



BANKS ENGINEERING
10511-101 SIX MILE CYPRESS PKWY
FORT MYERS , FL 33966

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BISCAYNE LANDING**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BISCAYNE LANDING ("Declaration") is made this _____ day of _____, 2020, by Lennar Homes, LLC, a Florida limited liability company ("Declarant"), for itself and its successors, grantees, and assigns.

WITNESSETH:

WHEREAS, Declarant owns certain real property located in Charlotte County, Florida. The Declarant intends to create thereon a community of single-family and multi-family homes, and related common area facilities and amenities to be known as Biscayne Landing; and

WHEREAS, the real property that is intended to be developed as Biscayne Landing ("Lands") is described in Exhibit "A" to this Declaration, as it may be amended from time to time; and

WHEREAS, Declarant desires to promote the general health, safety, and welfare of residents, provide for the maintenance of the Lands comprising Biscayne Landing and the improvements thereon, and to provide for preservation of the property values and the amenities, and to this end desires to subject the real property to the protective covenants, conditions, restrictions, and other provisions hereinafter set forth; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, Biscayne Landing Homeowners Association, Inc., a Florida corporation not for profit, has been incorporated.

NOW THEREFORE, the Declarant, and any other person owning an interest in the subject property who at any time consents to or joins in the making of this Declaration, hereby declares that the real property described in Exhibit "A" hereto, is and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Declaration, which shall run with the Lands and be binding on all parties having any right, title, or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. Nothing herein contained, and no violation of these covenants, conditions and restrictions shall invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value. Further, the express intent of Declarant is that substantive contract rights created hereunder shall not be retroactively affected by legislation enacted subsequent to the recording of this Declaration.

1. DEFINITIONS. The following definitions shall apply to the terms used in this Declaration and its recorded Exhibits, unless the context clearly requires another meaning.

1.1 "Architectural Review Committee" or "ARC" means the committee described in Section 6 of this Declaration.

1.2 **"Assessments"** means a share of the funds required for the payment of the expenses of the Association that from time to time are assessed against the Members, including, without limitation, **Base Assessments, Special Assessments, or other Assessments as further defined and authorized elsewhere herein.**

1.3 **"Association"** means Biscayne Landing Homeowners Association, Inc., a Florida corporation not for profit, organized or to be organized under Chapters 617 and 720, Florida Statutes.

1.4 **"Board"** means the Board of Directors of Biscayne Landing Homeowners Association, Inc.

1.5 **"Biscayne Landing"** is the name of the Community.

1.6 **"Builder"** shall mean any person or entity that purchases one or more Lots for the purpose of constructing improvements for later sale to consumers in the ordinary course of such person or entity's business, provided that the Declarant shall designate the status of "Builder" and assign the rights of such Builder in a written instrument. The Owner of a Lot shall not, solely by virtue of having purchased a Lot, be deemed a Builder or a successor or assignee of the development rights of a Builder, or of the Declarant for the purposes of this paragraph, unless an instrument of assignment or conveyance expressly so states.

1.7 **"Common Areas"** means any and all real property and improvements within the Community owned by, leased to, or dedicated to the Association for the use and benefit of its Members. Common Areas shall include those areas dedicated to the Association on the various recorded subdivision plats.

1.8 **"Community"** or **"Properties"** means all real property comprising Biscayne Landing and the improvements thereon.

1.9 **"County"** means Charlotte County, Florida.

1.10 **"Declarant"** means Lennar Homes, LLC, a Florida limited liability company, its successors, grantees, or assigns, or any other entity to which the Declarant specifically assigns any or all of the Declarant rights it may have under this Declaration.

1.11 **"Family"** means a) one natural person; b) two or more natural persons, each of whom are related to each other by blood, marriage, or adoption, and who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit; or c) not more than two natural persons who are not related to each other by blood or adoption and who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying Family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying Family unit, no change in persons so constituting the qualifying Family unit may be made except for one time in any calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion. Further, the biological and adopted children or stepchildren of only one person shall be entitled to Common Area privileges if they meet all of the following conditions: (a) said child or children are age 21 or younger; (b) such child or children are not married or co-habiting with any third party; (c) said children do not have custodial children of their own (i.e., grandchildren of the Member); and (d) said children reside with the Owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university. If a Lot or Living Unit is owned by two or more persons who are not a Family as described above, or is owned by an entity that is not a natural person, the Owner shall be required to select and designate one type of Family as defined above to utilize the membership. The Association may restrict the frequency of changes in such designation when there is no change in ownership of the Lot or

Living Unit.

1.12 **"Governing Documents"** means this Declaration, the Articles of Incorporation, the Bylaws, and any Rules and Regulations of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority listed herein.

1.13 **"Guest"** means any person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

1.14 **"Institutional Mortgagee"** means:

(A) A lending institution having a first mortgage lien upon a Lot, Living Unit, or Tract, including any of the following institutions: a federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company.

(B) A governmental, quasi-governmental, or private agency that is engaged in the business of holding, guaranteeing, or insuring residential mortgage loans including, without limitation, the Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, and Veterans Administration, and that holds, guarantees or insures a first mortgage upon a Lot or Living Unit.

(C) The Declarant and any and all investors or lenders, or the successors and assigns of such investors or lenders, that have loaned money to Declarant to acquire, develop, or construct improvements upon the Properties and who have a mortgage lien on all or a portion of the Properties securing such loan. An **"Institutional Mortgage"** is a first mortgage held by an Institutional Mortgagee encumbering a Lot or Living Unit.

1.15 **"Lands"** means the land described in Exhibit "A" to this Declaration, as it may be amended from time to time.

1.16 **"Lease"** when used in connection with a Living Unit, means the grant by the Owner of the Living Unit of a temporary right of use of the Living Unit for valuable consideration.

1.17 **"Living Unit"** or **"Unit"** means any residential structure, including a single-family detached or attached dwelling unit or multi-family unit located within the Community and intended for use by one Family as their place of residence. If a Living Unit is a free-standing or attached single-family home located on a Lot, the use of the term "Living Unit" or "Unit" shall be interpreted as if the term was followed immediately by the words "and the Lot on which it is located."

1.18 **"Lot"** means one or more of the platted portions of land into which parts of the Community have been subdivided, upon each of which a single Living Unit has been, or is intended to be, constructed. It is synonymous with the word "parcel" as used in Section 720, Florida Statutes. Unless the context clearly requires a different interpretation, the term "Lot" shall be interpreted as if it were followed by the words "and the Living Unit constructed thereon."

1.19 **"Member"** means a person who is entitled to membership in the Association, as provided in Section 2 of the Bylaws. Membership is mandatory for the Owners of all Lots or Living Units.

1.20 “Occupy” when used in connection with a Living Unit, means the act of using a Living Unit as one’s place of residence for two (2) or more consecutive days. An “**Occupant**” is one who occupies a Living Unit, other than the Owner or his Family as defined above.

1.21 “Owner” means the record Owner of legal title to any Lot or Living Unit.

1.22 “Rules and Regulations” means the administrative regulations governing use of the Common Areas and procedures for operating the Association, as adopted, amended, and rescinded from time to time by resolution of the Board of Directors.

1.23 “SWFWMD” means Southwest Florida Water Management District.

1.24 “Service Assessment” means a charge against one or more Lots or Living Units for any service, material, or combination thereof that may be provided by the Association for the use and benefit of the Owners on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance, or for costs associated with bringing a Lot or Living Unit into compliance with the Declaration, all as more particularly set forth in Section 9.5 of this Declaration. The amount paid or incurred by the Association on behalf of the Owners accepting or receiving such material or service shall be a Service Assessment against the Lots or Living Units so benefited. An Owner is deemed to have agreed to such Service Assessment by the act of subscribing to, requesting, or accepting the material or service.

1.25 “Structure” means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or that is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof.” The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and storage sheds.

1.26 “Surface Water Management System Facilities” means those surface water management system facilities that include, but are not limited to: all inlets, ditches, swales, culverts, water control structures, retention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas, all of which shall be located on lands dedicated as Common Areas of the Association whether dedicated by plat, deed, easement, or otherwise.

1.27 “Voting Interests” means the arrangement established in Section 2 of the Bylaws of the Association by which the Owners of each Lot or Living Unit are entitled to vote in the affairs of the Association whenever a vote of the Owners is permitted or required as to any Association business.

2. GENERAL DEVELOPMENT PLAN. The Community shall consist of approximately 358 single-family and multiple-family dwelling units. However, the exact number of dwelling units contained within the Community is subject to change.

2.1 Renderings, Plans, and Models. From time to time, Declarant and others may present to the public certain renderings, plans, and models showing possible future development of the Community. Declarant does not warrant in any way the schemes in these renderings, plans, or models, or how the future improvements in the Community will actually be developed. Any such renderings, plans, or models are primarily schematic and in no way represent a guaranteed final development plan.

2.2 Right to Use Common Areas. The non-exclusive right to use the Common Areas shall be appurtenant to and shall run with each Owner’s membership in the Association, subject to this Declaration and its recorded Exhibits. The Association has the right to enter into agreements with other

entities for the maintenance and operation of the Common Areas.

2.3 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to the Members, and persons to whom an Owner has delegated his right of use in and to the Common Areas, but also to any other person occupying an Owner's Living Unit under lease from the Owner, or by permission or invitation, expressed or implied, of the Owner or his tenants, licensees, invitees or Guests. Failure of an Owner to notify any person of the existence of the easements, covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of Declarant or the Association of enforcement of these provisions and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, licensees, invitees, or Guests, and by the Guests, licensees, and invitees of his tenants at any time. However, nothing in this Section 2.3 shall be deemed to authorize the lease or use of a Living Unit or Common Areas by other persons.

2.4 Members' Rights and Easements.

(A) Every Member of the Association shall have a non-exclusive right and easement for access to and the use and enjoyment of the Common Areas. The right and easement shall be appurtenant to and shall pass with the title to every Lot and Living Unit subject to any limitation set forth in this Declaration, including, without limitation:

1. The right of the Association to determine the annual Base Assessment and any Special Assessments to be paid by the Members.
2. The right of the Association to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility.
3. The right of the Association to grant easements over, across, or through the Common Areas or any part thereof.
4. The right of the Association to borrow money for the accomplishment of its purposes of improving the Common Areas, and in aid thereof, to mortgage Common Areas.
5. The right to take such steps as are reasonably necessary to protect Common Areas against foreclosure.
6. The right to enforce the Articles of Incorporation and Bylaws of the Association; and any Rules and Regulations governing use and enjoyment of the Common Areas adopted by the Association.
7. The right of the Association to charge use fees or membership fees.

(B) **Delegation of Rights.** Each Owner may temporarily delegate his right of use in and to the Common Areas to his non-resident Guests (if the Guests are accompanied by the Owner) or to tenants who reside in the Living Unit of the Owner, but only to the extent and subject to conditions, limitations, and restrictions as may be provided for in the Governing Documents. Each Owner of a Living Unit shall be financially and legally responsible for the actions of any person to whom the Owner has delegated his right to use the Common Areas.

2.5 Conveyance and Use.

(A) Any real property conveyed, leased, or the use of which has been granted by Declarant or any

third party to the Association as Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members of the Association.

(B) The Declarant, may convey property to the Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Association must accept such property. The Association shall not accept the conveyance of real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any property in the Association.

2.6 Quiet Enjoyment. Full development of the Community will likely span a number of years. Incident to the development process, the quiet enjoyment of the Community may be unavoidably interfered with to some extent by construction operations associated with the Community.

3. THE ASSOCIATION'S PURPOSES AND POWERS. The primary purposes of the Association are to operate and maintain the Common Areas; to enforce restrictive covenants applicable to the Community; to provide architectural and aesthetic control along with architectural control provided by the ARC; and to take such other action as the Association is authorized or required to take with regard to the Community pursuant to the Governing Documents. The Association shall operate, insure, maintain, and repair all property and related improvements designated by Declarant as Common Areas, regardless of whether legal title to that property has been formally conveyed to the Association. If required by governmental agencies, the Association shall accept the transfer of all permits for the Community and assume responsibility for same.

3.1 Common Areas. The Association shall operate, maintain and, if deeded by the Declarant, hold record title to the Common Areas. The Common Areas may include, but shall not be limited to, certain roads, certain utilities serving Association property or other Common Areas, and related facilities. The Association may also maintain any environmental habitat and preservation areas, and surface water drainage and management systems on the Common Areas. The Board of Directors may promulgate reasonable Rules and Regulations regarding use of the Common Areas consistent with the Governing Documents. Use of Common Areas shall be available to all Members and their invitees, Guests, Family members and tenants, subject to the Rules and to the Governing Documents. The costs of operating, maintaining, repairing, insuring, and protecting the Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Lots and Living Units. The Association shall have, without limitation, the following powers:

(A) To exercise the rights as set forth in the Declaration.

(B) To enter into agreements for the maintenance and operation of the Common Areas.

(C) To enter into agreements to cause additional properties and amenities to become Common Areas if such properties are of common benefit to the Community.

3.2 Manager. The Association may contract, employ, and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Association shall determine to be necessary or desirable.

3.3 Personal Property. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required elsewhere in this Declaration. The Association additionally shall cause all persons with access to Association funds to be insured or bonded with adequate fidelity insurance or bonds.

3.5 Express and Implied Powers. The Association may exercise any rights, powers, or privileges given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power, or privilege reasonably inferable therefrom.

3.6 Acts of the Association. Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Members. The Officers and Directors of the Association have a fiduciary relationship to the Association and its Members. A Member does not have the authority to act for the Association by reason of being a Member.

3.7 Member Approval of Certain Litigation. After turnover, and notwithstanding any other provisions of the Governing Documents or applicable statutory provisions, the Board of Directors shall be required to obtain the prior approval of at least two-thirds (2/3) of the Voting Interests of the Association prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

(A) Collection of Assessments.

(B) Collection of other charges that Members are obligated to pay.

(C) Enforcement of the Governing Documents.

(D) Enforcement of the Rules and Regulations of the Association.

(E) In an emergency, when waiting to obtain the approval of the Member creates substantial risk of irreparable injury to the Association or its Members.

(F) Filing a compulsory counterclaim.

3.8 Articles of Incorporation. The Articles of Incorporation of the Association are attached as Exhibit "B" as they may be amended from time to time.

3.9 Bylaws. The Bylaws of the Association are attached as Exhibit "C" as they may be amended from time to time.

3.10 Official Records. The official records of the Association, as defined by Chapter 720, Florida Statutes, as amended, shall be maintained within the State of Florida and must be open to inspection and available for photocopying as provided for in the Bylaws. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the Governing Documents, to ensure their availability to Members and to prospective purchasers, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.11 Rules and Regulations. Subject to this Declaration and any other applicable recorded instrument, the Association shall have the right and the power to develop, promulgate, and enforce reasonable Rules and Regulations for the use and enjoyment of the Common Areas. No Common Areas shall be used in violation of any rule or regulation adopted by the Association pursuant to the Bylaws.

3.12 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the Voting Interests.

3.13 Disposition of Property. Any property owned by the Association, whether real, personal, or mixed, may be mortgaged, sold, leased, or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 3.12 above.

4. MEMBERSHIP AND VOTING RIGHTS. Every Owner of record legal title to a Lot or Living Unit within Biscayne Landing shall be a Member of the Association, as further defined in Section 4.1 below. The Declarant shall hold Declarant membership as provided for in Section 4.1(B) below. Membership is appurtenant to, and may not be separated from, ownership of a Lot or Living Unit. The rights, powers, duties, and privileges of Members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Association.

4.1 Classes of Membership. The Association will initially have two (2) classes of voting membership.

(A) **Members or Class "A" Members.** Every Owner of a Lot or Living Unit shall be a Member, which membership has been given as an appurtenance. Members shall be all Owners of Lots or Living Units within Biscayne Landing. The Declarant shall create a membership for every Lot and Living Unit. Members shall have full rights of use in the Common Areas and facilities. The actual number of memberships that may be created is in the discretion of the Declarant, but it is anticipated that the number will be approximately 358. Except for temporary delegations as provided in Section 4.4 below, a membership shall not be assignable and/or transferable by any method other than the sale, lease, or conveyance of record legal title to the Lot or Living Unit to which it is appurtenant. Upon sale or other transfer of Ownership of a Lot or Living Unit to which a membership is appurtenant, the transferor shall be deemed to have automatically assigned and transferred the membership with his property. A Member's rights to use the Common Areas and other recreation facilities shall be limited as set forth in this Declaration and the Bylaws. Any attempt to separate the membership from the interest in real property upon which it is based shall be null and void.

