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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

January 30, 1998

Florida Department of State
Division of Corporations/
Corporate Records
Post Office Box 6327
Tallahassee, Florida 32314

RE: Registration of Business Trust

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****350.00 ****350.00

Dear Sir:

Enclosed please find the appropriate form necessary to register Naples Championship Pitch & Putt Golf Business Trust as a trust pursuant to Florida Statute §609.02. Also enclosed is the filing fee of \$350.00. Please provide a certificate of status upon the filing of the trust with the Division of Corporations.

Yours truly,


Robert G. Hines, Esq.

RGH/tmp

enclosures

2-4-98
mm

**AFFIDAVIT TO THE SECRETARY OF STATE OF FLORIDA
TO FILE OR QUALIFY**

NAPLES CHAMPIONSHIP PITCH & PUTT GOLF

A BUSINESS TRUST

In accordance with Section 609.02 of the Florida Statutes, pertaining to Common Law Declarations of Trust, the undersigned, the Chairman of the Board of Trustees of Naples Championship Pitch & Putt Golf Business Trust

(Name of Trust)

a Florida Trust hereby affirms in order to file or qualify
(State)

Naples Championship Pitch & Putt Golf Business Trust, in the State of Florida.

(Name of Trust)

1. Two or more persons are named in the Trust.

2. The principal address is 6017 Pine Ridge Road, Suite 103,
Naples, Florida

3. The registered agent and office in the State of Florida is:

Robert G. Hines, 4532 East Tamiami Trail, Suite 402,

Naples, Florida 34112

4. Acceptance by the registered agent: Having been named as registered agent to accept service of process for the above named Declaration of Trust at the place designated in this affidavit, I hereby accept the appointment as registered agent and agree to act in this capacity.

(Signature of Registered Agent)

5. I certify that the attached is a true and correct copy of the Declaration of Trust under which the association proposes to conduct its business in Florida.

(Signature)
Name: JAMES YORK
Chairman of the Board of Trustees

NOTARY

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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

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DIVISION OF CORPORATIONS
TALLAHASSEE, FLORIDA

**DECLARATION OF TRUST
OF
NAPLES CHAMPIONSHIP PITCH AND PUTT BUSINESS TRUST**

On January 27, 1998, Robert G. Hines, of Naples, Collier County, Florida, James York, of Naples, Collier County, Florida, and Joseph Skladany, of Naples, Collier County, Florida, so long as they shall continue in office in accordance with the terms of this declaration of trust, and all other persons who at the time in question have been duly elected or appointed as trustees in accordance with the terms of this declaration of trust and are then in office, referred to in this declaration of trust as the trustees, state this trust as follows:

RECITALS

A. The trustees desire to form a trust for the principal purpose of raising capital and investing this capital in real property and improvements thereto.

B. The trustees may hereafter acquire, hold, invest and dispose of certain assets as trustees in the manner stated below.

C. The beneficial interest in the trust assets shall be divided into transferable shares of beneficial interest, evidenced by certificates, as provided below.

DECLARATION

Now, therefore, the trustees declare that they will hold all property of every type and description that they may acquire as such trustees, together with the proceeds of such property, in trust, to manage and dispose of it for the benefit of the holders of record of the certificates for shares being issued and to be issued under this declaration and in the manner and subject to the provisions as follows:

**SECTION ONE
THE TRUST**

1.1. *Name; change of name.* The name of the trust created by this declaration shall be "NAPLES CHAMPIONSHIP PITCH AND PUTT GOLF BUSINESS TRUST," referred to in this declaration as the trust. So far as may be practicable, the trustees shall conduct the activities of the trust, execute all documents and sue or be sued under this name. This name (and the word "trust" wherever used in this declaration of trust, except where the context otherwise requires) shall refer to the trustees in their capacity as trustees, and not individually or personally, and shall not refer to the officers, agents, employees or shareholders of the trust or of such trustees. Should the trustees determine that the use of this name is not practicable, legal or convenient, they may adopt such other

name for the trust as they deem proper; and the trust may hold property and conduct its activities under such name subject, however, to the limitations contained in the next succeeding paragraph.

1.2. *Location.* The principal place of business of the trust shall be in Naples, Florida, unless changed by the trustees to another location. The trust may have executive offices in Naples, Florida, and may have such other offices or places of business as the trustees may from time to time determine as necessary or expedient.

1.3. *Nature of trust.* The trust is a business trust, organized under the laws of the State of Florida. The trust is not a general partnership, limited partnership, joint venture, corporation or joint stock company. The shareholders shall be beneficiaries, and their relationship to the trustees shall be solely in that capacity, in accordance with the rights conferred on them under this declaration.

1.4. *Definitions.* As used in this declaration of trust, the following terms shall have the following meanings, unless the context of this declaration requires otherwise:

(a) "Affiliate" shall mean as to any corporation, partnership or trust any person who (1) holds beneficially, directly or indirectly, fifty percent (50%) or more outstanding capital stock, shares or equity interests of such corporation, partnership or trust, (2) is an officer, director, employee, partner or trustee of such corporation, partnership or trust or any person that controls, is controlled by, or under common control with, such corporation, partnership or trust, or (3) controls, is controlled by, or under common control with, such corporation, partnership or trust.

(b) "Construction loans" shall mean mortgage loans made to finance the construction of buildings and other improvements on land, and may include the financing of all or part of the cost of acquisition of such land or leasehold interests in such land.

(c) "Declaration of trust" shall mean this declaration of trust as amended, restated or modified from time to time. References in this declaration of trust to "declaration," "below," and "above" shall be deemed to refer to the declaration of trust and shall not be limited to the particular text, article or section in which such words appear.

(d) "Development loans" shall mean mortgage loans made to finance the development of land into a site or sites suitable for other residential, recreational, commercial, industrial or public uses, and may include the financing of all or part of the cost of the acquisition of such land or leasehold interests in such land.

(e) "FHA" shall mean the Federal Housing Administration and any successor to the Federal Housing Administration.

(f) "First mortgage" shall mean a mortgage that takes priority or precedence over all other charges or encumbrances on the real property, other than a leasehold interest in the real property, and that must be satisfied before such other charges are entitled to participate in the proceeds of any sale or other disposition of such real property. However, this priority shall not be deemed to be abrogated by liens for taxes, assessments that are not due and delinquent, leases, mechanics' and materialmen's liens for work performed and materials furnished, and other claims normally deemed in the same locality where the real property is located not to abrogate the priority of a first mortgage.

(g) "Junior mortgage" shall mean a mortgage that (1) has the priority or precedence over all charges or encumbrances on real property as that required for a first mortgage, except that the junior mortgage is subject to the priority of one or more other mortgages and (2) must be satisfied before such other charges or encumbrances (other than priority mortgages) are entitled to participate in the proceeds of any sale or other disposition of such real property.

(h) "Mortgages" shall mean mortgages, deeds of trust or other security interests in real property or in rights or interests, including leasehold interests, in real property.

(i) "Net assets" shall mean the total assets of the trust after deducting from such assets any liabilities of the trust, except that the assets shall be included in the total at the greater of either (1) the cost of such assets on the books of the trust, less provision for depreciation, amortization and depletion, or (2) the fair market value of such assets in the judgement of the trustees.

(j) "Non-recourse indebtedness" shall mean indebtedness of the trust incurred in connection with the acquisition of any asset, wherein the liability of the trust is limited to the asset acquired (including any increments or additions to the asset) and income and proceeds attributable to the asset, and that does not represent a general obligation of the trust.

(k) "Person" shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments, agencies and political subdivisions of governments and agencies.

(l) "Real property" shall mean land, ownership or other interests in land, including leasehold interests as lessee or lessor, and any buildings, structures, improvements and fixtures located on or used in connection with land, rights in land or interests in land, but does not include mortgages, mortgage loans or interests in mortgages or mortgage loans.

