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NAPLES FL 34103

## DECLARATION OF COVENANTS AND RESTRICTIONS

OF  
VALENCIA LAKES AT ORANGETREE



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# DECLARATION OF COVENANTS AND RESTRICTIONS OF VALENCIA LAKES AT ORANGETREE

THIS DECLARATION OF COVENANTS AND RESTRICTIONS OF VALENCIA LAKES AT ORANGETREE (the "Declaration") is made this 31<sup>st</sup> day of July, 2001, by ROBERTO BOLLT, SUCCESSOR TRUSTEE OF LAND TRUST AGREEMENT RECORDED IN OFFICIAL RECORDS 1347, PAGE 2331, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA (referred to herein as either "Bolt" or "Declarant").

Declarant owns the Subject Property (as defined hereinafter). Accordingly, Declarant intends to develop the Subject Property as a residential community. The purpose of this Declaration is to provide various use and maintenance requirements and restrictions upon the Subject Property in order to protect and preserve the value of the Subject Property. This Declaration will also establish an Association (as defined hereinafter) that will own, operate and/or maintain the Common Areas (as defined hereinafter), will have the right to enforce the provisions of this Declaration, and will be given various other rights and responsibilities. The expenses of the Association will be shared by the Owners (as defined hereinafter), and each Owner (including, initially, the Declarant) will be a member of the Association.

NOW, THEREFORE, Declarant hereby declares that the Subject Property (as defined hereinafter) shall be held, sold, conveyed, leased, mortgaged and otherwise dealt with subject to the easements, covenants, conditions, restrictions, reservations, liens and charges set forth in this Declaration, all of which are created in the best interest of the Owners (as defined hereinafter) of the Subject Property, and which shall run with the Subject Property and shall be binding upon all persons having and/or acquiring any right, title or interest in and to the Subject Property or any portion thereof, and shall inure to the benefit of each and every person, from time to time, owning or holding an interest in the Subject Property or any portion thereof.

1. Definitions. The terms used in this Declaration, and in the Articles and the Bylaws, shall have the following meanings, unless the context otherwise requires:

1.1 "Approving Party" means Declarant for so long as Declarant owns any Lot or until Declarant assigns its right as the Approving Party to the Association. Thereafter, Approving Party means the Association. Notwithstanding the foregoing, Declarant reserves the right to assign its right as the Approving Party to the Association, in whole or in part, at any time as Declarant may determine in the exercise of the sole and exclusive discretion of Declarant.

1.2 "Articles" means the Articles of incorporation of the Association, as same may be amended from time to time.

1.3 "Assessment" means the amount of money that may be assessed against an Owner for the payment of an Owner's share of Common Expenses, and/or any other funds that an Owner may be required to pay to the Association as provided by this Declaration, the Articles or the Bylaws.

1.4 "Association" means Valencia Lakes at Orangetree Homeowners' Association, Inc., a Florida not for profit corporation, its successors or assigns. The Association has been established pursuant to the Articles of Incorporation attached hereto as Exhibit A.

1.5 "Board" means the Board of Directors of the Association.

1.6 "Bylaws" means the Bylaws of the Association, as same may be amended from time to time, which is attached hereto as Exhibit B.

1.7 "Common Areas" means any property, whether improved or unimproved, or any easement or interest therein, now or hereafter owned by the Association, or that is dedicated to the Association on any recorded plat or on any other recorded document, or that is declared to be a Common Area by this Declaration, or that is intended by Declarant to be a Common Area.

1.8 "Common Expenses" means all expenses of any kind or nature whatsoever incurred by the Association, including, but not limited to, the following:

- (a) Expenses incurred in connection with the ownership, maintenance, repair, improvement or operation of the Common Areas, or any other property to be maintained by the Association as provided in this Declaration, including, but not limited to, expenses associated with utilities, taxes, assessments, insurance, operation, maintenance, repairs, improvements, and alterations.
- (b) Expenses of obtaining, repairing or replacing personal property used in connection with any Common Area or any expenses incurred in the performance of the Association's duties.
- (c) Expenses incurred in connection with the administration and management of the Association.
- (d) Any charges for water, sewer, trash removal and/or other common utility, governmental or similar services provided to the Units that are not separately metered or charged individually to the Units and the Owners thereof, or that the Association determines to pay as a common expense.
- (e) Expenses declared to be Common Expenses pursuant to the provisions of this Declaration, by the Articles or by the Bylaws.



- (f) Such amounts of reserves as may be deemed appropriate, if any, for the repair, replacement or addition to the Common Areas.

1.9 "Common Surplus" means, at any point in time, the excess of the amount of receipts of the Association over the amount of the Common Expenses.