(B) **Declarant Member or Class "B" Member.** The Declarant shall be a voting Member for each Lot or Living Unit it owns. Declarant membership and voting rights shall cease to exist at the Turnover Meeting described in Section 7.2 of the Bylaws, but all of the Declarant's other rights and privileges as the Declarant, as set forth elsewhere in this Declaration or in the Bylaws, shall continue as long as the Declarant holds any property within the Community for sale in the ordinary course of business. If the Declarant conveys undeveloped property within the Community to a successor developer, the Declarant may assign its Declarant membership and/or some or all of its voting rights and privileges to the successor developer.

4.2 Voting.

(A) **Class "A".** Class "A" Members shall be all Owners. Class "A" Members shall have one equal vote for each Lot or Living Unit in which they hold the interest required for membership under Section 4.1, except that there shall be only one vote per Lot or Living Unit and no vote shall be exercised for any

property that is exempt from assessment under Section 9.13. All Class "A" votes shall be cast as provided in Section 4.2(C) below.

(B) **Class "B"**. The sole Class "B" Member shall be the Declarant. Until the Class "B" membership expires or is terminated, the Class "B" Member shall have the right appoint a majority of the members of the Board of Directors as specified in the Bylaws. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the Bylaws, and the Articles, are specified in the relevant sections of this Declaration, the Bylaws, and the Articles. The Class "B" Member shall have the number of votes in all matters equal to the total combined votes of the other classes of Members plus 100 votes until the Class "B" membership expires or is terminated. The Class "B" membership shall terminate upon the earlier of:

1. Three months after 90% of the maximum number of residential dwelling units that may be created and developed as part of the Properties have been constructed and conveyed to Class "A" Members.

2. When, in its discretion, the Declarant so determines and declares in a written instrument recorded in the public records of the County.

Upon termination of the Class "B" membership, the Declarant, provided Declarant is also an Owner, shall be a Class "A" Member entitled to one Class "A" vote for each Living Unit that it owns.

(C) **Exercise of Voting Rights**. In any situation where a Member is entitled personally to exercise the vote for his or her Living Unit, and there is more than one Owner of such Living Unit, the vote for such Living Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Living Unit's vote shall be suspended if more than one person attempts to exercise it.

4.3 Association Rights and Easements. Members in good standing have the non-exclusive right to use the Common Areas subject to:

- (A) The right of the Association, by and through its Board of Directors, to adopt the annual budget and to determine the annual Base Assessment to be paid by Members.

- (B) The right of the Association, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for Owners.

- (C) The right of the Association, by and through its Board of Directors, to suspend a Member's right to use Common Areas for the period during which any Assessment or charge against the Member's Lot or Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Association's Rules and Regulations.

- (D) The right of the Association, by and through its Board of Directors, to grant easements over, across, or through the Common Areas.

- (E) The right of the Association, by and through its Board of Directors, with the prior assent of a majority of the Voting Interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas.

(F) The right of the Association, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Common Areas.

(G) The right of the Association, by and through its Board of Directors, to close or restrict access to the Common Areas for limited periods of time to conduct special events, including those intended primarily to benefit the Declarant or its sales efforts.

(H) The right of the Association, by and through its Board of Directors, to regulate parking and traffic on the private roads within the Community, including, without limitation, the use of access gates or speed bumps.

(I) The right of the Association to dedicate or transfer ownership or control of all or any part of the Common Areas to any other governmental agency, public authority, or utility.

(J) The provisions of this Declaration, the Articles of Incorporation, and the Bylaws of the Association; and any Rules and Regulations governing use and enjoyment of the Common Areas adopted by the Association.

So long as there is a Declarant Member, any and all rights of Members, and any and all restrictions, limitations, conditions, and Rules and Regulations that a Member shall be subject to, shall not be amended without the consent of the Declarant.

4.4 Delegation of Use Rights In Common Areas. Guests accompanied by a Member shall have the right to use the Common Areas, but only to the extent provided in Section 2.4 of the Bylaws, or in the Association's Rules and Regulations, and subject to the conditions, limitations, and restrictions as may be stated therein. A fee may be imposed for such usage delegation, not necessarily limited by or related to the cost of processing the delegation. Each Member shall be financially and legally responsible to the Association for the actions and debts to the Association of any person to whom the Member has delegated his right to use the Common Areas. The Member may not delegate the obligation to pay Association Assessments. If a Member delegates his privileges to a tenant residing in his Living Unit, the Member shall not be entitled to use of the facilities, except as a Guest of another Member, during the period of the delegation.

4.5 Separation of Ownership. The Ownership of a Lot, and the Ownership of the Living Unit constructed thereon, may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Lot or Living Unit hold membership in the Association.

5. GENERAL COVENANTS AND USE RESTRICTIONS.

5.1 Residential Use. Each Living Unit shall be occupied by only one Family and its temporary Guests at any time, as a residence and for no other purpose. No time-sharing or business or commercial activity shall be conducted in or from any Living Unit. Co-Ownership of Units is permitted. However, if the co-Owners are other than a married couple, the co-Owners shall designate one (1) of the co-Owners as the "Primary Occupant." The use of the Living Unit by other co-Owners shall be as though the Primary Occupant were the only actual Owner. Those co-Owners who have not been designated as the Primary Occupant shall be treated as Guests of the Primary Occupant. Both the initial approval and the continued approval of a trustee, corporation, or other entity as an Owner shall be conditioned upon designation of one (1) natural person to be the "Primary Occupant" and the use of the Living Unit by other persons shall be as though the Primary Occupant were the only actual Owner. Those co-Owner(s) who have not been designated as the Primary Occupant shall be treated as Guests of the Primary Occupant. Any change in the Primary Occupant shall be treated as a transfer of ownership by sale or gift. No more than one (1)

such change shall be approved in any twelve (12) month period. The intent of this provision is to allow flexibility in estate, financial, or tax planning, and not to create circumstances in which the Living Unit may be used as short term accommodations for several families or individuals. No person may publicly advertise the address of a Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 5.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business, or professional records in his Living Unit, or from handling his personal, business, or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 5.1 is, however, intended to prohibit commercial or business activity by an Owner that would noticeably change the residential ambiance of the Community, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Community by persons making deliveries or pickups, or by employees and business associates, or by customers and clients.

5.2 Occupancy of Living Unit when Owner is not in Residence. An Owner may occasionally allow relatives, friends, or business associates in reasonable numbers to temporarily occupy his Living Unit in his absence. Except as otherwise provided in Section 5.4 below, this provision is not intended to allow any Owner to use his Living Unit as short-term transient accommodations for several individuals or families. The Owner must register all Guests with the Association in advance, giving such information about the Guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his Guests. When the Owner is not in residence, no more than eight (8) overnight occupants are allowed at any time.

5.3 Leasing. The Board of Directors has the right but not the obligation to approve leases for Living Units. If the Board chooses to exercise its right to approve leases, it shall adopt, by Board resolution, the procedure and criteria for approval of all leases, which shall apply to all leases subsequent to the adoption of the resolution. However, in all cases, the requirements of this Section 5.3 shall apply to any lease for a Living Unit in Biscayne Landing. The minimum allowable lease period shall be thirty (30) consecutive days. No Living Unit may be rented or leased more than twelve (12) times per year. No lease may begin sooner than thirty (30) days after the first day of occupancy under the last previous lease. All leases are subject to the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than fifteen (15) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

(B) No lease may be for a period of less than thirty (30) consecutive days or one (1) month, whichever is less.

(C) No subleasing or assignment of lease rights is allowed.

(D) No one but the lessee and the lessee's spouse, if any, and their unmarried children, who live with their parents, may occupy the Living Unit during a lease.

All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable to and enforceable against any person occupying a Living Unit as a lessee or Guest to the same extent as against an Owner, and a covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Governing Documents, designating the Association as the Owner's agent with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. Any lease entered into without

notice, or otherwise in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee by summary proceedings without securing consent to such eviction from the Owner.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING LIVING UNITS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

5.4 Nuisance. No Member shall use or permit a Living Unit to be used in any manner that would be unreasonably disturbing, detrimental, or a nuisance to the occupant of another Living Unit, or that would not be consistent with the maintenance of the highest standards for a first class residential development, nor permit the premises to be used in a disorderly or unlawful way. The use of each Living Unit and Common Area shall be consistent with existing laws and the Governing Documents, and residents shall at all times conduct themselves in a peaceful and orderly manner. No unlawful, disorderly, or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall any Owner permit or condone any activity that is, or may reasonably become, a source of annoyance or nuisance to other residents.

5.5 Temporary Structures. Temporary structures, including trucks, trailers, motor homes, recreational vehicles, tents, or shacks shall not be used on any Lot at any time as a residence, either temporary or permanent.

5.6 Signs. In order to maintain an attractive community, no sign, banner, advertisement, or poster (including "open house," "for sale" or "for rent" signs) shall be exhibited, displayed, inscribed, painted, or affixed in, on, or upon any part of the Properties without prior approval of the ARC, which approval may be withheld for any reason. This provision includes signs inside of Living Unit windows or the windows of motor vehicles. This Section 5.6 shall not apply to signs used by Declarant or its agents to market Living Units owned by Declarant.

5.7 Appearance; Refuse Disposal. Each Owner shall keep his Lot and Living Unit free of trash and debris, and shall reasonably maintain his Living Unit. Personal property of residents shall not be left on the lawns or landscaped areas outside the Living Units. Trash, garbage, or other waste must be kept in appropriate trash containers stored in the garage of a Living Unit, and all trash containers shall be taken to curbside in front of the Living Unit no earlier than the evening before a scheduled pickup and returned to their area of storage by the end of the day on which trash was collected. Porches and lanais shall be used only for the purposes intended, and shall not be used for hanging or drying clothing, for cleaning of rugs or other household items, or for storage of bicycles or other personal property.

5.8 Maintenance. The Declarant shall care for unimproved Lots within the Properties at its expense, remove and destroy tall grass, undergrowth, weeds, and rubbish therefrom, and do any other things and perform any labor necessary to keep the Lot in reasonable order. The Association shall have the right to repair any structure or improvement on any Lot which, in the opinion of the Board, constitutes a safety hazard or nuisance, or is unsightly, or is in a state of disrepair, provided that the Lot Owner is given no less than five (5) days' notice of the Association's intent to do so and such notice reasonably specifies the proposed action. The Association shall charge the expense of same against the Owner of the Lot, which charge shall be a lien on the Lot that may be foreclosed and shall include the Association's attorney fees and other costs in connection with the lien and foreclosure.

5.9 Awnings, Shutters, and Windows. Awnings, storm shutters, solar film, and other window coverings shall be subject to the prior approval and control of the ARC. Storm shutters may be installed only temporarily, and other precautions may be taken to protect structures or Lots while the threat of a hurricane, tornado, or other violent storm is imminent, but all such temporary shutters and other exterior alterations or additions made as a temporary storm precaution shall be promptly removed when the threat of storm has passed.

5.10 Fences. No fence, wall, hedge, or other physical and visual barrier shall be erected on a Lot or in the Common Areas, except as originally installed by Declarant or as approved by the ARC.

5.11 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved by the Declarant. Maintenance and repair of all driveways, and parking and other paved parking facilities shall not be the responsibility of the Association. Driveways must be kept clean and free from excessive oil, rust, or other unsightly stains.

5.12 Water Supply; Wells; Water Rights. Each Living Unit may be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each Owner shall be required to connect the water lines on his Lot to the lines of the utility provider(s) providing service to the Community. No Owner may install or operate a private well for any reason, including operation of a water source heat pump, or use lake water or water from retention areas contained within the Community. Owners shall be responsible for watering any landscaping within those portions of the Lots enclosed by privacy walls or screen enclosures.

5.13 Landscaping. The Association may, but is not obligated to, maintain the exterior landscaped portions of the Lots and Living Units within the Community, which includes lawns, shrubs, trees, and other landscaping installed on the Lots as part of the initial construction on the Lots, except for any areas enclosed by fencing or other screening or otherwise not readily accessible from outside the Lots or Living Units. The Association is not responsible for any casualty events related to acts of God, natural disasters or storms. The Association's costs associated with the maintenance described in this Section shall be a common expense of the Association and shall be allocated among all Lots or Living Units pursuant to Section 9.1 of the Declaration; provided, if appropriate, costs may be assessed as a Service Assessment in, accordance with Section 9.5 of the Declaration. The Association shall have a perpetual, non-exclusive easement over all the Community, including the Living Units (but not inside any structure within a Living Unit), for the purpose of performing its maintenance responsibilities under this Section. Such easement may be exercised, without prior notice, by the Association, its Officers, Directors, employees, agents, and contractors, and entry upon any Living Unit for such purpose shall not be deemed a trespass. No landscaping shall be added, augmented, replaced, cut down, destroyed, or removed without the prior written approval of the ARC. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon any Lot outside of the Living Unit and the Living Unit's privacy walls, unless approved by the ARC.

5.14 Pets. Each Unit may house up to three (3) animals, in the aggregate, that may only be domestic cats and/or dogs, unless such animals are of a breed prohibited by County, City, or any other ordinance.

Notwithstanding the foregoing, pit bull and pit bull mix dogs or other recognized aggressive breeds of dogs shall be prohibited regardless of size or weight. A pit bull or pit bull mix dog is defined as any dog that, in the sole and exclusive discretion of the Board, has the appearance and characteristics of being predominantly and commonly referred to as a "pit bull" regardless of the opinion of any veterinary doctor. The Association may prohibit other breeds of dogs that the Board considers dangerous in its sole discretion.

Any Owner who keeps or maintains any pet, in exchange for and in consideration of the privilege to keep the pet, hereby indemnifies and holds the Association and each Owner free and harmless from any loss, claim, or liability of any kind or character of whatever nature arising from or related to the keeping or maintaining of such pet in the Community.

Further, each Unit may house fish and/or two (2) domestic (household type) birds, as long as the fish and birds are kept indoors and do not become a source of annoyance to other residents.

Pets shall not be allowed on or about the Common Elements except on a leash of no longer than six (6) feet or when being carried by their owner. No pets shall be left unattended in or on a balcony, patio, or other similar area even if the area has been enclosed.

No reptiles, wildlife, amphibians, poultry, or livestock shall be raised, bred, or kept in or on any of the Properties. Animals may not be brought on or kept within the Properties for any commercial purposes, including boarding, grooming, or breeding.

No pets or other animals shall cause or be the source of annoyance, nuisance, or disturbance to any other Owner or occupant. Each pet owner shall be responsible for the removal and disposal of the pet's feces or waste. The ability to have and keep an animal or pet is a privilege, not a right, and the Board is empowered to order and enforce the removal of any animal or pet that becomes a source of annoyance to other residents of the Community or in any way causes any damage to the Properties.

Owners may provide in a lease that tenants shall not be permitted to keep or have pets of any kind. The pet restrictions provided for herein apply to pets visiting a Unit and pets permanently housed in a Unit.

5.15 Parking and Storage of Vehicles. Except for service vehicles temporarily present on the Properties, Owners and occupants of Living Units may not park, store, or keep on the Properties, any commercial truck or other commercial vehicle, or any boat, trailer, semi-trailer, recreation vehicle, motorcycle, house trailer, mobile home, motor home, bus, tractor, or any other such vehicle, unless it is enclosed within a garage. No person may park, store, or keep any motor vehicle on grassed or landscaped areas, or any places outside of paved driveways, garages, or other designated parking areas. No overnight parking is allowed on any street. In no manner shall a vehicle block or impede, in whole or in part, a sidewalk. Vehicles that are in wrecked, junked, partially dismantled, inoperative, or abandoned condition, whether attended or not, and those not bearing current license plates, are not permitted on the Properties. Because guest parking may be limited in some areas, each Owner is specifically cautioned that he and the other occupants of his Living Unit may be limited or restricted as to the number of motor vehicles they may keep on the Properties. The repair of motor vehicles, except emergency repairs, is not permitted on the Properties. No house trailer, mobile home, motor home, and the like may be kept more than two (2) times in any month. Any vehicle parked in violation of this Section is subject to being towed away at the Owner's expense without further warning. For the purposes of this Section "overnight" shall mean 12:00 AM through 6:00 AM, and "kept" shall mean present for either a period of twelve (12) consecutive hours or overnight, whichever is less.