(m) "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as "securities," or any certificates of interest, shares or participations in temporary or interim certificates for, receipts for guarantees of, or warrants, options, or rights to subscribe to, purchase, or acquire, any of the above.

(n) "Securities of the trust" shall mean any securities issued by the trust.

(o) "Shareholders" shall mean at a particular time all holders of record of outstanding shares at that time.

(p) "Shares" shall mean the shares of beneficial interest of the trust as described in Section 5.1.

(q) "Total assets of the trust" shall mean the aggregate amount of all of the trust property appearing on the most recent balance sheet of the trust, prepared in accordance with generally accepted accounting principles, without deduction for mortgages or other security interests to which such assets are subject, but after deduction for accumulated depreciation, amortization, and other asset valuation reserves.

(r) "Trust property" shall mean, as of any particular time, all property, real, personal or otherwise, tangible or intangible, that is transferred, conveyed or paid to the trust or trustees, and all rents, income, profits and gains from the above property, and that at such time is owned or held by, or for the account of, the trust or the trustees.

SECTION TWO POWERS OF TRUSTEES

2.1. *General.* The trustees, subject only to the specific limitations contained in this declaration of trust, and such limitations as may be imposed by law, shall have, without other or further authorization, and free from any power or control on the part of the shareholders, full, exclusive and absolute power, control and authority over the trust property and over the business of the trust to the same extent as if the trustees were the sole and absolute owners of the trust property and business in their own right, including such power, control and authority to do all such acts and things as in their sole judgement and discretion are necessary, incidental to or desirable for the conducting of the business of the trust, but with such powers of delegation as may be permitted by this declaration of trust. The enumeration of any specific power or authority in this declaration of trust shall not be construed as limiting the above-mentioned power or authority or any specific power or authority. The trustees shall have the power to enter into commitments; to make any investment, purchase or acquisition; and to exercise any power authorized by this declaration of trust.

2.2. *Investments.* The trustees shall have power, for such consideration as they may deem proper, to invest in, purchase or otherwise acquire, for cash or other property or through the issuance of securities of the trust, and to hold or retain for investment full or participating interests of any type in real, personal or mixed property of any kind, whether tangible or intangible, wherever located.

2.3. *Appraisals.* If the trustees shall at any time purchase real property, the consideration paid for that property shall generally be based on the fair market value of the property as determined by an appraisal.

2.4. *Legal title.* Legal title to all the trust property shall be vested in the trustees as joint tenants and held by and transferred to the trustees, except that the trustees shall have power to cause legal title to any trust property to be held by or in the name of one or more of the trustees with suitable reference to his, her or their trustee status, or in the name of the trust, or in the name of any other person as nominee, on such terms, in such manner, and with such powers as the trustees may determine.

2.5. *Dealing with trust property.* The trustees shall have power to sell, convey, transfer, assign, mortgage, pledge, hypothecate, grant security interests in, otherwise encumber, exchange or otherwise dispose of, or grant options with respect to, any trust property free and clear of all trusts, at public or private sale, for cash or on terms, with or without advertisement, and subject to such restrictions, stipulations, agreements and reservations as they shall deem proper, including the power to take back mortgages to secure the whole or any part of the purchase price of any of the trust property sold or transferred by them, and to execute and deliver any deed or other instrument in connection with the above. The trustees shall also have the power to:

(a) rent, lease, sublease or hire from others or to others for terms that may extend beyond the termination of this declaration of trust any property or rights to property, real, personal or mixed, tangible or intangible; and to own, manage, use and hold such property and such rights; and to modify and terminate leases and subleases and consent to assignments and subleases by others;

(b) tear down, alter, repair or make improvements on real property, and do any act of management or of conservation with respect to any of the trust property;

(c) subdivide or partition real property (or consent to its partitioning); grant or receive to or from any person, including the advisor, participating interests or tenancies in common with respect to any portion of the trust property, and in connection with the above to enter into any operating or other agreement;

(d) give consents and make contracts relating to the trust property or its use, including, without limitation, consents to zoning plans, ordinances, variances, deed

restrictions, redevelopment plans, condominium documents and changes in any of the above;

(e) release, subordinate, quitclaim, surrender or dedicate any trust property;

(f) enter into any grant or agreement relating to the trust property, including without limitation grants of easements, permits, licenses and rights of way for utilities; boundary line or party wall agreements; easements and rights of way for driveways, alleys, streets and highways; and mineral, oil and timber grants, reservations and leases;

(g) modify, amend, extend, renew or terminate any grant or agreement relating to the trust property and waive compliance with any of the covenants and terms of the above; and

2.6. *Financing; issuance of securities.* The trustees shall have power to lend money, whether secured or unsecured; to borrow or in any other manner raise such sum or sums of money or other property as they shall determine in any amount, in any manner, or on any terms, and to evidence the same by securities that may mature at any time or times, even beyond the possible date of termination of the trust; to reacquire any such securities; to enter into other contracts in behalf of the trust; and to execute and deliver any mortgage, pledge or other instrument to secure any such securities or other obligations or contracts. Provided, however, that after giving effect to any proposed increase in aggregate principal amount of outstanding obligations of the trust for money borrowed from or guaranteed to others, the aggregate principal amount of all such obligations (other than non-recourse indebtedness of the trust) shall not exceed seventy-five percent (75%) of the net assets of the trust. Any such securities, instruments or other obligations of the trust may, at the discretion of the trustees, without vote of the shareholders, be convertible into shares at such time and on such terms as the trustees may prescribe.

2.7. *Facsimiles.* The trustees may authorize the use of facsimile signatures and/or any facsimile seal of the trust on securities of the trust or any depository receipts representing such securities. Provided, however, that where facsimile signatures are so used, one of the authorized signatures is manual or the securities or any such depository receipts are manually countersigned or authenticated by a transfer agent, registrar or by an authenticating agent, trustee or similar person. In case any person who shall have signed (or whose facsimile signature shall appear on) securities of the trust or any such depository receipts shall have ceased to occupy the office or perform the function with respect to which such signature was authorized before the securities or any depository receipts shall have been actually issued, the securities or the depository receipts may nevertheless be issued with the same effect as though such person had not ceased to occupy the office or perform such function.

2.8. *Taxes.* The trustees shall have power to pay all taxes or assessments, of whatever kind or nature, imposed on or against the trust or the trustees in connection with the trust property or on or against the trust property or income or any part of the trust property or income, to settle and compromise disputed tax liabilities, and for these purposes to make such returns and do all such other acts and things as may be deemed by the trustees necessary or desirable.

2.9. *Rights as holder of mortgages and securities.* The trustees shall have power to exercise all rights, powers and privileges appertaining to the ownership of all mortgages or securities forming part of the trust property to the same extent that any individual might, and, without limiting the generality of the above, to vote or give any consent, request or notice, or waive any power of substitution, to one or more persons, which proxies and powers of attorney may be for meetings or action generally, or for any particular meetings or actions, and may include the exercise of discretionary powers.

2.10. *Delegation; investment committees.* The trustees shall have power, consistent with their continuing exclusive authority over the management of the trust, the conduct of affairs of the trust, and the management and disposition of trust property, to delegate from time to time to one or more of their number or to their officers, employees and agents, the doing of such things and the execution of such deeds or other instruments either in the name of the trust or the names of the trustees or as their attorney or attorneys or otherwise as the trustees may from time to time deem expedient, or to delegate from time to time any of their powers to a committee or committees (appointed by the trustees or the chairperson), consisting of two or more trustees. However, powers of the trustees relating to the approval of investments for the trust may be delegated only to a committee or committees consisting of three or more trustees, referred to in this declaration as investment committee or investment committees.