5.16 Antennas, Radio Equipment, and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, unless expressly approved in writing by the ARC, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Federal Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to

adopt rules governing the types of antennae, and restrictions relating to safety, location, and maintenance of antennae. The Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state, and local laws and regulations, including zoning, land-use, and building regulations. A flagpole for display of the American Flag only may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances that is sometimes caused by ham radios, CB base stations, or other high-powered broadcasting equipment. This Section 5.16 shall not apply to the Declarant or its agents to market Living Units owned by Declarant.

5.17 Garages. Each Living Unit shall contain an automobile garage that can accommodate two (2) or more full size automobiles. No garage shall be permanently enclosed or converted to any other use without the prior written approval of the Board and the ARC. The garage door shall remain closed at all times except when being used for ingress or egress. Repair of vehicles shall only be permitted inside a garage.

5.18. Storage Areas. No exterior storage area shall be permitted.

5.19 Clothes Lines; Laundry. No part of the Common Areas or any part of a Lot visible from the Common Areas shall be used for the washing, drying, hanging, or storing of clothes, towels, blankets, or other items of personal property.

6. ARCHITECTURAL AND AESTHETIC CONTROL.

6.1 General. Except for the initial construction of Living Units, Common Area facilities, and related improvements by the Declarant, no building, structure, or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work that in any way materially alters the exterior appearance of any structure, Lot, Living Unit, or Common Area be performed without the prior written approval of the ARC. In obtaining said written approval, an Owner, Builder, or any other person applying shall comply with all applicable requirements and procedures.

6.2 Architectural Review Committee ("ARC"). The architectural and aesthetic review and control functions of the Association shall be administered and performed by the ARC. The number of ARC members, term of office, composition, compensation (if any), qualifications, and meeting procedures of the ARC shall be as provided in Section 8 of the Bylaws. Notwithstanding the foregoing, prior to Association turnover, the Declarant shall have the sole right to appoint one individual who may or may not be a Member of the Association and who shall have the full and unilateral power to act on behalf of the ARC body, and no meeting or notice to Members of any meeting is required.

6.3 Guidelines. The Declarant has prepared the initial Community Development Standards and Design Guidelines, which may contain general provisions applicable to all of the Properties. The Community Development Standards and Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the ARC in considering applications hereunder. The Community Development Standards and Design Guidelines are not the exclusive basis for decisions of the ARC, and compliance with the Community Development Standards and Design Guidelines does not guarantee approval of any application.

The Declarant shall have sole and absolute authority to amend the Community Development Standards and Design Guidelines as long as it owns any portion of the Properties or has a right to expand or reduce the Properties pursuant to Section 15.9, notwithstanding a delegation of reviewing authority to the ARC. Upon termination or delegation of the Declarant's right to amend the Community Development Standards and Design Guidelines, the ARC shall have the authority to amend the Community Development Standards and Design Guidelines with the consent of the Board. Any amendments to the Community Development Standards and Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Community Development Standards and Design Guidelines, provided such amendments may remove requirements previously imposed or otherwise make the Community Development Standards and Design Guidelines less restrictive.

The ARC shall make the Community Development Standards and Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Community Development Standards and Design Guidelines may be recorded in the public records of the County, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Community Development Standards and Design Guidelines was in effect at any particular time

6.4 Powers. Subject to and limited by the guidelines of the approved regulatory permits of local ordinances for Biscayne Landing, the ARC shall have the power to:

(A) Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered; any proposed grading, excavation, tree or other landscape material removal or installation; any change of exterior color or other work that materially alters the exterior appearance of any structure, Lot, or Living Unit. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot or Living Unit, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work.

(B) Approve or disapprove the erection or alteration of any building, structure, or other improvement; any grading, excavation, landscaping, change of exterior color, or other work that in any way materially alters the exterior appearance of any structure, Lot or Living Unit. All decisions of the ARC shall be forwarded in writing to the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final and shall not be unreasonably delayed.

(C) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Association, in cash or check, at the time the request is submitted to the ARC.

(D) Adopt procedures for inspecting approved changes during and after construction to ensure conformity with approved plans.

6.5 Enforcement. Any decisions of the ARC shall be enforced by the Association.

6.6 Declarant's Rights. Until 100% of the property described on Exhibit "A" has been developed and conveyed to Owners, the Declarant shall have the exclusive right to exercise design review under this Section 6. The rights reserved to Declarant under this Section 6 shall continue so long as Declarant owns

any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed by Declarant and recorded in the public records of the County. Upon such time as Declarant no longer owns any portion of the Properties or any real property adjacent to the Properties, the Association shall automatically inure to the powers and rights of Declarant under this Section 6. The Declarant may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder. Each Owner and Builder, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties preserve its reputation and do not impair the Declarant's ability to market its property. Therefore, each Owner and Builder covenants and agrees that no activity within the scope of this Section 6 ("Work") shall be commenced on such Owner's Living Unit unless and until the Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole and absolute discretion. In reviewing and acting upon any request for approval, Declarant and its designee shall owe no duty to any other person.

6.7 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Section 6 will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Community Development Standards and Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARC may refuse to approve similar proposals in the future. Approval of applications or plans 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 applications, plans, specifications, or other matters subsequently or additionally submitted for approval.

6.8 Variances. The ARC 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. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; (c) estop the ARC from denying a variance in other circumstances; or (d) be effective unless approved by Declarant, provided Declarant is also an Owner at the time such variance is contemplated. For purposes of this Section 6.8, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

6.9 Limitation of Liability. The standards and procedures established by this Section 6 are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties, but shall not create any duty to any person. Review and approval of any application pursuant to this Section 6 is made on the basis of aesthetic considerations only and the ARC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, or of similar design, nor for ensuring that the dwelling units are marketable. Neither the Declarant, the Association, the Board, any committee, nor Member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, any defects in plans revised or approved hereunder, or any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARC and all persons comprising the ARC shall be defended and indemnified by the Association.

7. EASEMENTS. In addition to any easements created elsewhere herein or that otherwise exist on the Properties, easements are hereby provided for:

7.1 Utilities, Services, and Support. Each Lot, Living Unit, and Common Area (except Conservation Areas) is hereby subjected to easements for public services, communications and telecommunications, and utilities purposes, including, but not limited to, fire, police protection, emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, electric service, gas service, lake maintenance, and cable television. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to any Lot, Living Unit, and Common Area in furtherance of such easements. The easement areas on any Lot, whether or not shown on any plat, shall at all times be properly maintained by the Owner, whether or not the utility or service company properly maintains the easement area.

(A) There is hereby reserved for the purpose of installing, operating, and maintaining, governmental, public, or private utility facilities, and for other purposes incidental to the development of the Community, those easements described herein and those shown upon the recorded plat of the Community, and there is also reserved such easements and rights-of-way for any other purposes as Declarant in its sole discretion may in the future grant.

(B) Declarant hereby reserves the right and the power during a period of ten (10) years from the date of recording this Declaration, to declare, grant, and record additional easements for drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, telephone and other telecommunication lines, cable television lines, and such other service facilities as Declarant may deem necessary or desirable, along the various utility service routes through, in, over, and under all Lots and Common Areas. The purpose, duration, and scope of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Lot or Common Area, or materially change the rights of the Owners. If any agreement is entered into by the Association for the exclusive provision of System services or other services to the Community, as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Association to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such agreement, to provide subsequent or alternate easements so as to ensure the continuous accessibility and availability to the Community of those services.

7.2 Cable TV and Telecommunications System. The Declarant hereby reserves for itself and its successors, assignees, and licensees, the right, without obligation, to construct or install over, through, under, across, and upon any portion of the Community for the use and benefit of the Owners or authorized Guests, invitees, tenants, and Family members, one (1) or more cable and/or telecommunications receiving and distribution system; electronic surveillance system; and emergency, medical, and surveillance monitoring or alarm systems (all or any part of which shall be referred to collectively as "System"), the exact description, location, and nature of which may have not yet been fixed or determined. Declarant shall have, and hereby reserves to itself and its designees, successors, assignees, and licensees, a perpetual and exclusive right, privilege, easement, and right-of-way for the installation, construction, and maintenance of the System (the scope, extent, size, and location of which over, across, upon, and through the Community shall be determined solely by Declarant, its successors, designees, and assigns), together with a perpetual and exclusive right and privilege of:

(A) Unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving, and replacing the facilities and equipment constituting the System, including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System, including, without limitation, television and radio signals; electronic banking; surveillance, fire, police, and emergency medical protection.

(B) Transmitting the facilities and equipment, which shall be owned and exclusively controlled by Declarant, its successors, assigns, or designees.

7.3 Contracts with Service Providers. Declarant, or the Association, or both, shall have the right to enter into contracts for the exclusive provision of the System, as Declarant and the Association shall deem, in their sole respective discretion, to be in the best interest of the Community. Either the Declarant or the Association may receive valuable consideration for the grant of the exclusive right to provide System services. As used herein, the term "contractual designee" means the service provider with which Declarant or the Association contracts for the furnishing of System services. Should Declarant enter into a contract or contracts pursuant to this Section 7.3, the Association shall, to the extent the Declarant assigns its rights and obligations under such contract or contracts, accept such assignment, and is bound by all the terms and provisions of the contract or contracts. Any such contract for cable television or other similar services shall provide, and if it does not shall be deemed to provide, that during any period of occupancy of a Living Unit by a hearing impaired or legally blind Owner who does not occupy the Living Unit with a non-hearing impaired or sighted person, said Owner may refuse or discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such Living Units, the Owners shall not be required to pay any charge related to such service.

7.4 Collection of "System" Assessments by Association. Every Lot or Living Unit to which the service System is available for many contractual designee(s) shall be subject to a System Service Assessment, payable per Lot or Living Unit for System services, including, without limitation, cable television services. The Association shall bill the appropriate System Service Assessment to each Lot or Living Unit, along with other Assessments for common expenses that may be due and payable at the same time, and shall collect same and remit payment to the contractual designee(s) providing the System services.

7.5 Construction and Maintenance. Declarant, including its designees and contractors, shall have the right to enter any part of the Community and take any action reasonably necessary or convenient for the purpose of completing the construction or sales thereof, and for maintenance purposes and the completion of warranty work, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the Living Units or Lots by Owners.

7.6 Additional Easements. In addition to any other easements granted herein or elsewhere, the following easements shall be reserved, granted, and/or dedicated as the circumstances dictate:

(A) An easement in favor of each Owner for ingress and egress over the private roads within the Common Areas subject to the provisions of this Declaration.

(B) An exclusive easement in favor of each Owner over any portion of a driveway servicing the Owner's Lot and located within the Common Areas.

(C) The Declarant initially, and the Association after turnover, shall have an easement for ingress and egress over each Lot for purposes of performing its maintenance responsibilities as set forth in this Declaration.

Prior to the exercising of the easements set forth above, the party exercising its easement rights shall notify the owner of the property burdened by the easement and reasonably coordinate its use of the easement.

8. COMMON AREAS AND LOTS; CONVEYANCE, USE, AND MAINTENANCE.

8.1 Designation. Except for the Conservation Areas, and the Stormwater Management System, Declarant shall have the right and the power, in its sole discretion, to determine which parts of the Property shall be Common Areas, and to convey, lease, or grant a license or other right to use real property within the Common Areas.

(A) Any such conveyance, lease, or grant of license or use right may be exclusive or non-exclusive, so that persons or entities other than the Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed, or the use of which has been granted. The Association must accept from Declarant any such conveyance, lease, grant of license, or grant of use right. The Association shall not accept from any person other than Declarant a conveyance, lease, grant, or license, or grant of use right except upon the prior written approval of the Declarant.

(B) Prior to the conveyance of Common Areas by Declarant to the Association, the Association shall have the right to charge reasonable fees, rents, or other charges for the use of the property; however, rents, fees, and other charges required to be paid to Declarant under leases, grants, licenses, or contracts creating use rights to third parties shall continue to be paid.

8.2 Conveyance and Use. Declarant will initially hold the legal title to the Common Areas. Not later than ninety (90) days after the date when the Members first appoint a majority of the Board of Directors, the Declarant shall convey the Common Areas to the Association by Quit Claim Deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance (if any) and to mortgages, restrictions, limitations, conditions, reservations, and easements of record. The Declarant may, however, convey title at any earlier time the Declarant so chooses. Commencing with the date this Declaration is recorded in the public records of the County, the Association shall be responsible for the maintenance and administration of all areas and facilities designated by the Declarant as Common Areas. Declarant shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent property and for the purpose of construction of any facilities upon the Common Areas that Declarant elects to build.

(A) Any real property that has been conveyed or leased or the use of which has been granted by Declarant or any third party to the Association as Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members and their Guests, tenants, and invitees.

(B) Declarant may convey property to the Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Association must accept such property, including any governmental permits pertaining to said property. The Association shall not accept conveyance of real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any property in the Community.

THE ASSOCIATION AND THE NON-DECLARANT MEMBERS ARE OBLIGATED TO ACCEPT THE COMMON AREAS AND ANY RELATED PERMITS REQUIRED BY GOVERNMENTAL AGENCIES, AND THE FACILITIES IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED OR TRANSFERRED BY THE DECLARANT. THE DECLARANT MAKES NO REPRESENTATIONS AND, TO THE FULLEST EXTENT PERMITTED BY LAW, THE DECLARANT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR

FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, THE DATE OF COMPLETION, THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS, OR THE MATERIALS, FURNITURE OR EQUIPMENT THAT WILL BE USED IN THE COMMON AREAS AND FACILITIES. AT THE TIME OF CONVEYANCE, DECLARANT SHALL TRANSFER OR ASSIGN TO THE ASSOCIATION, WITHOUT RECOURSE, ALL EXISTING WARRANTIES IT RECEIVED FROM MANUFACTURERS AND SUPPLIERS RELATING TO ANY OF THE FACILITIES AND THAT ARE ASSIGNABLE.

8.3 Partition, Subdivision, and Encumbrance. Except as hereinafter provided, after legal title to the Common Areas, or any portion thereof, becomes vested in the Association, the Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered without first obtaining the approval of not less than a majority of the Voting Interests. The foregoing shall not be construed to limit the authority of the Declarant or the Association through its Board of Directors to grant such easements over, across, and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities, or for the general benefit of the Members. Nothing herein shall be construed to prohibit judicial partition of any Lot or Living Unit owned in co-tenancy.

8.4 Association's Rights and Powers. No Common Areas shall be used in violation of any Rule or Regulation or other requirement of the Association established pursuant to the provisions of this Declaration or the Bylaws.

8.5 Alteration, Expansion, or Modification of Common Areas. Additions or modifications to the Common Areas may be made if not inconsistent with the applicable governmental permits and regulations, and any amendments thereto. The Declarant shall not be obligated, however, to make any additions or modifications. The Declarant further reserves the right to change the configuration or legal description of the Common Areas due to changes in development plans. Funds necessary for material alterations or substantial additions to the Common Areas by the Association may be levied as Special Assessments by the Association only upon prior approval by a majority of the Board of Directors and approval by two-thirds (2/3) of the Voting Interests present and voting at a meeting called for the purpose. However, if changes that are necessary to enable the Association to perform its legal duty to protect, insure, maintain, repair, or replace the Properties also happen to constitute material alterations or substantial additions, no prior approval by the Owners is necessary.

8.6 Maintenance of Common Areas. Except as otherwise provided herein, the Association shall maintain, repair, and replace any and all improvements constructed on the Common Areas, including, without limitation, all landscaping, rights-of-way, roads, access and utility easements dedicated to the Association, conservation areas, recreational areas, the components of the irrigation systems, including, but not limited to, the tap into the main line, timers, switching devices and heads, drainage structures, utility lines, walkways, light fixtures, and other structures. Additionally, where the Common Areas are contiguous to the right-of-way of a road, the Association shall maintain all landscaping (if any) between the Common Areas and the pavement within such right-of-way. The Owners have the right to enforce, by appropriate legal means, the Association's duty to operate, maintain, repair, replace, and insure the Common Areas, including, without limitation, all improvements placed thereon.

8.7 Maintenance of Lots. Each Owner must maintain his or her Lot, including, without limitation, all structures, landscaping, and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the community-wide standards as determined by the ARC, and any other applicable covenants, except to the extent that such maintenance responsibility is assigned to or assumed

by the Association pursuant to this Declaration or any amendments thereto or additional covenants applicable to such Lot. In addition, each Owner shall maintain the sidewalk, if any, and landscaping located between the boundary of such Owner's Lot and the back-of-curb of any roadway lying adjacent to the boundary of his or her Lot, unless the Association assumes all or part of such maintenance responsibility, and then only to the extent not assumed by the Association.