2.11. *Collection.* The trustees shall have power to collect, sue for, receive and receipt for all sums of money or other property due to the trust; to consent to extensions of the time for payment, or to the renewal, of any bonds or other securities or obligations; to engage in or intervene in, prosecute, defend, compound, compromise, abandon or adjust by arbitration or otherwise any actions, suits, proceeding, disputes, claims, demands or things relating to the trust property; to foreclose any mortgage or other security securing any notes, debentures, bonds, obligations or contracts, by virtue of which any sums of money are owed to the trust; to exercise any power of sale held by foreclosure sale, to purchase or otherwise acquire title to any property; to be parties to reorganizations and to transfer to and deposit with any corporation, committee, voting trustee or other person any stocks, shares, bonds or other securities or obligations of any corporation, trust, association or other organization, or otherwise to participate in any arrangement for enforcing or protecting the interests of the trustees as the owners or holders of such stock, shares, bonds or other securities or obligations, and to pay any assessment levied in connection with such reorganization or arrangement; to extend the time with or without

security for the payment or delivery of any debts or property and to execute and enter into releases, agreements and other instruments; and to pay or satisfy any debts or claims on any evidence that the trustees shall think sufficient.

2.12. *Expenses.* The trustees shall have power to incur and pay any charges or expenses that in the opinion of the trustees are necessary or incidental to or proper for carrying out any of the purposes of this declaration of trust, and to reimburse others for the payment of such charges or expenses, and to pay appropriate compensation or fees from the funds of the trust to themselves as trustees and to persons with whom the trust has contracted or transacted business. The trustees shall fix the compensation of all officers and trustees. The trustees shall receive reasonable compensation for their general services as trustees and officers under this declaration of trust, and the trustees may pay themselves such compensation for special services, including legal services, and reimbursement for expenses reasonably incurred by themselves on behalf of the trust as they in good faith deem reasonable.

2.13. *Guarantees.* The trustees shall have the power to endorse or guarantee the payment of any notes or other obligations of any person; to make contracts of guaranty or suretyship or otherwise assume liability for payment of such notes or other obligations; and to mortgage and pledge the trust property or any part of the trust property to secure any such obligations.

2.14. *Deposits.* The trustees shall have power to deposit any moneys or securities included in the trust property with any one or more banks, trust companies or other banking institutions, whether or not these deposits will draw interest. These deposits may be withdrawn in such manner as the trustees may determine, and the trustees shall have no responsibility for any loss that may occur by reason of the failure of the bank, trust company or other banking institution with which the moneys or securities have been deposited.

2.15. *Allocation.* The trustees shall have power to determine whether moneys or other assets received by the trust shall be charged or credited to income or capital or allocated between income and capital, including the power to amortize or fail to amortize any premium or discount, to treat all the profit resulting from the maturity or sale of any asset, whether purchased at a premium or at a discount, as income or capital or apportion the same between income and capital, to apportion the sale price of any asset between income and capital, and to determine in what manner expenses or disbursement are to be borne as between income and capital, whether or not in the absence of the power and authority conferred by this Section 2.15 such assets would be regarded as income or as capital or such expense or disbursement would be charged to income or capital; to treat any dividend or other distribution on any investment as income or capital or apportion the same between income and capital; to provide or fail to provide reserves for depreciation, amortization, or obsolescence in respect of any trust property in such amounts and by

such methods and for such purposes as they shall determine, and to allocate to the shares of beneficial interest account less than all of the consideration received for shares (but not less than the par value of such shares) and to allocate the balance of such shares to paid-in capital, all as the trustees may reasonably deem proper.

2.16. *Valuation.* The trustees shall have power to determine conclusively the value of any of the trust property and any of the services, securities, assets or other consideration hereafter to be acquired or disposed of by the trust; and to revalue the trust property.

2.17. *Avoiding conflicts of interest in dealing with trust property.* Notwithstanding any other provisions of this declaration of trust, the trustees may not knowingly, directly or indirectly, lend any of the trust property to, purchase or otherwise acquire any property whatsoever (other than securities of the trust), sell or otherwise transfer any property whatsoever (other than securities of the trust), contract with or pay any commission or other remuneration, directly or indirectly, in connection with the purchase or sale of trust assets to (a) any trustee, officer or employee of the trust (acting in their individual capacities), (b) any corporation, partnership, trust or other organization with which a trustee, any officer or employee of the trust is affiliated, or any independent contractor to the trust. However, the trustees shall be entitled to engage in any transaction on behalf of the trust, notwithstanding any affiliation, provided (1) each such transaction has been approved or ratified, after full disclosure of such affiliation, by a majority of the trustees including a majority of the trustees who are not affiliates of any person (other than the trust) who is a party to the transaction, and (2) the trustees approving the transaction have determined that the transaction is fair and reasonable to the shareholders of the trust and that the transaction is on terms not less favorable to the trust than terms available for a comparable transaction with others that are not so affiliated.

2.18. *Power to contract.* Subject to the provisions of Section 2.10 with respect to delegation of authority by the trustees, the trustees shall have power to appoint, employ or contract with any person (including one or more of themselves and any corporation, partnership or trust of which one or more of them may be an affiliate, subject to the applicable requirements of Section 2.17) as the trustees may deem necessary or desirable for the transaction of the business of the trust.

2.19. *Organization of business entities.* Subject to Section 8.3, the trustees shall have power to cause to be organized or assist in organizing any person under the laws of any jurisdiction to acquire the trust property or to carry any business in which the trust shall directly or indirectly have any interest, and to cause the trust to merge with such person or any existing person or to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer the trust property to or with any such person or any existing person in exchange for the securities of such person or otherwise, and to lend money to, subscribe for the securities of and enter into any contracts with, any such person in which the trust holds or

is about to acquire securities or any other interest.

2.20. *Associations.* The trustees shall have power to cause the trust to enter into joint ventures, general or limited partnerships, and any other combinations or associations.

2.21. *Insurance.* The trustees shall have the power to purchase and pay for entirely out of trust property insurance policies individually insuring the shareholders, trustees, officers, employees, agents, or independent contractors of the trust, against all claims and liabilities of every nature arising by reason of their holding or having held any such office or position, or by reason of any action alleged to have been taken or omitted by any such person as trustee, officer, employee, agent, or independent contractor, including any action taken or omitted that may be determined to constitute negligence, whether or not the trust would have the power to indemnify such person against such liability.

2.22. *Pension and other plans.* The trustees shall have the power to pay pensions for faithful service, as deemed appropriate by the trustees, and to adopt, establish, and carry out pension, profit-sharing, share bonus, shares or purchase, savings, thrift, and other retirement, incentive, and benefit plans, trusts and provisions, including the purchasing of life and health insurance and annuity contracts as a means of providing such retirement and other benefits for any or all of the trustees, officers, employees and agents of the trust.

2.23. *Distributions.* The trustees shall have power to declare and pay, dividends in cash, shares or otherwise and make other distributions to shareholders, whether out of current or accumulated income, capital, capital gains, principal, surplus or from any other source, as the trustees in their discretion shall determine.

2.24. *Seal.* The trustees shall have the power to adopt and use a seal for the trust; but, unless otherwise required by the trustees, it shall not be necessary to place the seal on, and its absence shall not impair the validity of, any document, instrument or other paper executed and delivered by or on behalf of the trust.

2.25. *Charitable contributions.* The trustees shall have power to make donations, irrespective of benefit to the trust, for the public welfare or for community fund, hospital, charitable, religious, educational, scientific, civic or similar purpose, and in time of war or other national emergency in aid of the above.

2.26. *Indemnification.* In addition to the mandatory indemnification provided for in Section 4.3, the trustees shall have power to the extent permitted by the law to indemnify or enter into agreements with respect to indemnification with any person with whom the trust has dealings, including, without limitation, any investment adviser, including the adviser, or independent contractor, to such extent as the trustees shall determine.