(A) At the discretion of the Board, the following services may be the responsibility of the Association:

1. Maintenance (including, mowing, fertilizing, watering, pruning, and controlling disease and insects) of all lawns and landscaping installed in the Lot as part of the initial construction on the Lots, specifically excluding any enclosed courtyard, patio, or other area not readily accessible from outside the dwelling. Regardless of whether the Association assumes the maintenance responsibility for the exterior portions of Lots, Owners shall be solely responsible for replacing, at the Owner's sole cost and expense, any and all landscaping contained on a Lot, including, but not limited to, shrubs, trees, plants, and sod, if such landscaping either dies or requires replacement for any reason whatsoever, including, but not limited to, weather damage, insect, or disease, the Association's negligence, or a force majeure.

2. Operation, maintenance, repair, and replacement of any irrigation equipment (including, without limitation, any sprinklers, pumps, wells, water lines, and time clocks) serving the Lots, except that the Association shall have no responsibility for any sprinklers or other irrigation equipment installed by the Owner or occupant of any Lot.

3. Repair and replacement of any fixtures or furnishings originally placed or installed by Declarant on any recreational amenity situated in a Common Area, if any.

(B) Each Owner shall be responsible for:

1. Painting of all exterior painted portions of any dwelling, including any garage, garage door, exterior doors, shutters, fascia on the dwelling, and any fence or perimeter walls erected along the Lot boundaries as part of the original construction on the Lots or any replacement thereof ("Boundary Fences").

2. Cleaning, repair, and replacement of the roofs of dwellings and garages (all tile roofs shall be power washed no less than once every other year or as needed).

3. Repair and replacement of any Boundary Fences on Lots originally installed by Declarant, by the current Owner, or a previous owner.

4. Repair and replacement of any damaged garage door and exterior door hardware.

5. Cleaning of driveways and sidewalks adjacent to the Living Unit.

The Association's responsibility to maintain, repair, or replace items or components listed above is limited to the maintenance, repair, and replacement due to ordinary wear and tear and not as a result of a casualty event. If any items or components for which the Association has responsibility to maintain, repair, or replace suffer damage or are in need of repair or replacement as a result of a casualty event, then the Owner bears the sole responsibility for making the repairs or replacements at the Owner's sole cost and expense.

All other portions of the Lots (and the improvements located thereon) shall be the responsibility of the respective Owners, including, without limitation, maintenance, repair, and replacement, as necessary, of all pipes, lines, wires, conduits, or other apparatus that serve only the Lot, whether located within or outside the Lot's boundaries (including all utility lines and courtyard drains and associated pipes serving only the Lot) and all landscaping located in the rear of the Lot.

(C) Declarant or a Builder may have constructed or installed drainage swales, drainage lines, and/or other equipment on a Lot for the purpose of managing and/or containing the flow of surface water, if any, found upon such Lot from time to time. Except to the extent that such responsibility is assigned to or assumed by the Association pursuant to this Declaration, any amendment thereto, or any Supplemental Declaration, each Owner shall be responsible for the maintenance, operation, and repair of such drainage swales, drainage lines, and other equipment on his Lot. Maintenance, operation, and repair shall mean and include, without limitation, the exercise of practices, such as mowing and erosion repair, which allow the drainage swales, drainage lines, and other equipment to provide drainage, water storage, conveyance, or other storm water management capabilities as permitted by the SWFWMD. Filling, excavation, construction of fences, or otherwise obstructing the surface water flow in or into the drainage swales, drainage lines, and other equipment is prohibited. No alteration of a drainage swale, drainage lines, and other equipment is authorized, and any damage to any drainage swale, drainage lines, and other equipment, whether caused by natural or human-induced phenomena, shall be repaired and the drainage swale, drainage lines, and other equipment returned to its former condition as soon as possible by the Owner of the Lot upon which the drainage swale, drainage lines, and other equipment is located.

(D) Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement. The maintenance, repair, replacement, and other obligations of the Association and Owners specified in this Declaration shall be performed as and when the Board determines it necessary to maintain the property to a level consistent with the community-wide standards established by the ARC.

8.8 Enforcement of Maintenance. If the Owner of a Lot fails to maintain it as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including, but not limited to, entering the Lot, with or without consent of the Owner. The Association may maintain, repair, or replace any item that constitutes an immediate hazard to other property or residents, or that has a material adverse effect on the appearance of the Community. Any expenses so incurred by the Association shall be assessed against the Owner, together with reasonable attorney fees and other expenses of enforcement.

8.9 Negligence; Damage Caused by Condition in Living Unit or Lot. The Owner of each Lot shall be liable for the expenses of any maintenance, repair, or replacement made necessary by his negligence or by that of any member of his Family or his Guests, employees, agents, or lessees, only to the extent that such expense is not met by proceeds of insurance. Each Owner has a duty to maintain his Lot and the personal property therein in such a manner as to prevent foreseeable and reasonably preventable damage to other Lots, the Common Areas, or the property of other Owners and residents. If any condition, defect, or malfunction resulting from the Owner's failure to perform this duty causes damage to other Lots, the Common Areas, Association property, or property within other Lots, the Owner of the offending Lot shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Lots involved is not occupied at the time the damage is discovered, the Association may enter the Lot without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner.

8.10 Pest Control. The Association may elect to supply pest control services for each Lot (but not inside a Living Unit), with the cost thereof being part of the common expenses. An Owner has the option to decline such service unless the Association determines that such service is necessary for the protection of other Lots, in which case the Owner must either permit the Association's pest control company to enter his Lot, or employ a licensed pest control company of his own selection to enter his Lot on a regular basis to perform pest control services, and furnish written evidence thereof to the Association. The cost of pest control provided by the Association is a common expense, so the election of an Owner not to use the service will not reduce the Owner's Assessments.

9. ASSESSMENTS.

9.1 Budgeting and Allocating Common Expenses. The Association is hereby authorized to levy Base Assessments against all Lots and Living Units subject to assessment under Section 9.6 to fund the common expenses, including, but not limited to, the operating and maintenance of the Surface Water Management System Facilities and any applicable on-site wetland mitigation monitoring and maintenance. In determining the Base Assessment rate per Lot or Living Unit, the Board may consider any Assessment income expected to be generated from any additional Lots or Living Units reasonably anticipated becoming subject to assessment during the fiscal year. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements set forth in this Declaration, the Bylaws, or pursuant to Florida law.

9.2 Share of Assessments. Each Lot and its Owner are liable for a share of all annual Base Assessments and Special Assessments levied by the Association, which share shall be a fraction of the whole, the numerator of which is the number one (1) and the denominator of which is the actual number of Lots in the Community. Until the development of the Community is completed, and all Lots have been sold to purchasers other than the Declarant, the denominator shall be conclusively presumed to be the number three hundred fifty-eight (358) unless additional Lots are submitted to this Declaration by the Declarant. Any amendment submitting additional Lots shall increase the denominator by the number of Lots submitted by the amendment.

9.3 Budgeting for Reserves. The Board may, but shall not be obligated to, periodically prepare a reserve budget for the Common Areas. In the event that the Board elects to fund voluntary, non-statutory reserves under this Section 9.3, the reserve budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Funding for any such reserves shall be funded primarily through the capitalization Assessments specified in Section 9.14; provided, however, the Board may, but shall not be obligated to, include a capital contribution in the common expense budget adopted pursuant to Section 9.1 to fund reserves. No such reserves shall be established without the consent of the Declarant, and if the Declarant consents, Declarant shall have no obligation to contribute to such reserves. Furthermore, the Declarant shall have no obligation to fund any deficit in reserves under any deficit funding obligations it may have with respect to operating expenses and Assessments elsewhere herein.

9.4 Special Assessments. In addition to other authorized Assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. For such time as the Declarant membership remains in existence, all Special Assessments shall require the affirmative vote or written consent of the Declarant Member. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

9.5 Service Assessments. The Association shall have the power to levy Service Assessments against a particular Lot or Living Unit, as follows:

(A) To cover the costs, including overhead and administrative costs, of providing services to Lots or Living Units upon request of an Owner pursuant to any menu of special services that may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service.

(B) To cover costs incurred in bringing the Living Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Living Unit, their agents, contractors, employees, licensees, invitees, or Guests; provided, however, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific Assessment under this Subsection 9.5(B).

9.6 Authority to Assess Owners; Time of Payment. The Declarant hereby establishes and the Association is hereby authorized to levy Assessments as provided for in this Section 9.6 and elsewhere in the Governing Documents. The obligation to pay Base Assessments and Special Assessments shall commence as to each Lot or Living Unit on the day of the first conveyance of the Lot or Living Unit to an Owner other than the Declarant, except that no Lot or Living Unit shall be subject to assessment until a certificate of occupancy or like authorization has been issued by the County as to the Living Unit located on the Lot. The first annual Base Assessment levied on each Lot or Living Unit shall be prorated to the actual date of closing according to the number of days remaining in the fiscal year at the time Assessments commence on the Lot or Living Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of Assessments, including, but not limited to, Base Assessments, Special Assessments, and Initial Capital Assessments, as provided in Section 9.14 of this Declaration, at closing of the transfer of title to a Lot or Living Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Assessments may be paid in two or more installments. Unless the Board otherwise provides, Assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Lot or Living Unit, the Board may require the outstanding balance on all Assessments to be paid in full immediately.

9.7 Obligation for Assessments.

9.7.1 Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all Assessments authorized in the Governing Documents. All Assessments, together with interest computed from the due date at the maximum rate allowed by Florida law (currently 18%) per annum, late charges as determined by Board resolution subject to the limitations of Florida law, costs, fees, and reasonable attorney fees, shall be the personal obligation of each Owner and a lien upon each Lot and Living Unit until paid in full. Upon a transfer of title to a Lot or Living Unit, the grantee shall be jointly and severally liable for any Assessments and other charges due at the time of conveyance.

Failure of the Board to fix Assessment amounts or rates or to deliver or mail each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an Assessment was made, until a new Assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for Assessments by non-use of Common Areas, abandonment of his Lot or Living Unit, or any other means. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

9.7.2 Declarant's Option to Fund Budget Deficits. The Assessment and lien provisions of this Section 9.7.2 shall not apply to any Lot or Living Unit subject to the Governing Documents that is owned by Declarant, or by any person succeeding to all or a portion of Declarant's rights herein, whether by assignment, in reorganization, or by other arrangement. Should Declarant's lender, its successors or assignees, acquire title to any Lot or Living Unit owned by Declarant as a result of a foreclosure or deed in lieu of foreclosure, the Assessment and lien provisions of this Section 9.7.2 shall not apply. Exception: The obligation and covenant to pay Assessments as provided in this Section 9.7.2 shall apply to a Living Unit or Lot owned by the Declarant upon the occurrence of any one of the following events:

- (A) Conveyance of the Lot or Living Unit to an Owner other than the Declarant.
- (B) Construction of a Living Unit has been completed, a certificate of occupancy or the equivalent approval by an appropriate local governmental agency has been issued, and the Living Unit is occupied and used as a residence.
- (C) Declarant executes and records a written instrument subjecting a Lot or Living Unit to the Assessment and lien provisions of this Section 9.7.2.

During the period that Declarant membership exists, the Declarant may elect to excuse itself from paying Assessments on Lots or Living Units owned by the Declarant. For any year Declarant elects to excuse itself from paying Assessments, Declarant shall pay the general operating expenses of the Association that exceeds all income of the Association, including, but not limited to, Assessments levied on all Members subject to assessment other than the Declarant, and all other income, including, but not limited to, interest income, and income from ancillary operations. Declarant, however, shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, any capital improvement fund, or any Special Assessment. Declarant's rights and obligations hereunder may be wholly or partially assigned to another developer. During the period of Declarant's election to be excused from the payment of Assessments, in return for funding the operating expenses of the Association, any net operating profit of the Association will be credited or refunded back to the Declarant to offset existing and future capital improvements, operating expenses, support costs, and start-up costs. Net operating profit shall mean the amount by which income from all sources of the Association exceeds operating costs and expenses, but excluding depreciation expense and amortization expense. In addition to the foregoing, if it is determined that the Declarant has funded a greater amount than required under this Section 9.7.2, then any excess shall be promptly refunded by the Association to the Declarant.

9.8 Lien for Assessments. The Association shall have a lien against each Lot and Living Unit to secure payment of delinquent Assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorney fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies that by law would be superior, and (b) the lien or charge of any first mortgage of record (meaning any recorded mortgage with first priority over other mortgages) made in good faith and for value and recorded prior to the date the Association perfects its lien. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law.

The Association may bid for the Lot or Living Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot or Living Unit. While a Lot or Living Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf, (b) no Assessment shall be levied on it; and (c) each other Lot and Living Unit shall be charged, in addition to its usual Assessment, its pro-rata share of the Assessment that would have been charged to such Lot or Living Unit had it not been acquired by the Association. The Association may sue for unpaid Assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The record Owner of legal title of each Lot or Living Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while the Owner. Multiple Owners are jointly and severally liable. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any Common Area, by abandonment of the Lot or Living Unit for which the Assessments are made, or by interruption in the availability of the Lot, Living Unit, or Common Area for any reason whatsoever. Except as provided in Section 9.9, whenever title to a Lot or Living Unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid Assessments against the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

9.9 Institutional First Mortgagees.

(A) The liability of an Institutional First Mortgagee, or its successors or assignees, who acquires title to a Lot by foreclosure or by deed in lieu of foreclosure for the unpaid Assessments that became due prior to the Institutional First Mortgagee's acquisition of title shall be governed by Chapter 720, Florida Statutes, as it may be amended from time to time. The provisions of this Section 9.9 shall not apply unless the Institutional First Mortgagee joins the Association as a defendant in the foreclosure action. Joinder of the Association is not required if, on the date the complaint is filed, the Association was dissolved or did not maintain an office or agent for service of process at a location that was known to, or reasonably discoverable by, the Institutional First Mortgagee.

(B) The Institutional First Mortgagee, or its successor or assignees, acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Lot and proceed in the same manner as provided in Section 9.11 for the collection of unpaid Assessments.

(C) The provisions of this Subsection 9.9(C) shall not be available to shield an Institutional First Mortgagee from liability for Assessments in any case where the unpaid Assessments sought to be recovered by the Association are secured by a lien recorded prior to the recording of the mortgage.

(D) In the event of the acquisition of title to a Lot by foreclosure or judicial sale or by deed in lieu of foreclosure, any Assessments or charges as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners as a part of the common expense of the Association, although nothing herein contained shall be construed as releasing the party personally liable for such delinquent Assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

9.10 Effect of Foreclosure or Judicial Sale. Subject to the provisions of Section 9.9, an Owner, regardless of how title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure, is liable for all Assessments that come due while he is the Owner, and is also jointly and severally liable with the previous Owner for all unpaid Assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the current Owner may have to recover from the previous Owner the amounts paid by the current Owner.

9.11 Collection of Assessments. If the Owner of any Lot fails to pay any charge or Assessment, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative, and are not in lieu of but are in addition to, all other remedies available to the Association:

(A) To charge interest on the unpaid amount, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment fee of the greater of \$25.00 or five percent (5%) of the delinquent amount. This fee shall not be considered a "fine" as provided for in Section 10.3 below, and the procedural requirements for levying fines shall not apply to the imposition of late payment fees.

(B) To accelerate the due date for any and all remaining unpaid installments of the annual Base Assessment against the Owner's Lot for the fiscal year.

(C) To file an action in equity to foreclose its lien. Unless otherwise required by law, the lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 720.3085 of the Florida Statutes, as it may be amended from time to time.

(D) To bring an action at law for a money judgment against the Owner, without waiving any lien foreclosure rights. The Association may refuse to accept any tendered payment that bears a restrictive endorsement, and such will be the equivalent of no payment. Payment by check is not deemed received until the check has cleared.

9.12 Estoppel Information. The Association shall, within ten (10) business days after receiving a written request for same, certify to any Owner, prospective purchaser of a Lot, or mortgagee, in writing (sometimes referred to as an "estoppel letter") signed by an Officer of the Association, setting forth whether all Assessments and other sums due the Association have been paid. Such certificate may be relied upon by all interested persons except the Lot Owner. The Association may charge up to the maximum amount allowed under Florida law to issue an estoppel certificate. The Association may, but is not obligated to, respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to the maximum amount allowed under Florida law (in addition to any charge for an estoppel letter) plus attorney fees for doing so.