2.27. *Remedies.* Notwithstanding any provision in this declaration of trust, when the trustees deem that there is a significant risk that an obligor to the trust may default or is in default under the terms of any obligation to the trust, the trustees shall have power to pursue any remedies permitted by law that, in their sole judgment, are in the interests of the trust, and the trustees shall have the power to enter into any investment, commitment or obligation of the trust resulting from the pursuit of such remedies as are necessary or desirable to dispose of property acquired in the pursuit of such remedies.

2.28. *Further powers.* The trustees shall have power to do all such other things and execute all such instruments as they deem necessary, proper or desirable to carry out, promote or advance the interests of the trust, although such things are not specifically mentioned in this declaration of trust. The trustees shall have the power to determine the interests of the trust, and their decisions made in good faith shall be conclusive. In construing the provisions of this declaration of trust, the presumption shall be in favor of a grant of power to the trustees. The trustees shall not be required to obtain any court order to deal with the trust property.

SECTION THREE INVESTMENTS

3.1. *Statement of investment policy.* The investment objective of the trust is to purchase real property in Collier County, Florida; to construct an eighteen hole championship pitch and putt golf course, clubhouse, driving range, practice green, and other improvements on the real property; and to the operate the facilities until such time as the project is sold and the proceeds of the sale are distributed to the shareholders of the trust.

Subject to the investment restrictions in sections 3.3 below. The trustees may alter the above described investment policy if they should determine such change to be in the best interests of the trust and the shareholders.

3.2. *Uninvested assets.* To the extent that the trust has assets not otherwise invested in accordance with Section 3.1 above, the trustees may invest such assets in:

(a) obligations of, or guaranteed or insured by, the United States Government, or any agencies or political subdivisions of the United States, including the Federal Housing Administration and the Federal National Mortgage Association;

(b) obligations of, or guaranteed by, any state, territory or possession of the United States of America or any agencies or political subdivisions of the above;

(c) evidences of deposits in, or obligations of, banking institutions, federal

savings and loan associations and federal savings banks, and savings institutions that are members of the Federal Deposit Insurance Corporation or of the Federal Home Loan Bank System;

3.3. *Restrictions.* The trustees shall not:

(a) invest in commodities, foreign currencies, bullion or chattels, except as required in the day-to-day business of the trust or in connection with its investments;

(b) engage in any short sale;

(c) issue equity securities of more than one class (other than convertible obligations, warrants, rights and options),

(d) issue "redeemable securities," as defined in Section 2(a)(31) of the Investment Company Act of 1940, as amended.

SECTION FOUR LIMITATIONS OF LIABILITY

4.1. *Liability to third persons.* No shareholder shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other person or persons in connection with trust property or the affairs of the trust; and no trustee, officer, employee or agent of the trust shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other person or persons in connection with trust property or the affairs of the trust, save only that arising from his or her bad faith, willful misconduct, or reckless disregard of his or her duties or for his or her failure to act in good faith in the reasonable belief that his or her action was in the best interests of the trust; and all such other persons shall look solely to the trust property for satisfaction of claims of any nature arising in connection with the affairs of the trust. If any shareholder, trustee, officer, employee or agent, as such, of the trust is made a party to any suit or proceedings to enforce any such liability, he or she shall not on account of such position be held to any personal liability. The trust shall indemnify each shareholder against all claims and liabilities, whether they proceed to judgment or are settled or otherwise brought to a conclusion, to which such shareholder may become subject, solely by reason of his or her being or having been a shareholder, and shall reimburse such shareholder for all legal and other expenses reasonably incurred by the shareholder in connection with any such claim or liability. The rights accruing to a shareholder under this Section 4.1 shall not exclude any other right to which such shareholder may be lawfully entitled, nor shall anything contained in this declaration of trust restrict the right of the trust to indemnify or reimburse a shareholder in any appropriate situation, even though not specifically provided in this declaration of trust. However, the trusts shall have no liability to reimburse shareholders for taxes assessed against them by reason of their ownership of shares, nor for any losses suffered by reason

of changes in the market value of securities of the trust.

4.2. *Liability to trust or to shareholders.* No trustee, officer, employee or agent of the trust shall be liable to the trust or to any shareholder, trustee, officer, employee or agent of the trust for any action or failure to act (including, without limitation, the failure to compel in any way any former or acting trustee to redress any breach of trust) except for his or her own bad faith, willful misconduct, or reckless disregard of his or her duties or for his or her failure to act in good faith on the reasonable belief that his or her action was in the best interests of the trust.

4.3. *Indemnification.* The trust shall indemnify each of its trustees, officers, employees and agents (including any person who serves at its request as director, officer, partner, trustee or the like of another organization in which it purchases any interest as a shareholder, creditor, or otherwise) against all liabilities and expenses, including amounts paid in satisfaction of judgments, in compromise, or as fines and penalties and attorney fees reasonably incurred by him or her in connection with the defense or disposition of any action, suit or other proceeding, whether civil or criminal, in which he or she may be involved or with which he or she may be threatened while acting as trustee or as an officer, employee or agent of the trust or the trustees, as the case may be, or thereafter, by reason of his or her being or having been such agent trustee, officer, employee or agent, except with respect to any maker as to under which he or she shall have been adjudicated to have acted in bad faith, with willful misconduct or reckless disregard of his or her duties, or not to have acted in good faith in the reasonable belief that his or her action was in the best interests of the trust. Provided, however, that as to any matter disposed of by a compromise payment by such trustee, officer, employee or agent, pursuant to a consent decree or otherwise, no indemnification either for such payment or for any other expenses shall be provided unless the compromise shall be approved as in the best interests of the trust by a majority of the disinterested trustees or unless the trust shall have received a written opinion of independent legal counsel to the effect that such trustee, officer, employee or agent appears to have acted in good faith with the reasonable belief that his or her action was in the best interests of the trust. The rights accruing to any trustee, officer, employee or agent under these provisions shall not such exclude any other right to which he or she may be lawfully entitled. However, no trustee, officer, employee or agent may satisfy any right of indemnity or reimbursement granted in this declaration of trust or to which he or she may be otherwise entitled, except out of the trust property, and no shareholder shall be personally liable to any person with respect to any claim for indemnity, reimbursement or otherwise. The trustees may make advance payments in connection with indemnification under this Section 4.3, provided that the indemnified trustee, officer, employee or agent shall have given a written undertaking to reimburse the trust in the event it is subsequently determined that he or she is not entitled to such indemnification.

Any action taken by or conduct on the part of a trustee, officer, employee or agent

of the trust in conformity with or in good faith reliance on the provisions of Section 2.17 shall not, for the purposes of this declaration of trust (including, without limitation, Sections 4.1, 4.2 and 4.3 constitute bad faith, willful misconduct or reckless disregard of his or her duties, or failure to act in good faith in the reasonable belief that his or her action was in the best interests of the trust.

4.4. *Surety bonds.* No trustee shall, as such, be obligated to give any bond, surety or other security for the performance of any of his or her duties.

4.5. *Apparent authority.* No purchaser, lender, transfer agent or other person dealing with the trustees or any officer, employee or agent of the trust shall be bound to make any inquiry concerning the validity of any transaction, purporting to be made by such trustee, officer, employee or agent or make inquiry concerning, or be liable for the application of, money or property paid, loaned, or delivered to or on the order of the trustees or of such officer, employee or agent.

4.6. *Recitals.* Every note, debenture, bond, obligation, contract, instrument, certificate, share or undertaking, and every other act or thing whatsoever executed in connection with the trust, shall be conclusively taken to have executed or done by a trustee or trustees or an officer, employee or agent of the trust only in his, her or their capacity as trustee or trustees under this declaration of trust or in the capacity of officer, employee or agent of the trust. Every written note, debenture, bond, obligation, contract, instrument, certificate, share or undertaking made or issued by or on behalf of the trust shall refer to this declaration of trust and contain a recital to the effect that the obligations under this declaration of trust are not personally binding on, nor shall resort be had to the private property of, any trustee, shareholder, officer, employee or agent of the trust (but the trust property or a specific portion of the trust property only shall be bound), and may contain any further recital that he, she or they may deem appropriate, but the mission of the first-mentioned recital shall not operate to impose personal liability on any trustee, shareholder, officer, employee or agent of the trust. The trustees shall at all times maintain insurance for the protection of the trust property, its shareholders, trustees, officers, employees and agents in such amount as the trustees shall deem adequate to cover all foreseeable tort liability to the extent available at reasonable rates

SECTION FIVE SHARES

5.1. *Description of shares.* The interests of the shareholders under this declaration of trust shall be divided into shares, all of one class and having a par value of _____ DOLLARS (\$_____) per share. The number of shares authorized under this declaration of trust is unlimited. Ownership of shares shall be evidenced by certificates. All shares shall have equal noncumulative voting, distribution, liquidation and other rights, and shall be fully paid and non-

assessable, and shall have no preference, conversion, exchange, preemptive or redemption rights.

5.2. *Certificates.* Every shareholder shall be entitled to receive a certificate, in such form as the trustees shall from time to time approve, specifying the number of shares held by the shareholder. Subject to Section 5.4 and Section 7.5, the certificates shall be treated as negotiable, and title to the certificates and to the shares represented by the certificates shall be transferred by delivery to the same extent in all respects as a stock certificate. Unless otherwise determined by the trustees, the certificates shall be signed by the chairperson and secretary and shall be countersigned by a transfer agent and registered by a registrar, if any, and these signatures may be facsimile signatures in accordance with Section 2.7. There shall be filed with each transfer agent a copy of the form of certificate so approved by the trustees, certified by the chairperson or secretary, and the form shall continue to be used unless and until the trustees approve some other form.

5.3. *Issuance of units.* Notwithstanding any other provisions of this declaration of trust, the trustees may issue from time to time units consisting of different securities of the trust. Any security issued in any such unit shall have the same characteristics and shall entitle the registered holder of such security to the same rights as any identical securities issued by the trustees, except that the trustees may provide (and may cause a notation to be placed on the certificate representing such unit or securities of the trust issued in any such unit) that for a specified period not to exceed twelve (12) months after issuance, securities of the trust issued in any such unit may be transferred on the books of the trust only in such unit.

SECTION SIX RECORD AND TRANSFER OF SHARES

6.1. *Share register.* A register shall be kept by or on behalf of the trustees, under the direction of the trustees, that shall contain the names and addresses of the shareholders, the number of shares held by the shareholders respectively, the numbers of the certificates representing such shares, and a record of all transfers of the certificates. Only shareholders whose certificates are recorded on this register shall be entitled to vote, receive distributions or otherwise exercise or enjoy the rights of shareholders. No shareholder shall be entitled to receive any distribution or to have notice given to him or her, as provided in this declaration of trust, until the shareholder has given his or her address to a transfer agent or such other officer or agent of the trust as shall keep the register for entry of the above-mentioned records and information.

6.2. *Transfer agent.* The trustees shall have power to employ in Naples, Florida, and/or in any other city, a transfer agent or transfer agents and, if they so determine, a registrar or registrars. The transfer agent or transfer agents may keep the register, record

in the register the original issues and transfers of shares, and countersign certificates for shares issued to the persons entitled to the shares. Any such transfer agents and registrars shall perform the duties usually performed by transfer agents and registrars of certificates of stock in a corporation, except as such duties are modified by the trustees.

6.3. *Blank certificates.* In accordance with the usual custom of corporations having a transfer agent, signed certificates for shares in blank may be deposited with any transfer agent of the trust, to be used by the transfer agent in accordance with authority conferred on it as the occasion may require, and in so doing the signers of the certificates shall not be responsible for any loss resulting from such transfers.

6.4. *Owner of record.* Any person becoming entitled to any shares in consequence of the death, bankruptcy or insolvency of any shareholder, or otherwise by operation of law, shall be recorded as the holder of such shares and receive a new certificate for the same on production of the proper evidence of ownership and delivery of the existing certificate to the trustees or a transfer agent of the trust. But until such record is made, the shareholder of record shall be deemed to be the holder of such shares for all purposes under this declaration of trust, and no trustee, transfer agent, registrar, officer or agent of the trust shall be affected by any notice of such death, bankruptcy, insolvency or other event.

6.5. *Transfers of shares.* Shares shall be transferable on the records of the trust (other than by operation of law) only by the record holder of the shares or by the record holder's agent, duly authorized in writing, on delivery to the trust or a transfer agent of the trust of the certificate or certificates for the shares, with all transfer tax stamps affixed or duly provided for, properly endorsed or accompanied by duly executed instrument or instruments of transfer, together with such evidence of the genuineness of each such endorsement, execution and authorization and of other matters as reasonably be required by the trust or the transfer agent. On this delivery, the transfer shall be recorded on the register of the trust and a new certificate for the shares so transferred shall be issued to the transferee; and, in case of a transfer of only a part of the shares represented by any certificate, a new certificate for the residue of the shares shall be issued to the transferor. But until such record is made, the shareholder of record shall be deemed to be the holder of the shares for all purposes under this declaration of trust, and no trustee, transfer agent, registrar, officer, or agent of the trust or the trust itself shall be affected by any notice of the proposed transfer. This Section 6.5 and Section 6.4 are subject in all respects to the provisions of Section 5.4 and Section 7.5.

6.6. *Limitation of fiduciary responsibility.* The trustees shall not, nor shall the shareholders or any officer, transfer agent or other agent of the trust, be bound to see to the execution of any trust, express, implied, or constructive, or of any charge, pledge or equity to which any of the shares or any interest in the shares are subject, or to ascertain or inquire whether any sale or transfer of any such shares or interest in the shares by any

such shareholder, his or her personal representatives is authorized by such trust, charge, pledge or equity, or to recognize any person as having any interest in the shares except the persons recorded as such shareholders. The receipt of the person or persons or the duly authorized agent of any one of them in whose name any share is recorded shall be a sufficient discharge for all money, securities and other property payable, issuable or deliverable in respect to such share, and from all liability to see to the proper application of such money, security, or property.

6.7. *Notices.* All notices to which shareholders under this declaration of trust may be entitled and all communications shall be deemed duly served or given if mailed, postage prepaid, addressed to shareholders of record at their last known post office addresses, as recorded on the share register provided for in Section 6.1 above.

6.8. *Replacement of certificates.* In case of the loss, mutilation or destruction of any certificate for shares under this declaration of trust, the trustees may issue or cause to be issued a new certificate on such terms as they may deem fit.

SECTION SEVEN CHARACTERISTICS OF SHARES

7.1. *General.* The ownership of the trust property of every description and the right to conduct any business described in this declaration of trust are vested exclusively in the trustees, and the shareholders shall have no interest in the trust property other than the beneficial interest conferred by their shares, and they shall have no right to call for any partition or division of any property, profits, rights or interests of the trust nor can they be called on to share or assume any losses of the trust or suffer an assessment of any kind by virtue of their ownership of shares. The shares shall be personal property giving only the rights specifically set forth in this declaration of trust and in the certificates for shares. Notwithstanding any other provisions of this declaration of trust, all real estate at any time forming part of the trust property shall be held in trust, subject to sale and conversion into personal estate at such time or times and in such manner and on such terms as the trustees shall approve; but the trustees shall have power, until the termination of this trust, to postpone such conversion so long as they shall think fit. For the purpose of determining the nature of the interest of the shareholders in the trust, all such real estate shall at all times be considered as personal estate; and the real estate and personal property comprised in the trust estate shall constitute a single fund.