9.13 Exempt Property. The following property shall be exempt from payment of Base Assessments and Special Assessments:

(A) All Common Areas.

(B) Any property conveyed, sold, or dedicated to and accepted by any governmental authority or public utility.

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code, so long as such persons own property subject to this Declaration for purposes listed in Section 501(c).

9.14 Capitalization of Association. Upon acquisition of record title to a Lot or Living Unit by the first Owner thereof other than Declarant, and upon each subsequent transfer or conveyance of any type whatsoever, a contribution shall be made by or on behalf of the purchaser to the Association in an amount established by resolution of the Board of Directors. Said funds may be used for any purpose whatsoever in the discretion of the Board, including, but not limited to, using said funds to fund or pay any operating deficit or any operating expense, regardless of whether or not the Association is controlled by the

Declarant at the time the funds are used to pay, cover, or defray any expense of the Association. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such Assessment. This amount shall be paid to the Association by separate check upon the closing or other settlement of the transfer or conveyance of the Lot or Living Unit. Any unpaid contribution shall constitute a lien in favor of the Association against the Lot or Living Unit as provided in Section 9.8.

(A) Initial Capital Assessments. The first purchaser of each Lot or Living Unit at the time of closing of the conveyance from the Declarant to the purchaser shall pay to the Declarant an Initial Capital Assessment. The funds derived from the Initial Capital Assessment shall be used at the discretion of the Declarant for any purpose, including, but not limited to, future and existing capital improvements, operating expenses, support costs, and start-up costs. The Declarant may waive this requirement for some Lots and Living Units if the first purchaser is a Builder, and the Builder becomes unconditionally obligated to collect and pay the Initial Capital Assessment upon the subsequent sale of each Lot and Living Unit to an end purchaser. Unless subsequently adjusted by the Declarant, the amount of the Initial Capital Assessment shall be initially set as \$1,000.00.

(B) Resale Capital Assessments. In addition to the Initial Capital Assessment, the Association may levy a Resale Capital Assessment upon the transferee in any conveyance of a Lot or Living Unit by a Member. The amount of the Resale Capital Assessment and the manner of payment shall be as determined by resolution of the Board from time to time; provided, however, all Lots or Living Units similarly situated shall be assessed at a uniform rate. Unless subsequently adjusted by the Board, the amount of the Resale Capital Assessment shall be initially set as \$1,000.00. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee. For purposes of this Subsection 9.14(B), the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a Member or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Resale Capital Assessments shall be considered Assessments and can be collected as such in accordance with the provisions of Section 9 of this Declaration.

(C) Exempt Transfers. Notwithstanding the above, no Resale Capital Assessment shall be levied upon transfer of title to a Living Unit:

1. By the Declarant to the initial Owner.
2. By an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding transfer of the Living Unit was exempted from payment of the Resale Capital Assessment pursuant to this Subsection 9.14(C), then this Subsection shall not apply and the Living Unit shall be subject to the Resale Capital Assessment.
3. By an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Living Unit was exempted from payment of the Resale Capital Assessment pursuant to this Subsection 9.14(C), then this Subsection shall not apply and the Living Unit shall be subject to the Resale Capital Assessment.
4. Of an undivided interest in a Living Unit by the Owner thereof to any then existing co-Owner of such Living Unit.

5. To an institutional lender pursuant to a mortgage or upon foreclosure of a mortgage.

9.15 Declarant Advances. Declarant may, in its sole and unbridled discretion, advance and loan monies or other property in lieu of monies to the Association for any purpose, including providing working capital. Such advances shall be considered a loan by the Declarant to the Association and may be evidenced by a promissory note executed by the Association in favor of the Declarant. The Association, by and through its Officers, Directors, and agents are hereby empowered and shall have the authority to execute such promissory notes in favor of, and on behalf of, the Association and obligate the Association to repay all funds, monies, or property so advanced. Even if the advances are not evidenced by promissory notes, the amounts so advanced shall be considered loans that may be due upon demand before or after turnover.

10. COVENANT AND RULE ENFORCEMENT.

10.1 Enforcement Action. Judicial enforcement of these covenants and restrictions shall be by a 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 land to enforce any lien created by these covenants. Failure by the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2 Self-Help Remedies. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Declarant, its successors and assigns, and/or the Association, and its authorized agents or representatives, in addition to all other remedies, the right to enter upon the land where such violation or breach exists and summarily abate and remove any construction or other violation that may be or exist thereon, at the expense of the Owner of the land. The Declarant, its successors and assigns, and/or the Association, and its authorized agents or representatives, shall not thereby become liable in any manner for trespass, abatement, or removal.

10.3 Suspension of Common Area Use Rights; Fines. The Association may suspend, for a reasonable period of time, the rights of a Member or a Member's tenants, Guests, or invitees, or both, to use Common Areas and facilities, and may levy reasonable fines, not to exceed the amount allowed by law, against any Member or any tenant, Guest, or invitee for any violation of the Governing Documents.

(A) A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) Members appointed by the Board who are not Officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an Officer, Director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

(B) The amount of a fine shall not exceed One Thousand Dollars (\$1,000.00) per violation, per day. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing. A fine for a continuing violation may not exceed Ten Thousand Dollars (\$10,000.00). A fine of One Thousand Dollars (\$1,000.00) or more may become a lien against the Lot or Living Unit.

(C) The requirements of this Section 10.3 do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay Assessments or other monetary obligations when due.

(D) Suspension of Common Area use rights shall not impair the right of an Owner or tenant of a Lot or Living Unit to have vehicular and pedestrian ingress to and egress from the Lot, including, but not limited to, the right to park.

(E) Collection of Fines. A fine shall be treated as a special charge due to the Association five (5) days after written notice from the Association to the Owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law and may be the subject of a late payment fee.

(F) Application. All monies received from fines shall become part of the common surplus.

(F) Nonexclusive Remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover at law from such Owner.

11. ENVIRONMENTAL AREAS AND ISSUES.

11.1 Assignment of Responsibilities. Within and adjacent to the Community there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by local, state, federal, or other governmental agencies. The Declarant may, from time to time and at any time, deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed, transferred, or assigned to the Association, or otherwise placed within the Association's responsibility, shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a common expense. Alternatively, the Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, tax-exempt organization, community development district, or similar type entity with which the Association shall cooperate, perform the responsibilities and obligations as set forth therein, and share in the costs.

11.2 Surface Water Management Systems.

(A) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise, or otherwise interfere with the flow and the volume of water in any portion of the Surface Water Management System reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways, or for the accumulation of runoff waters, as reflected in any permits therefor or plat or instrument of record, without the specific written permission of the Association and the Declarant.

(B) An Owner shall in no way deny or prevent ingress and egress by Declarant, the Association, or SWFWMD to such Surface Water Management System and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Declarant, the Association, SWFWMD, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(C) No Lot or Living Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert, or change the established Surface Water Management System without the prior written consent of the Association, SWFWMD, and the Declarant (so long as Declarant owns any portion of the Properties).

(D) Water management for any Lot or Living Unit shall be provided in accordance with the overall Surface Water Management System for the Properties. Surface water drainage and management, including, but not limited to, stormwater treatment and storage capacity, shall conform to the overall Surface Water Management System requirements and permits for the Properties and meet with the

approval of the Declarant and the Association.

(E) Lakes and spillways in the Community are not visual amenities to the Properties, but are part of a functioning water management system. As such, the water levels in the lakes are not guaranteed and will fluctuate from time to time.

(F) The use of any lake or wetland within the Community is managed by the Association. No Owner may use the lakes within any part of the Properties in any manner except as may be permitted from time to time by the Association at the Association's sole and absolute discretion. Owners shall cooperate in maintaining the same in a clean, attractive, and pristine manner in order to be aesthetically pleasing.

(G) No boats or other watercraft powered by gasoline or diesel fuel shall be permitted on any body of water within Properties except as may be required by the Association or the Declarant. Boat usage is expressly limited to the maintenance of the Surface Water Management System.

(H) Any amendment to this Declaration that will affect the water management portions of the Common Areas must receive prior approval from the Southwest Florida Water Management District.

(I) No wells may be drilled, dug, or installed within any Lot, Living Unit, or Common Area except by the Declarant or with the Declarant's written consent.

The SWFWMD shall have the right to take enforcement actions, including civil actions for an injunction or penalty, against a violating party in order to compel the correction of any outstanding violations or problems with the Surface Water Management System or conservation or mitigation areas. Each Owner hereby agrees to indemnify and hold Declarant and the Association harmless from any and all claims, causes of action, injuries, and damages of any kind or nature, including, without limitation, actual attorney and paralegal fees, court costs, and other disbursements, including attorney and paralegal fees incurred on appeal, or incurred by Declarant or the Association as a result of such Owner's use or misuse of any of the lakes or other bodies of water regardless of the type within the Properties.

11.3 Conservation Areas.

ANY CONSERVATION AREAS ARE HEREBY DEDICATED AS COMMON AREAS. THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE ASSOCIATION AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL OR PERMITTED STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO: CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION, WITH THE EXCEPTION OF EXOTIC/NUISANCE VEGETATION REMOVAL; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

Any portions of the Common Area designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of Charlotte County, Florida, as well as SWFWMD and any recorded conservation easement. The Association shall not, and it shall not allow any person to, undertake or perform any activity or improvements to a conservation area or remove any native vegetation, without the prior approval of the foregoing agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area.

11.4 Open Space and Buffers. Any property conveyed or dedicated to the Association that is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other document recorded in the public records, shall be owned and maintained by the Association in a natural, open condition, so long as such designation is in effect. The Association or any Owner shall not do anything that diminishes or destroys the open space, buffers, preserve areas, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

Any landscape buffer installed and maintained in the Common Areas under requirements of Charlotte County ordinances, or the requirements of any other governmental entity, and that is located in an easement area, shall be permanently maintained by the Association. In the event that any portion of the landscaping consisting of trees and shrubs in such easement areas are removed, the Association shall replace the trees and shrubs with like size and species as a common expense of the Association.

11.5 Effluent Disposal and Water Supply. By the act of purchasing or occupying a Lot or Living Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Areas and other areas within the Properties with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction.

All Lots and Living Units within the Properties may be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line, and all spigots on the exterior portion of a structure shall be connected to the potable water line. OWNERS ARE HEREBY ADVISED THAT THE EFFLUENT AND NON-POTABLE WATER EMANATING FROM THE NON-POTABLE WATER SYSTEMS THROUGHOUT THE PROPERTIES MAY NOT BE SAFE OR APPROVED FOR HUMAN OR ANIMAL CONSUMPTION. ONLY THE POTABLE WATER AVAILABLE AT THE PROPERTIES SHALL BE CONSUMED. Each Owner shall be required to connect the water lines on his Lot and Living Unit to the lines of the utility provider providing service within the Properties. The Declarant, its designees, successors, or assigns, shall have the exclusive right to develop and utilize the ground and surface water resources of the Properties for any legal purpose, including the distribution and use of such water within and beyond the Properties. The conveyance of any Lot or Living Unit to an Owner, or parcel to a Builder by Declarant, does not include the right to develop or utilize the ground or surface water within such Lot, Living Unit, or parcel, or the right to use or extract any of the subsurface oil, gas, or minerals within such Lot, Living Unit, or parcel.

11.6 Environmental Permits and Reporting. The Association shall be responsible for monitoring, maintaining, repairing, reporting, and performing obligations, including providing evidence of financial assurances for the performance of said obligations, arising out of any environmental permits as may be designated by Declarant from time to time. Declarant may notify the Association in writing of the applicable environmental permit, along with a copy thereof or summary of the monitoring, maintenance, repair, reporting, or other performance obligations. An Owner shall in no way deny or prevent ingress and egress by the Declarant or the Association to areas necessary for the performance of such obligations arising under such environmental permits. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Association, any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress for purposes related to any environmental permits, and Declarant for so long as Declarant owns any Property for development and sale in the ordinary course of business.

12. INSURANCE.

12.1 Duty to Insure and to Reconstruct. Each Owner shall at all times maintain property insurance on his Living Unit and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot is destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane, or other casualty, the Owner of such improvements shall cause repair or replacement to be commenced within six (6) months from the date that such damage or destruction occurred, and shall complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design, and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the ARC.

12.2 Failure to Reconstruct. If the Owner of any Lot or Living Unit fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 12.1, the Association shall give written notice to the Owner of his default. If the Owner has not notified the Association of satisfactory arrangements to meet his obligations within thirty (30) days after the Association mailed such notice, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to remove all debris and damaged improvements, or to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this Section 12.2, which shall be in the sole discretion of the Board of Directors, the Owner of the Lot or Living Unit shall be deemed to have assigned to the Association any right the Owner may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and Living Unit to secure payment.

12.3 Failure to Insure; Association as Additional Insured. For the purpose of this Section 12, each Owner of a Lot or Living Unit within the Community agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may from time to time exist. The Association has the right to require each Owner to produce proof of insurance. If an Owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the Owner in all respects, together with interest, reasonable attorney fees, and costs of collection, immediately upon the Association notifying the Owner, in writing, that it has procured such insurance and the costs thereof.

12.4 Association's Right of Entry. For the purpose of performing the duties authorized by this Section 12, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours.

12.5 Association Insurance: Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force at all times the insurance coverage that it is required to carry, and may obtain and keep in force any or all of such other or additional insurance coverage as it may deem necessary. The premiums for all insurance shall be a common expense. The name of the insured shall be the Association as agent for the Owners, without naming them, and their mortgagees.

12.6 Required Coverage. The Association shall maintain adequate liability insurance and casualty insurance covering all buildings and other insurable improvements (if any) within the Common Areas, with coverage equal to the maximum insurable replacement value thereof, as determined annually by the Board of Directors; such insurance to afford the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly referred to as an "all risk" property contract.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as shall be required by the Board of Directors, with cross-liability endorsement to cover liabilities of the Owners as a group to any single Owner.

(C) Automobile. Automobile liability for bodily injury and property damage for owned and/or non-owned motor vehicles, in such limits of protection and with such coverage as shall be required by the Board of Directors.

(D) Fidelity Bonding. Adequate fidelity bond coverage for all individuals having control of or access to Association funds.

The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Owners. Some of the more common options include:

1. Flood insurance.
2. Broad Form Comprehensive General Liability Endorsement.
3. Directors and Officers Liability.
4. Medical Payments.
5. Leakage, seepage, and wind-driven rain.
6. Endorsement for loss by operation of local ordinance.

12.7 Description of Coverage. A detailed summary of the coverage included in the Association's policies shall be available for each Owner upon request. All Association insurance policies shall be available for inspection by Owners upon request.

12.8 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies that provide that the insurer waives its right to subrogate as to any claim against Owners, the Association, or their respective servants, agents or Guests, except for any claim based primarily upon gross negligence evidencing reckless, willful, or wanton disregard for life or property.

12.9 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, and all proceeds shall be payable to the Association.

12.10 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Association's common surplus.

12.11 Association as Agent. The Association is hereby irrevocably appointed agent for each Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Living Units.

12.12 Reconstruction of Common Areas. Damaged improvements on the Common Areas shall be repaired or reconstructed unless the Declarant Member, if any, votes not to repair or reconstruct, or after the period of the Declarant membership at least 75% of the total Class "A" Members in the Association vote not to repair or reconstruct. Except as otherwise provided in any written agreement between Declarant and Declarant's mortgagee, no mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins, and shall thereafter be maintained by the Association in a neat, attractive, and landscaped condition. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members 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 or Living Unit. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall.

13. RIGHTS OF DECLARANT. In addition to those provided elsewhere in the Governing Documents, the Declarant shall have the following rights and privileges:

13.1 Sales Activity. While one or more Lots or Living Units are for sale in the ordinary course of business, the Declarant shall have the right to use those Lots or Living Units and the Common Areas (including, but not limited to, all recreational facilities) to establish, modify, maintain, and utilize, as it deem appropriate, model Living Units, sales offices, or other offices for use in selling or providing warranty services to any part of the Community, including temporary trailers or other structures used for sales marketing or construction purposes. No Owner may interfere with or do anything detrimental to the Declarant's sales efforts. Without limiting the generality of the foregoing, the Declarant and its designees may show model Living Units or the Common Areas to prospective purchasers or tenants, advertise, erect signs, conduct promotional activities and special events, and take all other action helpful for sales, leases, and promotion of the Community.