7.2. *Death of a shareholder.* The death of a shareholder during the continuance of the trust shall not terminate this declaration of trust or give the shareholder's legal representatives a right to an accounting or to take any action in the courts or otherwise against other shareholders, the trustees or the trust property, but shall simply entitle the legal representatives of the deceased shareholder to demand and receive, pursuant to the provisions of Section 7.4 above, a new certificate for shares in place of the certificate held

by the deceased shareholder; and on the acceptance of the new certificate the legal representatives shall succeed to all the rights of the deceased shareholder under this declaration of trust.

7.3. *Repurchase of securities of the trust* The trustees may, on behalf of the trust, purchase or otherwise acquire outstanding securities of the trust from time to time for such consideration and on such terms as they may deem proper. Shares so purchased or acquired by the trustees for the account of the trust shall not, so long as they belong to the trust, receive distributions (other than, at the option of the trustees, distributions in shares) or be entitled to any voting rights. Such shares may, in the discretion of the trustees, be canceled and the number of shares issued reduced accordingly, or such shares may, in the discretion of the trustees, be held in the treasury and may be disposed of by the trustees at such time or times to such party or parties and for such consideration as the trustees may determine. Shares canceled pursuant to this Section 7.3 are restored to the status of authorized but unissued shares.

7.4. *Trustees as shareholders.* Any trustee in the trustee's individual capacity may purchase and otherwise acquire or sell and otherwise dispose of shares or other securities issued by the trust, and in so doing shall be subject to the same limitations as director of a business corporation organized under the laws of Florida.

SECTION EIGHT SHAREHOLDERS

8.1. *Meetings of shareholders. (a) Annual meetings.* Annual meetings of the shareholders shall be held, commencing in 1998 in Naples, Florida, or in such other place as the trustees may designate, on a day, at a time and at a place set by the trustees. The business transacted at this meeting shall include the election of trustees and the transaction of such other business as shareholders may be entitled to vote on as provided below in these Sections 8.1 to 8.8, or as the trustees may determine. The holders of a majority of outstanding shares present in person or by proxy shall constitute a quorum at any annual or special meeting.

(b) *Special meetings.* Special meetings of the shareholders may be called at any time by a majority of the trustees and shall be called by the trustees on written request of shareholders holding in the aggregate not less than two-thirds of the outstanding shares having voting rights, the request specifying the purpose or purpose for which the meeting is to be called. Any such meeting shall be held in Naples, Florida, or such other place as the trustees shall designate.

8.2. *Notice of meetings.* Notice of all meetings of the shareholders, stating the time, place and purposes of the meeting, shall be mailed by the trustee to each shareholder at the shareholder's registered address at least thirty (30) days and not more

ninety (90) days before the meeting. Any adjourned meeting may be held as adjourned without further notice.

8.3. *Voting rights of shareholders.* At all meetings of shareholders, each shareholder shall be entitled to cast one vote for each share owned on each matter presented for vote. The shareholders shall be entitled to vote only on the following matters: (a) amendment of this declaration of trust or termination of this trust, as provided in Section 12.1; (b) any merger or consolidation of the trust or the sale, lease or exchange of all or substantially all of the property and assets of the trust, including its goodwill, as provided in Section 12.2; and (c) whether or not a court action, proceeding or claim should, be brought or maintained derivatively or as a class action on behalf of the trust or its shareholders. Except as otherwise expressly provided in this declaration of trust, each such matter shall require the affirmative vote of the holders of not less than a majority of the shares then outstanding and entitled to vote. Except with respect to the matters specified above in this Section 8.3 on which the specified shareholders' vote shall determine the trustees' action, no action taken by the shareholders at any meeting shall in any way bind the trustees.

8.4. *Record date for meetings.* For the purpose of determining the shareholders who are entitled to vote or act at any meeting or any adjournment of any meeting or to participate in any dividend or distribution, or for the purpose of any other action, the trustees may from time to time close the transfer books for such period, not exceeding sixty (60) days, as the trustees may determine; or without closing the transfer books the trustees may fix a date not more than sixty (60) days prior to the date of any meeting of shareholders, of dividend payment, or of other action as a record date for the determination of shareholders entitled to vote at such meeting or any adjournment of such meeting or to receive such dividend or to be treated as shareholders of record for purposes of such other action. Any shareholder who was a shareholder at the time so fixed shall be entitled to vote at such meeting or any adjournment of such meeting or to receive such dividend even though the shareholder has since that date disposed of his or her shares, and no shareholder becoming such after that date shall be so entitled to vote at such meeting or any adjournment of such meeting or to receive such dividend or to be treated as a shareholder of record for purposes of such other action.

8.5. *Proxies; voting.* At any meeting of shareholders, any shareholder entitled to vote may vote by proxy, provided that no proxy shall be voted at any meeting unless it shall have been placed on file with the secretary, or with such other officer or agent of the trust as the secretary may direct, for verification prior to the time at which the vote shall be taken. Pursuant to a resolution of a majority of the trustees, proxies may be solicited in the name, of one or more trustees or one or more of the officers of the trust. Only shareholders of record shall be entitled to vote, and each full share shall be entitled to one vote. When any share is held jointly by several persons, any one of them may vote at any meeting in person or by proxy with respect to such share; but if more than one of them shall be

present at the meeting in person or by proxy, and the joint owners or their proxies so present disagree as to any vote to be cast, the vote shall not be received in respect of such share. A proxy purporting to be executed by or on behalf of a shareholder shall be deemed valid unless challenged at or prior to its exercise, and the burden of proving invalidity shall rest on the challenger.

8.6. *Reports.* The trustees shall cause to be prepared at least annually a report of operations containing a balance sheet and a statement of income and surplus of the trust, prepared in conformity with generally accepted accounting principles, and an opinion of an independent certified public accountant or independent public accountant on the financial statements based on an examination of the books and records of the trust. A signed copy of this report and opinion shall be filed with the trustees within thirty (30) days after the close of the period covered by the report, and with any state securities or "Blue Sky" administrator or other similar authority who requests that such report be filed. Copies of such reports shall be mailed to all shareholders of record within thirty (30) days of the period covered by the report, and in any event, within reasonable period preceding the annual meeting of shareholders. The trustees, shall, in addition, furnish promptly to the shareholders, after the end of each of the first three quarterly periods of every calendar year, an interim report containing an unaudited balance sheet of the trust as of the end of such quarterly period and a statement of income and surplus for the period from the beginning of the current calendar year to the end of such quarterly period. The trustees shall also file a copy of such interim report with any state securities or "Blue Sky" administrator or similar authority who requests it.

8.7. *Inspection of records.* The records of the trust shall be open to inspection by shareholders. Any federal or state securities or "Blue Sky" administrator or other similar authority shall have the right, at reasonable times during business hours and for proper purposes, to inspect the books of account of the trust and the records of the meetings of shareholders and trustees.

8.8. *Shareholder action by written consent.* Any action taken by shareholders may be taken without a meeting if a majority of shareholders entitled to vote on the matter consent to the action in writing; and the written consents or are filed with the records of the meetings of shareholders. This consent shall be treated for all purposes as a vote taken at a meeting of shareholders.

SECTION NINE TRUSTEES

9.1. *Number and qualification.* There shall be three trustees until such time as the number of trustees has been changed pursuant the provisions of this Section 9.1. The number of trustees may be increased or decreased by a written instrument signed by a majority of the trustees then in office, provided that the number of trustees shall in no event

be less than two or more than four. Any vacancy created by an increase in trustees may be filled by the appointment of an individual having the qualifications described in this Section 9.1, made by a written instrument signed by a majority of the trustees then in office. Any such appointment shall not become effective, however, until the individual named in the written instrument of appointment shall have accepted the appointment in writing and agreed in writing to be bound by the terms of this declaration of trust. No reduction in the number of trustees shall have the effect of removing any trustee from office prior to the expiration of his or her term. Whenever a vacancy in the number of trustees shall occur, until the vacancy is filled as provided in Section 9.4, the trustees continuing in office, regardless of their number, shall have all the powers granted to the trustees and shall discharge all the duties imposed on the trustees by this declaration of trust. A trustee shall be an individual at least twenty-one (21) years of age who is not under any legal disability. The trustees, in their capacity as trustees, shall not be required to devote their entire time to the business and affairs of the trust.

9.2. *Term of office.* Each trustee named in this declaration of trust, or appointed as provided in Section 9.1 or Section 9.4 prior to the first annual meeting of shareholders, shall (except in the event of resignations, removals, or vacancies pursuant to Section 9.3 or Section 9.4) hold office until this trust is terminated.

9.3. *Resignation and removal.* Any trustee may resign as trustee without need for prior or subsequent accounting) by an instrument in writing signed by the trustee and delivered or mailed to the chairperson or secretary. The resignation shall be effective on its delivery, or at a later date, according to the terms of the notice. Any trustee may be removed (provide the aggregate number of trustees after the removal shall not be less than one) with cause, by the action of two-thirds of the remaining trustees at a meeting duly called. On the resignation or removal of a trustee, or the trustee's otherwise ceasing to be a trustee, the resigning or removed trustee shall execute and deliver such documents as the remaining trustees shall require for the purpose of conveying to the trust or the remaining trustees any trust property held in the name of the resigning or removed trustee. On the incapacity or death of any trustee, his or her legal representative shall execute and deliver on such trustee's behalf such documents as the remaining trustees shall require as provided in the preceding sentence.

9.4. *Vacancies.* The term of office of a trustee shall terminate and a vacancy shall occur in the event of the death, resignation, adjudicated incompetence or other incapacity to exercise the duties of the office, or removal of a trustee. No such vacancy shall operate to annul this declaration of trust or to revoke any existing agency created pursuant to the terms of this declaration of trust. Title to any trust property held in the name of any trustee alone, jointly with one or more of the other trustees, or otherwise, shall, in the event of the death, resignation, removal, adjudicated incompetence or other incapacity of such trustee to exercise their duties of the office, vest in the continuing or surviving trustees without necessity of any further act or conveyance. In the case of an existing vacancy, a majority

of the trustees continuing in office acting by written instrument or instruments, shall fill the vacancy, and any trustee so elected by the trustees shall hold office until this trust is terminated, or until said trustee resigns, dies, is removed, or is adjudged to be incompetent or incapacitated. On the effectiveness of any such appointment as provided in this Section 9.4, the trust property shall vest in the new trustee jointly with the continuing or surviving trustees without the necessity of any further act or conveyance, provided that no such election or appointment as provided in this section shall become effective unless or until the new trustee shall have accepted in writing his or her appointment and shall have agreed to be bound by the terms of this declaration of trust.

9.5. *Meetings of trustees.* Meetings of the trustees shall be held from time to time on the call of the chairperson, the secretary, or any two trustees. Notice of any meeting shall be mailed or otherwise given not less than forty-eight (48) hours before the meeting, but may be waived in writing by any trustee either before or after the meeting. The attendance of a trustee at a meeting shall constitute a waiver of notice of the meeting, except where a trustee attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened. The trustees may act with or without a meeting. A quorum for all meetings of the trustees shall be a majority of the trustees then in office. Unless specifically provided otherwise in this declaration of trust, any action of the trustees may be taken at a meeting by vote of a majority of the trustees present (a quorum being present) or without a meeting. Any agreement, deed, mortgage, lease or other instrument executed by one or more of the trustees or by any person, pursuant to authorization or on ratification of the instrument by action of the trustees as provided in this declaration of trust, shall be valid and binding on the trustees and on the trust.

9.6. *Meetings of committees.* Any committee may act with or without a meeting. A quorum for all meetings of any committee shall be a majority of the members of the committee. Unless specifically provided otherwise in this declaration of trust, any action of any committee may be taken at a meeting by vote of a majority of the members present (a quorum being present) or without a meeting.

9.7. *Action taken without a meeting.* Any action of the trustees or of a committee taken without a meeting may be taken without prior notice and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the majority of the trustees then in office or the then members of the committee, or such other proportion of the trustees or of the committee as would be necessary to authorize or take such action at a meeting of the trustees or the committee. Notice of the taking of such action without a meeting by less than unanimous written consent of the trustees or the committee shall be given to those trustees or committee members who have not consented in writing within five days after the execution of such consent by the last trustee whose execution of consent was required for effective action to be taken.

9.8. *Meeting by conference telephone.* Trustees may participate in a meeting of trustees or any committee of trustees by means of conference telephone or similar communications equipment that will enable all persons participating in the meeting to hear each other and to participate in the meeting. Such communications shall constitute presence in person at the meeting. The minutes of any meeting of trustees held by telephone shall be prepared in the same manner as a meeting of trustees held in person.

9.9. *Officers.* The trustees shall annually elect from among their number a chairperson who shall be the principal officer of the trust. The trustees may elect or appoint, from among their number or otherwise, or may authorize the chairperson to appoint, a vice-chairperson, president, one or more vice presidents, a treasurer, a secretary, a comptroller, one or more assistant secretaries and assistant treasurers, and such other officers or agents, who shall have such powers, duties and responsibilities as the trustees may deem to be advisable. Two or more offices (except chairman and secretary and assistant secretary) may be held by the same person.

9.10. *Trustees regulations.* The trustees may adopt and from time to time amend or repeal trustees' regulations for the conduct of the business of the trust, and in such trustees' regulations may define the duties of their officers, agents, employees and representatives.

SECTION TEN DISTRIBUTIONS TO SHAREHOLDERS

10.1. *General.* The trustees may from time to time declare and pay to the shareholders, in proportion to their respective ownership of shares, out of the current or accumulated income, capital, capital gains, principal, surplus, (including paid-in capital) or assets in the hands of the trustees such dividends or other distributions as they see fit. Subject to the above, the declaration and payment of such dividends or other distributions and the determination of current or accumulated income, capital, capital gains, principal and surplus available for dividends and other purposes shall lie wholly in the discretion of the trustees, and no shareholders shall be entitled to receive or be paid any dividends or to receive any distribution except as determined by the trustees in the exercise of such discretion. The trustees may, in addition, from time to time in their discretion, declare and pay as dividends or other distributions such additional amounts, whether or not out of current or accumulated income, capital, capital gains, principal and surplus (including paid-in capital) available for dividends or other distributions, sufficient to enable the trust to avoid or reduce its liability for federal income taxes, inasmuch as the computations of net income and gains for federal income tax purposes may vary from the computations of dividends or other distributions on the books of the trust. All such dividends or other distributions may be made, in whole or in part, in cash, property or other assets of the trust, or in senior or subordinated, secured or unsecured, evidences of indebtedness of the trust, as the trustees may in their discretion from time to time determine. The trustees

may also distribute to the shareholders, in proportion to their respective ownership of shares, additional shares in such manner and on such terms as the trustees may deem proper.

10.2 *Retained earnings.* The trustees, except as provided in Section 10.1 above, may always retain from the net profits such amount as they may deem necessary to pay the debts or expenses of the trust, to meet obligations of the trust, to establish reserves, or to use as they may deem desirable in the conduct of their affairs or to retain for future requirements or extensions of the business.

10.3 *Source of distributions.* Any distributions to shareholders shall be accompanied by a statement in writing advising the shareholders of the source of the funds so distributed so that distributions of ordinary income, return of capital and capital gains income will be clearly distinguished, or, if the source of funds so distributed has not been determined, the communication shall so state, in which event the statement of the source of funds shall be forwarded to shareholders promptly after the close of the calendar year in which the distribution was made.