13.2 Assignment of Rights to Successor Declarant. Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, partially or completely, to any person or entity, any or all of its development rights, powers, duties, and privileges created in or provided for by this Declaration. Such assignment shall not in any way lessen the Declarant's rights with respect to property not subject to such assignment.

13.3 Use of Common Areas. The Declarant has the right and authority, as long as the Declarant owns any Lot or Living Unit, to use the Common Areas without charge for a sales office, for promotional activities, and other special events whether private or open to the public, to promote the Community and to assist in its overall marketing effort.

13.4 Security; Non-Liability of Declarant and Association. The Declarant and the Association shall not be liable if security services are not provided.

ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE COMMUNITY ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR OWN PROPERTY.

NEITHER THE ASSOCIATION NOR THE DECLARANT ARE INSURERS OR GUARANTORS OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.

NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE LIABLE IN ANY WAY ON ACCOUNT OF LOSS, DAMAGE, OR INJURY RESULTING FROM LACK OF SECURITY OR THE LACK OF EFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE RELATIVE TO ANY FIRE PROTECTION SYSTEM AND/OR BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

13.5 Miscellaneous.

(A) Declarant shall have the right and the power to regulate and control the external design and appearance of all Common Areas in such a manner as to:

1. Promote a quality environment that will preserve the value of the Lots and Living Units.
2. Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structure, vegetation, and topography.

(B) Any use of Common Areas other than the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Declarant so long as it owns any land in the Community that it holds for the purpose of development.

(C) The Declarant has the right to replat unsold portions of the Properties without the joinder or consent of any Owner.

(D) The Declarant has the right to receive a refund of any and all deposits or other payments made to utility companies or governmental authorities that are refunded in the course of development, even if such refunds occur after the sale of the last Lot or Living Unit in the Community to an Owner other than the Declarant.

13.6 Management Contract. Declarant shall have the right and the power to enter into professional management contracts on behalf of the Association before turnover of control of the Association.

13.7 Appointment of Directors. As further provided in the Bylaws, the Declarant shall have the right to appoint all of the Directors of the Association until the turnover meeting, and shall have the right to appoint at least one Director until the time specified in Section 7.4 of the Bylaws.

13.8 Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the creation of any association or other entity, nor the recordation of any other instrument subjecting any land in the Community to protective covenants, conditions, restrictions, or other provisions shall obligate or require:

(A) Declarant to grant any right, power, duty, or privilege of any nature or kind to the Association or to any other entity.

(B) Declarant, the Association, or any other entity to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction, or other provision hereof or thereof, or to do anything that it does not, in its sole discretion, elect to do.

13.9 Assignment of Rights to Builders. In addition to any other rights of assignment, any or all of the rights and obligations of the Declarant set forth in this Declaration or the Bylaws may be transferred and assigned, in whole or in part, to any Builder, provided that such transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Bylaws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant. The foregoing sentence shall not preclude Declarant from permitting Builders or other persons to exercise on a one time or limed basis any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment.

14. RIGHTS OF MORTGAGEES.

14.1 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice

14.2 Mortgage Foreclosure. Except as otherwise provided by Florida law, as amended from time to time, an Institutional Mortgagee that acquires title to a Lot or Living Unit through mortgage foreclosure or acceptance of a deed in lieu of foreclosure in which the Association has been named as a defendant in the initial complaint, shall be liable for Assessments levied against such Lot or Living Unit in the same manner as provided in Section 9 above, unless the mortgagee is entitled to limited liability for delinquent Assessments as provided in Chapter 720, Florida Statutes, which currently requires the lender to pay the Association the lesser of one percent (1%) of the original mortgage indebtedness, or the sum of the annual Base Assessment and any Special Assessments that accrued or became due during the 12 months immediately preceding acquisition of title by the lender, and as provided in Chapter 720, Florida Statutes, as may be amended by time to time. The foregoing sentence pertaining to entitlement to limited liability shall not be construed to negate the authority of a court to order a mortgagee to pay a surcharge pursuant to 11 USC Section 506(c), or grant other relief that may be found to be applicable under federal or state law. Any unpaid Assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, including such acquirer and his or its successors and assigns. No Owner or acquirer of title to a Lot or Living Unit by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any Assessments or charges coming due during the period of such ownership.

14.3 Right to Inspect Documents and Books. The Association shall make available to Institutional Mortgagees requesting same the current Governing Documents, Rules and Regulations of the Association, and financial statements of the Association. "Available" shall mean ready for inspection upon written request and during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the Institutional Mortgagee requesting same.

14.4 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Association for the immediately preceding fiscal year.

14.5 Lender's Notices. Upon written request to the Association, any Institutional Mortgagee shall be entitled to timely written notice of:

(A) Any delinquency of more than sixty (60) days in the payment of Assessments or charges owed by the Owner of any Lot or Living Unit on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond

maintained by the Association. An increase in coverage or a change of insurer does not require notice under this Section 14.5.

(C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

15. DURATION OF COVENANTS; AMENDMENT.

15.1 Duration of Covenants. The covenants, conditions, restrictions, and easements in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the Association, the Declarant, and any Owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Declaration in the public records of Charlotte County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration, and as it may be amended, being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until and unless terminated as provided below.

15.2 Termination. After turnover this Declaration may be terminated at any time after the initial period if not less than eighty percent (80%) of the Voting Interests of all classes of the Members of the Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate that shall set forth the resolution of termination so adopted, the date of the meeting of the Association at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

15.3 Amendments. This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4) of the Voting Interests.

15.4 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.

15.5 Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least sixty-six and two-thirds (66-2/3) of the Members present, in person or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the Members with notice of the meeting.

15.6 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by Officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The certificate must set forth the location in the public records of the County where this Declaration was originally recorded.

15.7 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of two-thirds (2/3) or more of the Voting Interests of the Members is required to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action. This provision does not apply to amendments by the Declarant.

15.8 Amendment of Provision Relating to Declarant. As long as Declarant holds any Lot or Living Unit for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Declarant without its written consent.

15.9 Amendment by Declarant. In addition to any other right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Declarant, may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive, or add to the covenants, conditions, restrictions, and other provisions of this Declaration, and any recorded Exhibit hereto. In addition, Declarant shall have the unilateral right to add, annex, withdraw, or subtract any property from the jurisdiction of this Declaration. This right shall expire at such time as no Declarant holds any property for sale in the ordinary course of business within the Community.

15.10 Limitations. No amendment to any of the Governing Documents shall be effective to materially and adversely change any Member's voting rights as set forth in Section 2.2 of the Bylaws unless all Members affected first consent in writing to said amendment.

15.11 Exhibits. Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such Exhibit shall be governed by this Section 15. Exhibit "B" is attached for informational purposes and may be amended as provided therein. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

16. GENERAL PROVISIONS.

16.1 Other Documents. Declarant and the Association shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents. This Declaration and its provisions shall prevail in all events of conflict.

16.2 Severability. If any covenant, condition, restriction, or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

16.3 Merger or Consolidation of Associations. Upon a merger or consolidation of the Association with another corporation as provided by law, the Association's rights, obligations, and property may, by operation of law, be transferred to another surviving or consolidated association, or alternatively, remain the rights, obligations and property of the Association as the surviving corporation. The surviving or consolidated corporation may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme.

16.4 Dissolution. If the Association is dissolved other than by a merger or consolidation as provided for in Section 16.3, each Lot or Living Unit shall continue to be subject to the Assessments provided for in Section 9, and each Owner shall continue to be personally obligated to Declarant or the successor or assigns of the Association (as the case may be) for such Assessments to the extent that such Assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate, and preserve it.

16.5 Gender; Number. Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

16.6 Notices.

(A) To Declarant. Notices to Declarant as may be required herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of State, or at any other location designated by Declarant.

(B) To the Association. Notices to the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Association.

(C) To Owners. Notices to any Owner as may be required herein shall be in writing and shall be delivered or mailed to the Owner at his last known address, or at the address shown on the deed recorded in the public records of the County.

16.7 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein, including the premises.

16.8 Captions, Headings, and Titles. Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings, or titles define, limit, or in any way affect the subject matter, content, or interpretation of the terms and provisions of the Governing Documents.

16.9 Interpretation. The Board of Directors of the Association shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Association legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the validity of such interpretation.

16.10 Applicable Statutes. The validity, application, and construction of this Declaration and its Exhibits shall be governed by the laws of Florida, as they exist on the date of recording this Declaration.

16.11 Rights Limited to Express Terms of Governing Documents. Every Member of the Association acknowledges that his or her rights, duties, or obligations are limited to the express terms of the Declaration, Articles of Incorporation, Bylaws, and the Rules and Regulations (the Governing Documents). Every prospective Member should make his decision to purchase within the Community based upon these representations as set out in the Governing Documents, which contain the entire understanding of the parties and no prior or present agreements or representation shall be binding upon the Declarant unless included in the Governing Documents.

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IN WITNESS WHEREOF, the Declarant has caused this Master Declaration to be duly executed this 9th day of November, 2020.

WITNESSES:

Sign: [Signature]
Print: Matthew Koratich

Sign: [Signature]
Print: Darlene Smith

LENNAR HOMES, LLC
a Florida limited liability company

By: _____
Print: Darin McMurray
Title: Vice President

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me, by means of (check one) X physical presence or _____ online notarization, this 9 day of November, 2020, by Darin McMurray as Vice President of Lennar Homes, LLC, a Florida limited liability company, on behalf of the company, who is personally known to me.

Notary Seal/Stamp



NOTARY PUBLIC, State of Florida

Sign: [Signature]
Print: Matthew Koratich

EXHIBIT "A"

All of the plat of Biscayne Landing, as recorded at Official Records Instrument No.
_____, of the Public Records of Charlotte County, Florida.

From: Rich Valente

Fax: 4

To: 8506176381@rcfax.com

Fax: (850) 617-6381

Page: 3 of 8

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EXHIBIT "B"

**ARTICLES OF INCORPORATION
OF
BISCAYNE LANDING HOMEOWNERS ASSOCIATION, INC.**

Pursuant to Section 617.01201, Florida Statutes, these Articles of Incorporation are created by the undersigned, Pavese Law Firm, its Authorized Member of PLF Registered Agent, L.L.C., 1833 Hendry Street, Fort Myers, Florida 33901, as sole incorporator, for the purpose set forth below.

ARTICLE I

NAME: The name of the corporation is Biscayne Landing Homeowners Association, Inc. ("Association").

ARTICLE II

PRINCIPAL OFFICE: The initial principal office of the corporation is located at 10481 Six Mile Cypress Parkway, Fort Myers, Florida 33966.

ARTICLE III

PURPOSE AND POWERS: This Association will not permit pecuniary gain or profit nor distribution of its income to its Members, Officers, or Directors. It is a corporation not-for-profit organized on a non-stock basis for the purpose of providing a residential homeowners' association. For the accomplishment of its purpose, the Association shall have all of the common law and statutory powers and duties of a corporation not-for-profit, except as limited or modified by these Articles of Incorporation and a Declaration of Covenants, Conditions, and Restrictions ("Declaration") to be recorded in the public records of Charlotte County, Florida, and shall have all of the powers and authority reasonably necessary or appropriate to the operation and regulation of a residential neighborhood subject to the said recorded Declaration, as it may from time to time be amended, including, but not limited to, the power to:

(A) Fix, levy, collect, and enforce payment by any lawful means all charges or assessments levied pursuant to the Declaration; and pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all license fees, taxes, or governmental charges.

(B) Enforce any and all covenants, conditions, restrictions and agreements applicable to the residential neighborhood known as Biscayne Landing.

(C) Acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association.

(D) Borrow money, and mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security.

(E) Dedicate, sell, or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members.

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20 MAY 27 PM 5:00
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CLERK OF COURT
CLERK OF COURT

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(F) Purchase policies of insurance upon the Properties and use the proceeds from such policies to effectuate its purposes.

(G) Participate in mergers and consolidations with other non-profit corporations organized for the same or similar purposes, or to annex additional property and common areas, provided that merger, consolidation, or annexation shall have the consent of at least two-thirds (2/3) of the voting interests of the Association.

(H) Establish rules and regulations in accordance with the Governing Documents.

(D) Sue and be sued.

(J) Exercise any and all powers, rights, and privileges that a homeowners' association organized under Chapter 720, Florida Statutes, may now or hereafter have or exercise; subject always to the Declaration, as amended from time to time.

(K) Contract for services necessary to operate and maintain the Common Areas and improvements located thereon.

(L) To be the responsible entity to operate and maintain the Surface Water Management System as permitted by the Southwest Florida Water Management District, including, but not limited to, all lakes, retention areas, culverts, and related appurtenances.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS: Membership and voting rights shall be as set forth in the Bylaws of the Association. However, all owners of Lots within the Biscayne Landing shall be members of the Association.

ARTICLE V

TERM: The Association shall commence upon the filing of these Articles of Incorporation with the Secretary of State, State of Florida. The Association shall have perpetual existence. Notwithstanding anything in the foregoing to the contrary, the Association may be terminated in accordance with the Declaration and the Bylaws, subject however to any required prior governmental approval, and provided that, upon such termination, proper written consent must be duly recorded in the Public Records of Charlotte County, Florida. In the event of dissolution, the assets owned by the Association, including, without limitation, the control and right of access to all surface water management system facilities, shall be conveyed or dedicated to an appropriate agency of local government, and if such agency refuses to accept such assets, then such assets shall be transferred to a non-profit corporation similar to the Association.

ARTICLE VI

BYLAWS: The Bylaws of the Association may be altered, amended, or rescinded in the manner provided therein.

ARTICLE VII

AMENDMENTS: Amendments to these Articles shall be proposed and adopted in the following manner:

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20 MAY -7 PM 5:00

Manner provided

From: Rich Valente
To: [Redacted]

To: 8506176381@rcfax.com Fax: (850) 617-6381

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(A) Proposal. Amendments to these Articles may be proposed by a majority of the Board or by petition to the Board signed by at least one-fourth (1/4) of the voting interests.

(B) Procedure. A proposed amendment must be submitted to a vote of the Members not later than the next annual meeting for which proper notice can still be given.

(C) Vote Required. Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation shall be adopted if it is approved by at least two-thirds (2/3) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that notice of any proposed amendment must be given to the Members of the Association, and the notice must contain the full text of the proposed amendment.

(D) Effective Date. An amendment becomes effective upon filing with the Secretary of State and recording a certified copy in the public records of Charlotte County, Florida, with the same formalities as are required in the Declaration for recording amendments to the Declaration.

ARTICLE VIII

DIRECTORS AND OFFICERS:

(A) The affairs of the Association will be administered by a Board of Directors consisting of the number of Directors set in the Bylaws, but never less than three (3), and in the absence of a Bylaw provision shall consist of three (3) Directors.

(B) Directors of the Association shall be elected by the Members in the manner determined by the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

(C) The business of the Association shall be conducted by the Officers designated in the Bylaws. The Officers shall be elected by the Board of Directors at its first meeting after the annual meeting of the Members and shall serve at the pleasure of the Board.

ARTICLE IX

INITIAL DIRECTORS:

The initial Directors and Officers of the Association shall be:

Matthew Koratich	President/Director	10481 Six Mile Cypress Parkway Fort Myers, Florida 33966
Gregory Roughgarden	Vice President/Director	10481 Six Mile Cypress Parkway Fort Myers, Florida 33966
David Negip	Secretary/Treasurer/Director	10481 Six Mile Cypress Parkway Fort Myers, Florida 33966

From: Rich Valente
12000000000000000000

To: 8508176381@rcfax.com Fax: (850) 617-6381

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ARTICLE X

REGISTERED OFFICE AND INITIAL REGISTERED AGENT:

The street address of the initial Registered Office of the Association is 1833 Hendry Street, Fort Myers, Florida 33901. The name of the initial Registered Agent of the Association is PLF Registered Agent, L.L.C., 1833 Hendry Street, Fort Myers, Florida 33901.

ARTICLE XI

INDEMNIFICATION: To the fullest extent permitted by Florida law, the Association shall indemnify and hold harmless every Director and every Officer of the Association against all expenses and liabilities, including attorney fees, actually and reasonably incurred by or imposed on said Director or Officer in connection with any legal proceeding (or settlement or appeal of such proceeding) to which said Director or Officer may be a party because of his or her being or having been a Director or Officer of the Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that said Director's or Officer's actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Association, in a proceeding by or in the right of the Association to procure a judgment in its favor.