SECTION ELEVEN RECORDING OF DECLARATION OF TRUST

11.1 *Recording.* This declaration of trust and any amendment to this declaration shall, as soon as reasonably practicable after its execution or adoption be filed in the office of the Secretary of the State of Florida, which filing shall be a condition precedent to the effectiveness of any such amendment. The trustees shall also cause to be filed in the above-mentioned office and in all other offices in which recording of the amendment or instrument in question shall be required from time to time by the laws of the State of Florida, or by any other applicable laws or in which such recording shall seem desirable to the trustees, all amendments to this declaration of trust and appropriate instruments disclosing changes in the persons who are trustees of the trust. Except as to the required filing of amendments in the office of the Secretary of the State of Florida, the above-mentioned filing shall not be deemed a condition to the effectiveness of, and the failure to so file shall not be deemed to invalidate, any such amendment or any election or appointment of any person as a trustee or the resignation or removal of any trustee.

SECTION TWELVE AMENDMENT OR TERMINATION OF TRUST

12.1 *Amendment or termination.* The provisions of this declaration of trust may be amended or altered (except as to the limitations of personal liability of the shareholders and trustees and the prohibition of assessments on shareholders). The trust may be terminated at any meeting of shareholders called for the purpose by the affirmative vote of the holders of not less than two-thirds of the shares then outstanding and entitled to

vote, or by an instrument or instruments in writing, without a meeting, signed by a majority of the trustees and the holders of not less than two-thirds of such shares. No amendment or termination shall be effective until, until, if the amendment or termination is effectuated by an instrument in writing, the instrument shall have been filed in the office of the Secretary of the State of Florida or, if effectuated by a vote at a meeting, a certificate, signed and acknowledged by a trustee that the action was taken at a meeting duly called and held in accordance with and by the affirmative vote required by this declaration of trust, shall have been so filed. If the trust is terminated:

(a) The trust shall carry on no business except for the purpose of winding up its affairs.

(b) The trustees shall proceed to wind up the affairs of the trust; and under this declaration of trust all of the powers of the trustees shall continue until the affairs of the trust shall have been wound up, including the power to fulfill or discharge the contracts of the trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining trust property to one or more persons at public or private sale for consideration that may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities, and do all other acts appropriate to liquidate its business. However, any sale, conveyance, assignment, exchange, transfer or other disposition of all or substantially all of the trust property shall require approval of the principal terms of the transaction and the nature and amount of the consideration by affirmative vote of not less than a majority of all outstanding shares entitled to vote.

(c) After paying or adequately providing for the payment of all liabilities, and on receipt of such releases, indemnities and refunding agreements as they deem necessary for their protection, the trustees shall distribute the remaining trust property, in cash or in kind or in a combination of both, among the shareholders according to their respective rights.

Notwithstanding any other provision of this declaration of trust, until completion of the trust's first public offering of its shares, this declaration of trust may be terminated or amended in any respect by the affirmative vote of a majority of the trustees or by an instrument or instruments signed by a majority of the trustees.

12.2. *Merger, consolidation and sale of assets.* The trust may merge or consolidate with any other person or may sell, lease or exchange all or substantially all of its property and assets, including its goodwill, on such terms and conditions and for such consideration when and as authorized at any meeting of shareholders called for the purpose by the affirmative vote of the holders of not less than two-thirds of the shares then outstanding and entitled to vote, or by an instrument in writing, without a meeting, signed by the holders of not less than two-thirds of such shares. In respect of any such merger, consolidation or sale of assets, shareholders shall be entitled to rights of appraisal of his

or her shares to the same extent as a shareholder of a business corporation organized under the laws of Florida in respect of a merger, consolidation or sale of assets of a business corporation organized under the laws of Florida, and such rights shall be the shareholder's exclusive remedy in respect of his or her dissent from any such action.

SECTION THIRTEEN MISCELLANEOUS

13.1 *Governing Law.* This declaration of trust is executed by the trustees and delivered in Florida and with reference to the laws of that state, and the rights of all parties and the validity, construction and effect of every provision of this declaration of trust shall be subject to and construed according to the laws of that state.

13.2. *Counterparts.* This declaration of trust may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument that shall be sufficiently evidenced by any such original counterpart.

13.3. *Reliance by third parties.* Any certificate executed by an individual who, according the records in the office of the Secretary of State of Florida, appears to be a trustee under this declaration of trust, certifying to: (a) the number or identity of trustees or shareholders, (b) the due authorization of the execution of any instrument or writing, (c) the form of any vote passed at a meeting of trustees or shareholders, (d) the fact that the number of trustees or shareholders present at any meeting or executing any written instrument satisfies the requirements of this declaration of trust, (e) the form of any trustees' regulations adopted by, or the identity of any officers elected by, the trustees, or (f) the existence or nonexistence of any fact or facts that in any manner relates to the affairs of the trust, shall be conclusive evidence as to the matters so certified in favor of any person dealing with the trustees, or any of them, and the successors of such person.

13.4. *Provisions in conflict with law or regulations.* (a) The provisions of this declaration of trust are severable, and if the trustees shall determine with the advice of counsel that any one or more of such provisions (the "conflicting" provisions) are in conflict with federal or state laws and regulations, the conflicting provisions shall be deemed never to have constituted a part of this declaration of trust. However, such determination by the trustees shall not affect or impair any of the remaining provisions of this declaration of trust or render invalid or improper any action taken or omitted (including but not limited to the election of trustees) prior to such determination. Such determination shall become effective when a certificate in recordable form signed by a trustee setting forth any such determination and reciting that it was duly adopted by the trustees, or a copy of this declaration of trust with the conflicting provisions removed pursuant to such a determination, in recordable form, signed by a trustee, shall be filed in the office of the Secretary of the State of Florida. The trustees shall not be liable for failure to make any

determination under this section. Nothing in this section shall in any way limit or affect the right of the trustees to amend this declaration of trust

(b) If any provision of this declaration of trust shall be held invalid or unenforceable in any jurisdiction, the invalidity or unenforceability shall attach only to that provision in that jurisdiction and shall not in any manner affect or render invalid or unenforceable that provision in any other jurisdiction or any other provision of this declaration of trust in any jurisdiction.

13.5. *Section headings.* Section headings have been inserted for convenience only and are not a part of this declaration of trust.

13.6. *Construction of terms used.* In the construction of this declaration of trust, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the singular, words denoting males include females, and words denoting persons include individuals, firms, associations, companies (joint, stock, or otherwise), trusts and corporations, unless the contrary intention is to be inferred from or required by the subject, matter or context. The cover, titles, headings of different parts of this declaration of trust, the table of contents, the index of definitions and the marginal notes, if any, are inserted only for convenience of reference and are not to be taken to be any part of this declaration of trust or to control or affect the meaning, construction, interpretation or effect of this declaration of trust.

SECTION FOURTEEN DURATION OF TRUST

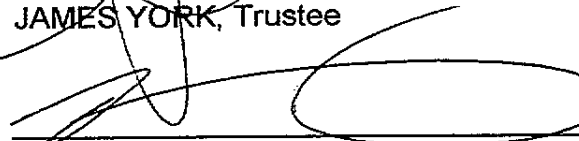
14.1. *Duration.* Subject to earlier termination in accordance with the provisions of Sections 12.1 and 12.2 above, the trust created by this declaration of trust shall terminate on the expiration of twenty-one years after the death of the last survivor of the initial three trustees. However, as to trust property located in any jurisdiction in which such duration is not permitted, the trust created by this declaration of trust shall terminate on the latest date permitted by the law of such jurisdiction, using the initial trustees as measuring lives if so permitted.

IN WITNESS WHEREOF, the undersigned have executed this declaration of trust at Naples, Collier County, Florida, on the date indicated below.

Date: 12/27/98


JAMES YORK, Trustee

Date: 1/27/98


ROBERT HINES, Trustee

Date: 1/27/98


JOSEPH SKLADANY, Trustee