(B) A violation of criminal law, unless the Director or Officer had no reasonable cause to believe his or her action was unlawful or had reasonable cause to believe it was lawful.

(C) A transaction from which the Director or Officer derived or sought to derive an improper personal benefit.

(D) Recklessness, or an act or omission that was committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property, in an action by or in the right of someone other than the Association or a Member.

(E) Wrongful conduct by Directors or Officers appointed by the Developer, in a proceeding brought by or on behalf of the Association.

In the event of a settlement, there is no right to indemnification unless a majority of the disinterested Directors approve such settlement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to, and not exclusive of, all other rights to which a Director or Officer may be entitled.

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From: Rich Valente
To: [Signature]

To: 8506176381@rcfax.com Fax: (850) 617-6381

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For the purpose of forming the Biscayne Landing Homeowners Association, Inc., under the laws of the State of Florida, the undersigned, Pavese Law Firm, its Authorized Member of PLF Registered Agent, L.L.C., being the incorporator of this Association, has executed these Articles of Incorporation as of the 26th day of May, 2020.

PLF REGISTERED AGENT, L.L.C.
a Florida limited liability company

By: Pavese Law Firm, its Authorized Member

By: [Signature]
Charles Mann, Managing Partner

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me by means of physical presence this 26th day of May, 2020, by Charles Mann, Managing Partner of Pavese Law Firm, Authorized Member of PLF Registered Agent, L.L.C., a Florida limited liability company, on behalf of the company, who is personally known to me.

Notary Seal/Stamp



NOTARY PUBLIC, State of Florida

Sign: [Signature]
Print: Alyssa Allenhofen

FILED
20 MAY 27 PM 5:00
NOTARY PUBLIC
FLORIDA

From: Rich Valente
To: 8506176381@rcfax.com Fax: (850) 617-6381

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CERTIFICATE OF ACCEPTANCE BY REGISTERED AGENT

The undersigned, having been named to accept service of process for the above-stated Association at the place designated in this Certificate, hereby agrees to act in this capacity, is familiar with and accepts the obligations of this position, and further agrees to comply with the provisions of all statutes relative to the proper and complete performance of his duties.

Dated this 26th day of May, 2020.

PLF REGISTERED AGENT, L.L.C.
a Florida limited liability company

By: Pavese Law Firm, its Authorized Member

By: Charles Mann Managing Partner

FILED
20 MAY 27 PM 5:00
SHERIFF'S OFFICE
TALLAHASSEE, FLORIDA

EXHIBIT "C"

**BYLAWS
OF
BISCAYNE LANDING HOMEOWNERS ASSOCIATION, INC.**

1. **GENERAL.** These are the Bylaws of Biscayne Landing Homeowners Association, Inc. ("Association"), a Florida corporation not-for-profit organized for the purposes set forth in the Articles of Incorporation.

1.1 **Principal Office.** The principal office of the Association shall initially be at 10481 Six Mile Cypress Parkway, Fort Myers, Florida 33966, and shall subsequently be at such location as may be determined by the Board of Directors.

1.2 **Definitions.** All terms defined in the Declaration of Covenants, Conditions and Restrictions for Biscayne Landing ("Declaration"), to which these Bylaws were attached as an Exhibit when it was originally recorded, shall be used with the same meanings as defined therein.

1.3 **Seal.** The seal of the Association shall be inscribed with the name of the Association, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced, or otherwise placed upon any document or writing of the corporation where a seal may be required.

2. **MEMBERSHIP AND VOTING RIGHTS.** The classes of membership shall be as more fully set forth in Section 4 of the Declaration.

2.1 **Membership.** Every person or entity who or that is a record Owner of a fee or undivided fee interest in any Lot or Living Unit that is subject to the Declaration shall be a Member of the Association, provided that any such person or entity who holds record ownership merely as security for the performance of an obligation shall not be a Member of the Association.

2.2 **Voting Rights.** The votes of the classes of Members of the Association shall be cast by their respective classes of Voting Members as follows:

(A) **Class A.** Class A Members shall be all those Owners, as defined in Section 2.1, with the exception of the Declarant (as to Declarant, as long as the Class B membership shall exist, and thereafter the Declarant shall be a Class A Member to the extent it would otherwise qualify).

(B) **Class B.** The Declarant shall be a voting Member for each Lot or Living Unit it owns. Declarant membership and voting rights shall cease to exist at the Turnover Meeting described in Section 7.2 of these Bylaws, but all of the Declarant's other rights and privileges as the Declarant, as set forth elsewhere in the Declaration or in these Bylaws, shall continue as long as the Declarant holds any property within the Community for sale in the ordinary course of business. If the Declarant conveys undeveloped property within the Community to a successor developer, the Declarant may assign its Declarant membership and/or some or all of its voting rights and privileges to the successor developer. Until the turnover of control as described in Section 7 below, the Declarant shall have the number of votes in all matters equal to the total combined votes of the other classes of Members, plus 100 votes.

2.3 **Rights and Privileges of Members.** Each Member is encouraged to take an active interest in Association affairs.

(A) Every Member shall have the right to:

- (1) Have his vote cast at the meetings of the Members.
- (2) Serve on the Board if elected.
- (3) Serve on committees.
- (4) Attend membership meetings.

(B) Every Member in good standing shall have the privilege of using and enjoying the Common Areas in accordance with the type of membership held by the Member, subject to the rules of the Association and the right of the Association to charge admission and other fees for the use of any facilities.

(C) A Member is in good standing if he is current in the payment of all assessments and other financial obligations to the Association and his membership is not suspended.

2.4 Delegation of Rights to Use Common Areas.

(A) In accordance with Section 4.4 of the Declaration, a Member may delegate his privilege to use the Common Areas to:

- (1) A reasonable number of Guests if accompanied by the Member.
- (2) Residential tenants who reside in the Member's Living Unit

(B) In the case of residential tenants of the Member's Living Unit, the delegating Member must give prior written notice to the Association of such delegation. The written notification shall state the name, age, permanent address, intended length of time the delegation will be effective, and such other information about each residential tenant as the Board shall require.

(C) A Member who has delegated his use privileges and is not in residence in Biscayne Landing may not use Common Areas during the period of the delegation, except as a Guest of another Member. A Member may not be the Guest of his tenant.

(D) Members shall be responsible for keeping the Association informed as to the identity and relationship of any persons who normally reside with the Member and intend to utilize the Common Areas.

(E) The Board of Directors may limit the number of Guests or the frequency or duration of any Member's delegation of use rights, and may impose fees for the delegation of such rights of use of the facilities by renters or Guests, which fees may be different from fees charged to Members for their use.

2.5 Suspension of Membership. As further provided in Section 10 of the Declaration, the Board may suspend a Member's membership in the Association:

(A) For the period of time during which an assessment against the Member remains unpaid more than ninety (90) days after the date it was due and payable.

(B) For a reasonable period during or after any infraction of the Association's rules and regulations by a Member or by any person to whom he has expressly or impliedly delegated his use privileges.

(C) For misuse, abuse, or intentional destruction of Association property, real or personal.

Suspension of any Member's membership temporarily revokes the Member's rights and privileges to use and enjoy Common Areas and facilities and to participate in Association affairs. A suspension shall in no way impair the enforceability of any assessment or lien therefor, or the authority of the Association to assess and collect any future assessment and lien, nor shall it impair the Member's right of access to, and use of, his own property in a manner consistent with the Governing Documents.

2.6 Electronic Voting. Electronic voting may occur in and for the Association under the terms and provisions of the following:

(A) In order for electronic voting to occur on any Association matter, the Board must first pass a resolution authorizing same, which resolution must:

(1) Provide that Members receive notice of the opportunity to vote through an online voting system.

(2) Establish reasonable procedures and deadlines for Members to consent, in writing, to online voting.

(3) Establish reasonable procedures and deadlines for Members to opt out of online voting after giving consent.

(B) Once such a resolution has been passed, elections and other membership votes may be conducted through an internet-based online voting system if a Member consents, in writing, to online voting and if the following requirements are met:

(1) The Association shall provide each Member with a method or means:

(a) To authenticate the Member's identity to or within the online voting system.

(b) To confirm, at least fourteen (14) days prior to the date of the vote or the voting deadline, that the Member's electronic device can successfully communicate with the online voting system.

(c) That is consistent with the election and voting procedures in these Bylaws and the other Governing Documents.

(2) The Association utilizes an online voting system that is able to:

(a) Authenticate the Member's identity.

(b) Authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Transmit a receipt from the online voting system to each Member who casts an electronic vote.

(d) Permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific Member (this provision only applies if these Bylaws provide for secret ballots for the election of Directors).

(e) Store and keep electronic ballots accessible to election officials for recount, inspection, and review.

(C) A Member voting electronically pursuant to or as a result of this Section 2.6 shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(D) A Member's consent to online voting is and shall remain valid until the Member opts out of online voting pursuant to the procedures established by the Board.

(E) This Section 2.6 shall apply to any matter that requires a vote of the Members.

3. MEMBERS' MEETINGS.

3.1 Annual Meeting. The annual meeting shall be held at a date, time, and place designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the Members. The annual meeting is a general meeting, and unless the law or the Governing Documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3.2 Special Members' Meetings. Special Members' meetings must be held whenever called for by the President or by a majority of the Directors, and must be promptly called by the Board upon receipt of a written request signed by Members entitled to cast at least ten percent (10%) of the votes of the Association. Such requests shall be in writing and shall state the purpose or purposes of the meeting. Business at any special meeting shall be limited to the item specified in the request or contained in the notice of meeting.

3.3 Quorum. A quorum shall be attained at a Members meeting by the presence, in person or by proxy, of at least thirty percent (30%) of the total voting interests.

3.4 Vote Required to Transact Business. The acts or resolution approved by at least a majority of the votes cast at a duly called meeting at which a quorum has been attained shall be the act of the Members, unless a higher vote is specifically required by law or by the Governing Documents.

3.5 Notice of Meetings. Written notice of meetings shall be mailed or hand-delivered to each Member at the address last provided to the Association by the Members. The notices must be mailed or delivered by the Association not less than fourteen (14) days prior to the date of the meeting. Notice may also be furnished by electronic transmission to any Member who has consented to receive notice by electronic transmission. Consent by a Member to receive notice by electronic transmission shall be revocable by the Member by written notice to the Association.

3.6 Adjourned Meetings. Any duly called meeting of the Members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meetings to a different date, time, or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 720.303(2), Florida Statutes, as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617.0707, Florida Statutes, as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are Members as of the new record date but were not Members as of the previous record date.

3.7 Order of Business. The order of business at Members' meetings shall be substantially as follows:

- (A) Determination that a quorum has been attained
- (B) Reading or waiver of reading of minutes of last Members' meeting
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (when appropriate)
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.8 Minutes. Minutes of all meetings of the Members must be maintained in written form, or in another form that can be converted into written form within a reasonable time.

3.9 Parliamentary Rules. Robert's Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the law, with the Declaration, or with these Bylaws. The Presiding Officer may appoint a Parliamentarian, but the decision of the Presiding Officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.10 Action by Members without a Meeting. Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting if written instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date that appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph affects the rights of Members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law.

4. BOARD OF DIRECTORS. The administration of the affairs of the Association shall be by a Board of Directors. All powers and duties granted to the Association by law, as modified and explained in the Declaration, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to the approval or consent of the Members only when such is expressly required.

4.1 Powers. The Board shall have the authority to:

- (A) Manage and control the affairs of the Association.
- (B) Appoint and remove at its pleasure all Officers, agents, and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing in these Bylaws shall be construed to prohibit the employment of any Member, Officer, or Director of the Association in any capacity whatsoever.
- (C) Establish, levy, assess, and collect any assessment or charge provided for in the Governing Documents.
- (D) Designate one or more financial institution(s) as depository for Association funds, and the Officer(s) authorized to make withdrawals therefrom.

(E) With the prior consent of at least a majority of the voting interests, borrow money for Association purposes, and assign, pledge, mortgage, or encumber any Common Areas or future revenues of the Association as security therefor.

(F) Adopt, amend, or revoke rules and regulations relating to the use of Common Areas, and such sanctions for noncompliance therewith, as it may deem necessary for the best interest of the Association and its Members. The Board may also establish and levy fees for the use of Common Areas or Association property.

(G) Cause the Association to employ sufficient personnel to adequately perform the responsibilities of the Association.

(H) Negotiate and enter into contracts for the maintenance and operation of the Common Areas.

(I) Make improvements to the Common Areas.

(J) Establish committees of the Association and appoint the members thereof. It may assign to such committees responsibilities and duties not inconsistent with the provisions of these Bylaws as it may deem appropriate.

(K) Acquire property, real or personal, and enter into agreements with any persons, including Declarant, relating to the orderly transfer of property from said person to the Association, and such other matters as the Board may deem appropriate.

(L) Perform all other acts not inconsistent with law or the Governing Documents and necessary for the proper functioning of the Association.

4.2 Number; Qualifications. Until turnover of control of the Association from Declarant to the non-Declarant Owners, the affairs of the Association shall be managed by a Board of three (3) Directors. A Director must be a Member or the spouse of a Member, except that the Directors elected or appointed by the Class B Member need not be Members and may be the officers and/or employees of Declarant. Subsequent to turnover of control of the Association, the Board of Directors shall consist of no fewer than three (3) and nor more than seven (7) Members, such number to be determined by the Board from time to time.

4.3 Term of Office. Prior to turnover, each Director shall be elected for a term of one (1) year, which will end upon final adjournment of the annual meeting in conjunction with which the Director's successor is to be elected. After turnover, in order to provide for a continuity of experience by establishing a system of staggered terms of office, in the first election in which Owners other than the Declarant elect at least a majority of the Directors, a majority number of the elected candidates shall each be elected for a term that expires at the final adjournment of the second annual meeting following turnover. The other elected candidates shall be elected for a term that expires at the final adjournment of the next annual meeting. Thereafter, all Directors shall be elected for two (2) year terms, ending at the final adjournment of the annual meeting at which successors are to be duly elected, or at such other time as may be provided by law. Directors shall be elected by the Members as described in Section 4.4 below, or in the case of a vacancy, as provided in Section 4.6 below. There is no limit on the number of consecutive terms to which a Director may be elected. A resignation must be in writing to be effective, and may not be revoked once received by the Association.

4.4 Nominations and Election of Directors. Except as otherwise provided herein and for the first Board of Directors and their Declarant-appointed replacements, Directors shall be elected by the Members at the annual meeting of the Association. Notwithstanding the foregoing, until such time as the Class B

membership in the Association terminates, the Class B Member shall have the right to appoint Directors in accordance with the provisions of the Declaration and Chapter 720, Florida Statutes.

(A) Directors shall be elected in accordance with Chapter 720, Florida Statutes, these Bylaws, and the election rules, if any, and process established and utilized by the Board of Directors.

(B) Not less than sixty (60) days before a scheduled election, the Association shall mail or deliver, whether by separate Association mailing or included in another Association mailing or delivery, including regularly published newsletters and including electronic transmission for those Members who have so consented, to each Member entitled to vote, a First Notice of Annual Meeting with the date of the election. Any eligible person who nominates himself to be a candidate may do so no later than forty (40) days prior to the annual meeting and may also submit a resumé by such deadline on one side of an 8-½" x 11" sheet of paper. As Members have been given the opportunity to nominate themselves in advance and prior to the annual meeting where the election will take place, nominations from the floor will not be accepted.

(C) Not less than fourteen (14) days prior to the annual meeting, the Association shall send a Second Notice of Annual Meeting to all Members, along with an election ballot for the election of Directors, any timely submitted candidates' resúmes, a proxy, and any other documents in the Board's discretion. The election ballot shall contain the names of all candidates who nominated themselves in a timely manner, listed alphabetically by surname.

(D) If a voter checks off the names of more candidates than the number of Directors to be elected, the election ballot shall not be counted for the election. Elections shall be determined by a plurality of the votes cast. A quorum of the Members need not cast a vote for a valid election to occur, so long as at least ten percent (10%) of the eligible Voting Interests cast a ballot. The Board may require all election ballots to be received by the Association at some point prior to the annual meeting so that votes can be tallied prior to the annual meeting and the results announced at the annual meeting

(E) The candidates who are elected shall take office upon the adjournment of the annual meeting.

(F) No election shall be necessary if the number of candidates is less than or equal to the number of vacancies.

(G) In addition to the foregoing, to the extent that the Association wishes to provide for and allow Members to vote electronically, Members who have consented to vote electronically shall be permitted to do so as otherwise provided for by Section 720.317, Florida Statutes (2018), or as later amended.

4.5 Certification. Within ninety (90) days after being elected or appointed to the Board, each Director shall certify in writing to the Secretary of the Association that he has read the Association's Declaration, Articles of Incorporation, Bylaws, and current written rules and policies; that he will work to uphold such documents and policies to the best of his ability; and that he will faithfully discharge his fiduciary responsibility to the Association's Members. In lieu of the written certification, the newly elected or appointed Director may submit a certificate of having satisfactorily completed the educational curriculum administered by a Division-approved education provider within one (1) year before or ninety (90) days after the date of election or appointment. The written certification or educational certificate is valid for the uninterrupted tenure of the Director on the Board. A Director who does not timely file the written certification or educational certificate is suspended from the Board until he complies with the requirement. The Board may temporarily fill the vacancy during the period of suspension. The Association shall retain each Director's written certification or educational certificate for five (5) years after the Director's election; however, the failure to retain the certificate does not affect the validity of any Board action.

4.6 Vacancies and Removal.

(A) Except as to vacancies resulting from removal of Directors by Members as provided for elsewhere herein, vacancies in the Board of Directors occurring between annual meetings of Members shall be filled by the remaining Directors at any Board meeting, provided that (i) all vacancies in directorships to which Directors were appointed by the Class B Member shall be filled by the Class B Member; and (ii) a vacancy in a directorship elected by Class A Members shall be filled with a Class A Member.

(B) Any Director elected by the Members (other than the Class B Member) may be removed from the Board of Directors with or without cause by a majority of the votes of the Class A Members at a special meeting called for that purpose or by written agreement signed by the Members entitled to cast a majority of the Class A Member votes. The vacancy in the Board of Directors so created shall be filled by the Members at a special meeting called for such purpose, or by the Board of Directors if such meeting does not occur within five (5) days of the removal.

(C) A Director or Officer charged by information or indictment with a felony theft or embezzlement offense involving the Association's funds or property is removed from office. The Board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the Director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the Director or Officer shall be reinstated for any remainder of his term of office.

4.7 Organizational Meeting. An organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed by the new Directors at the meeting when they were elected.

4.8 Regular Meetings. After turnover of control, regular meetings of the Board shall be held at such time and place in Charlotte County, Florida, as shall be determined from time to time by the Directors. A regular meeting of the Board of Directors is any meeting held according to a regular weekly, monthly, or other periodic schedule adopted from time to time by the Board. Notice of regular meetings shall be given to each Director personally, or by mail, telephone, or telegram, at least ten (10) days before the day named for such meeting. At regular meetings any business of the Association may be transacted. If any Director elected by the Members shall be absent for any reason from three (3) consecutive regular meetings of the Board, the Board may, by vote of at least a majority of the whole Board taken at the next meeting, declare the office of said Director to be vacant, and may appoint a successor.

4.9 Special Meetings. Special meetings of the Board are all meetings other than the annual organizational meeting and regular meetings. Special meetings may be called by the President, the Secretary, or by a majority of the Directors. Not less than two (2) days' notice of a special meeting shall be given to each Director personally, or by mail, facsimile, telephone, or telegram, which notice shall state the time, place, and purposes of the meeting. Business conducted at a special meeting shall be limited to the items specified in the notice of the meeting.

4.10 Waiver of Notice by Directors. Any Director may waive notice of a Board meeting before or after the meeting, and such waiver shall be deemed equivalent to the receipt of notice. Attendance at a meeting by any Director constitutes waiver of notice, unless that Director objects to the lack of notice at the beginning of the meeting.

4.11 Board Meetings; Notice to Members. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers and conducts Association business. All meetings of the Board shall be open to all Members, except as otherwise provided by law. Notice of all Board meetings shall be posted in a

conspicuous place on the Common Areas at least forty-eight (48) hours in advance of the meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of such assessments. Any Owner may audio record or videotape meetings of the Board and meetings of the Members. The Board may adopt reasonable rules governing the taping of meetings of the Board and the membership.

4.12 Quorum of Directors. A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may not vote by proxy or secret ballots at Board meetings, except that secret ballots may be used in electing officers. Any Director has a right to participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person.

4.13 Vote Required. Except as otherwise required by law or the Governing Documents, the acts approved by a majority of the Directors present and voting at a duly called Board meeting at which a quorum exists shall constitute the acts of the Board of Directors.

4.14 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum exists, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.15 The Presiding Officer. The President of the Association, or in his absence, the Vice President, shall be the Presiding Officer at all meetings of the Board of Directors. If neither is present, the Presiding Officer shall be selected by majority vote of those present.

4.16 Compensation of Directors and Officers. Neither Directors nor Officers shall receive compensation for their services as such. Directors and Officers may be compensated for all actual and proper out of pocket expenses relating to the proper discharge of their respective duties.

4.17 Emergency Powers. In the event of an "emergency" as defined in Section 4.17(G) below, the Board of Directors of the Association may exercise the emergency powers as described in this Section 4.17, and any other emergency powers authorized by Sections 617.0207 and 617.0303, Florida Statutes, as amended from time to time.

(A) The Board may name as Assistant Officers persons who are not Directors, which Assistant Officers shall have the same authority as the Executive Officers of whom they are assistant during the period of the emergency, to accommodate the incapacity of any Officer of the Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the Officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practical manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section 4.17 to further the ordinary affairs of the Association shall bind the Association, and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any Officer, Director, or employee of the Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) The provisions of these emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section 4.17, an "emergency" exists only during a period of time that the Community, or the immediate geographic area in which the Community is located, is subjected to:

- (1) A state of emergency declared by law enforcement authorities.
- (2) A hurricane warning.
- (3) A partial or complete evacuation order.
- (4) A designation by federal or state government as a "disaster area."

(5) A catastrophic occurrence, whether natural or man-made, that seriously damages or threatens serious damage to the Community, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

4.18 Committee Meetings. The provisions of this Section 4 governing the calling and holding of Board meetings shall also apply to the meetings of all committees or other similar bodies specified in the Governing Documents, and to any committee or similar body appointed by the Board or any Member thereof, or elected by the Members, to which the Board has delegated its decision-making powers. The meetings of any committee vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a Member of the Association must be conducted with the same formalities as required for meetings of the Board.

5. OFFICERS.

5.1 Officers and Elections. The Executive Officers of the Association shall be a President and one or more Vice Presidents, who must be Directors of the Association, and a Treasurer and a Secretary, all of whom shall be elected annually by majority vote of the Board of Directors. Any Officer may be removed, with or without cause, by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall, from time to time, appoint such other Officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Association. If the Board so determines, there may be more than one Vice President.

5.2 President. The President shall be the Chief Executive Officer of the Association; shall preside at all meetings of the Members and Directors; shall be ex officio a member of all standing committees; shall have general and active management of the business of the Association; and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages, and other contracts or documents requiring the seal of the Association, except where such are permitted by law to be otherwise executed, and the power to execute is delegated by the Board of Directors to another Officer or agent of the Association.

5.3 Vice Presidents. The Vice Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and they shall perform such other duties as the Board of Directors shall prescribe.

5.4 Secretary. The Secretary shall attend the meetings of the Board and meetings of the Members, and shall record all votes and the minutes of all proceedings in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the Members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if one has been designated.

5.5 Treasurer. The Treasurer shall have responsibility for the collection, safe keeping, and disbursement of funds and securities of the Association; shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association; shall deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors; and shall prepare the budget for the Association. He shall disburse the funds of the Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions and of the financial condition of the Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if one has been designated.

6. FISCAL MATTERS. The provisions for assessments and fiscal management of the Association set forth in the Declaration shall be supplemented by the following provisions:

6.1 Depository. The Association shall maintain its accounts in federally insured accounts at financial institutions doing business in the State of Florida, as may be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, provided they are federally insured, or backed by the full faith and credit of the United States.

6.2 Budget. The Board of Directors, at a duly noticed Board of Directors meeting each year, shall adopt a budget of general expenses for the next fiscal year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Declarant, or another person. The Association shall provide each Member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

6.3 Reserves. The Board may, but shall not be obligated to, establish in the budgets one or more reserve accounts for contingencies, operating expenses, repairs, improvements, capital expenditures or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budgets each year. These funds may be spent only for purposes for which they were reserved, unless another use is approved by unanimous consent of the entire Board.

6.4 Fidelity Bonds. The Treasurer and all other Officers who are authorized to sign checks, and all Directors and employees of the Association handling or responsible for Association funds, shall be bonded in such amounts as determined by the Board of Directors. The premiums on such bonds shall be paid by the Association.

6.5 Accounts and Accounting Procedures. The financial and accounting records of the Association must be kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

(A) Accurate, itemized, and detailed records of all receipts and expenditures.

(B) A current account and a period statement of the account for each Member, designating the name and current address of each Member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the Member, the date and amount of each payment on the account, and the balance due.

(C) All tax returns, financial statements, and financial reports of the Association.

(D) Any other records that identify, measure, record, or communicate financial information.

6.6 Financial Reporting. The Association shall prepare an annual financial report within ninety (90) days after the close of the fiscal year. The Association shall, within twenty-one (21) days after the report is prepared, provide each Member with a copy of the report, or a written notice that a copy of the financial report is available upon request at no charge to the Member.

6.7 Application of Payments and Commingling of Funds. All monies collected by the Association may be commingled, for investment purposes only, in a single fund, or divided into two or more funds, as determined by the Board of Directors. The books and records of the Association shall be kept in conformity to generally accepted accounting principles and the audit and accounting guide for Common Interest Realty Associations of the American Institute of Certified Public Accountants. All payments on account by an Owner shall be applied as to interest, delinquencies, costs and attorney fees, other charges, and annual or special assessments, in such manner and amounts as the Board of Directors may determine, or as may be required by law.

6.8 Fiscal Year. The fiscal year for the Association shall begin on the first day of January each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States.

6.9 Payment of Assessments. Annual assessments based on the adopted budgets shall be payable quarterly (due on January 1, April 1, July 1, and October 1 of each year, or such other date as the Board of Directors may determine). Assessments and special assessments as the term is used in this Section 6.9 and in Section 6.10 are assessments levied by the Association and shall not be confused with assessments that are levied by any local government (county, municipality, or CDD). Written notice of the annual assessment shall be sent to all Owners at least thirty (30) days prior to the due date. Failure to send or receive such notice shall not, however, excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee.

6.10 Special Assessments. Special assessments may be imposed by the Board of Directors whenever necessary to meet unbudgeted, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration or these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the Members in a manner consistent with law.

6.11 Proof of Payment. Within ten (10) business days after receipt of a request from an Owner, mortgagee, or purchaser of a Lot or Living Unit, the Association shall furnish a written statement certifying that all

assessments then due from any Lot or Living Unit have been paid, or indicating the amounts then due.

6.12 Suspension. The Association shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any Owner, or to any persons claiming under an Owner, unless and until all assessments and charges to which said Owner and his Lot or Living Unit is subject have been paid in full.

7. TURNOVER OF CONTROL OF ASSOCIATION.

7.1 Time of Turnover. Turnover of control of the Association occurs when the Class A Members are first entitled to elect a majority of the Directors of the Association. Class A Members shall be entitled to assume control of the Association by electing a majority of the Board of Directors not later than ninety (90) days after the conveyance of title, to Owners other than Declarant, of at least ninety percent (90%) of all Lots or Living Units that will ultimately be operated by the Association. The election shall occur at a meeting of the Members ("Turnover Meeting").

7.2 Procedure for Calling Turnover Meeting. No less than sixty (60) days prior to the Turnover Meeting, the Association shall notify in writing all Members of the date of the Turnover Meeting. At the Turnover Meeting, the Directors shall be elected by the Members as further provided in Section 4.4 above, and all but one of the Directors previously appointed by the Declarant shall resign.

7.3 Early Turnover. The Declarant may turn over control of the Association to the Members prior to the time for turnover set forth above, by causing all but one of its appointed Directors to resign, whereupon it shall be the affirmative obligation of the Class A Members to elect the other Directors and assume control of the Association. If at least sixty (60) days' notice of Declarant's decision to cause its appointees to resign is given as described in Section 7.2 above, neither the Declarant nor such appointees shall be liable in any manner in connection with such resignations if the Members refuse or fail to assume control.

7.4 Declarant Representative. The Declarant is entitled to appoint at least one member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least five percent (5%) of the Lots or Living Units in the Community. After the Declarant relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant-owned interests in the same manner as any other Member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

7.5 Turnover: "As Is". When Owners other than Declarant assume control of the Association by electing the majority members on the Board of Directors, the Association will accept turnover of the Common Areas and facilities in their "as is" condition, without recourse. The Declarant makes no representations, to the fullest extent permitted by law, and disclaims all warranties, expressed or implied, in law or in fact, with respect thereto, including, without limitation, representations or warranties or merchantability or fitness for any particular purpose, in representations or warranties regarding the construction, design, adequacy of size or capacity in relation to the utilization, date of completion, future economic performance, or operations of, or the materials, furniture, or equipment that have been used in the Common Areas and facilities at the time of turnover, the Association accepts the conditions of all Common Areas and Common Area facilities from the Declarant without recourse against the Declarant herein.

8. ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee ("ARC") provided for in Section 6 of the Declaration shall be selected, and conduct its affairs as provided in this Section 8.

8.1 Members; Qualification. The ARC shall initially be composed of three (3) persons, all appointed by the Declarant, who may also be Directors of the Association. After the Declarant no longer has a right to appoint the ARC, the size of the ARC shall be increased to five (5) persons. Except for those appointed by the Declarant, and as otherwise provided in Section 8.5 below, no member of the ARC shall be a Director. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design. Notwithstanding the foregoing, prior to Association turnover, the Declarant shall have the sole right to appoint one individual who may or may not be a Member of the Association and who shall have the full and unilateral power to act on behalf of the ARC body, and no meeting or notice to Members of any meeting is required.

8.2 Selection; Terms. The members of the ARC shall be appointed or reappointed by the President of the Association to serve terms of one (1) year beginning on January 1 of each year. If a midterm vacancy occurs for any reason, the President shall appoint a successor to fill the unexpired term. Members of the ARC, once appointed, may be removed only by vote of a majority of all the voting interests, and not by the Association Officers or Directors. There is no limit on the number of terms for members of the ARC.

8.3 Compensation. If approved by the Board of Directors, any or all members of the ARC may be compensated for their services.

8.4 Meetings. The ARC shall meet as necessary, and otherwise at the call of the Chairman as necessary, to carry out its duties and functions. The ARC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Written notice of meetings shall be provided to each Owner at least one (1) week in advance, and any Owner wishing to appear before the ARC may do so. Special meetings may be called as needed by the Chairman. Notwithstanding anything herein to the contrary, during Declarant control, the Declarant may appoint one (1) person who shall be empowered to serve on behalf of and act for the ARC.

8.5 Procedures; Voting. A majority of the members of the ARC present in person at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. Where a question involves proposed changes to a Lot or Living Unit owned by a member of the ARC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Association. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the ARC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any Owner. Copies of the plans and specifications for all approved changes and construction shall be kept for at least five (5) years.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws may be proposed either by a resolution approved by a majority of the whole Board of Directors, or by a petition to the Board signed by at least twenty-five percent (25%) of the voting interests of the Association. Once so proposed, the amendments shall be submitted to a vote of the Members at a meeting no later than the next annual meeting for which notice can still properly be given.

9.2 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, these Bylaws may be amended by concurrence of at least two thirds (2/3) of the voting interests present and voting at any annual or special meeting, provided that the text of any proposed amendment has been given to the Members with notice of the meeting.

9.3 Amendment by Board. As long as Declarant membership exists, the Board of Directors, by majority vote, may unilaterally amend these Bylaws in any manner that it deems advisable, including, but not limited to, amendments to correct errors or conform the Bylaws to any applicable statute or local ordinance. Such amendments shall not require consent of the Members.

9.4 Certificate; Recording. A copy of each approved amendment shall be attached to a certificate reciting that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Association with the formalities of a deed. The certificate must identify the Book and Page or Instrument Number of the public records where the Declaration was originally recorded. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the Charlotte County, Florida.

10. MISCELLANEOUS.

10.1 Gender; Number. Whenever the masculine or singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine, or neuter; singular or plural, as the context requires.

10.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration or the Articles of Incorporation of the Association, the provisions of the Declaration or Articles of Incorporation shall prevail over the provisions of these Bylaws.