1.10 "Declarant" means Roberto Bollt, Successor Trustee of Land Trust Agreement Recorded in Official Records 1347, Page 2331, Public Records of Collier County, Florida, or any assignee of Declarant pursuant to a written assignment executed by Declarant or the then Declarant and recorded in the public records of the county in which the Subject Property is located. In addition, in the event any Party obtains title to all the Subject Property then owned by Declarant as a result of the foreclosure of any mortgage or by a deed in lieu of foreclosure thereof, such Party may elect to become the Declarant or to obtain certain rights of Declarant by a written election recorded in the public records of the county in which the Subject Property is located and, regardless of the exercise of such election, such Party may appoint as Declarant or assign any rights of Declarant to any third party who acquires title to all or any portion of the Subject Property by written appointment recorded in the public records of the county in which the Subject Property is located. In any event, any subsequent Declarant shall not be liable for any actions or defaults of or any obligations incurred by any prior Declarant, except as same may be expressly assumed by any such subsequent Declarant.

1.11 "Declaration" means this Declaration of Covenants and Restrictions, as same may be amended from time to time.

1.12 "District" means the South Florida Water Management District, its successors and assigns.

1.13 "Improvement" means any building, fence, wall, patio area, driveway, walkway, landscaping, antenna, sign, mailbox, pool, tennis court or any other structure or item that is constructed, made, installed, placed or developed within or upon any Lot. No removal, change, alteration or addition of any Improvement other than normal maintenance and repairs that do not materially alter or change the exterior appearance, condition and color of any Improvement, shall be authorized, except in conformity with the provisions of this Declaration.

1.14 "Institutional Lender" means the holder of a mortgage encumbering a Lot, which holder in the ordinary course of business makes, purchases, guarantees or insures mortgage loans, provided such holder is not owned or controlled by the Owner of the Lot encumbered. An Institutional Lender may include, but is not limited to, a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension or profit sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, or any other similar type of lender generally recognized as an institutional-type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Declarant, or which encumbers any portion of the Subject Property that is owned by Declarant.

whether or not such holder would otherwise be considered an Institutional Lender, and notwithstanding anything contained herein to the contrary, and the holder of any such mortgage shall be entitled to all rights and protections granted to first mortgagees hereunder, whether or not such mortgage is a first mortgage.

1.15 "Lake Parcels" shall mean those parcels, including the slopes, banks and the like, designated as Lakes on the Plat. The Lake Parcels may be dedicated or conveyed at any time to the District.

1.16 "Lot" shall mean one of the plots of land designed or to be designated as a "Lot" in the Plat (each of which may bear a separate identification number) upon which a single Unit is permitted to be erected.

1.17 "Owner" means the record owner(s) of the fee title to a Lot.

1.18 "Party" means an individual, corporation, partnership, trust or any other legal entity.

1.19 "Plat" means, collectively, the plat of Valencia Lakes - Phase I-A as approved by Collier County, Florida and recorded in Plat Book 36, Pages 25-27, Public Records of Collier County, Florida (Exhibit "C" attached hereto), which Plat contains the Subject Property and each and every plat of any portion of the Subject Property that may be recorded in the Public Records of Collier County, Florida prior or subsequent to the recording of this Declaration.

1.20 "Subject Property" means all of the property that may from time to time be subject to this Declaration and that is, as of the execution of this Declaration, the Valencia Lakes [Phase One] Property (as hereinabove defined) and such other property which Declarant may at any time elect to make subject to the terms of this Declaration. The Subject Property shall include any property that is hereafter encumbered by this Declaration but excludes any property that is hereafter withdrawn, by an amendment hereto, from the encumbrance of this Declaration.

1.21 "Unit" means a residential dwelling constructed upon a Lot. A Unit shall be deemed to exist at such time as a Certificate of Occupancy is issued for such Unit by Collier County or the appropriate governmental agency or municipality that customarily issues Certificates of Occupancy in Collier County, Florida.

2. Association. In order to provide for the administration of the Subject Property and this Declaration, the Association has been organized under the laws of the State of Florida.

2.1 Articles. A copy of the Articles is attached hereto as Exhibit A. No amendment to the Articles shall be deemed an amendment to this Declaration, and this Declaration shall not prohibit or restrict amendments to the Articles, except as specifically, provided herein.

2.2 Bylaws. A copy of the Bylaws is attached hereto as Exhibit B. No amendment to the Bylaws shall be deemed an amendment to this, Declaration, and this Declaration shall not prohibit or restrict amendments to the Bylaws, except as specifically provided herein.

2.3 Powers of the Association. The Association shall have all of the powers provided for in this Declaration, along with any and all power indicated in or incidental to those powers contained in the Articles and Bylaws. Accordingly, the Association shall be vested with the power to enforce this Declaration and by this Declaration, the Subject Property is hereby submitted to the jurisdiction of the Association.

2.4 Approval or Disapproval of Matters. Whenever the approval, consent, or decision of the Owners is required for any matter pursuant to this Declaration, the Articles or the Bylaws such approval, consent, or decision shall, except for matters where a greater voting requirement is specified, be made by a majority of the votes of the Owners present in person or any by proxy at a duly called meeting of the Association at which a quorum exists, in accordance with the Articles and the By-laws.

2.5 Acts of the Association. Unless the approval or action of the Owners and/or a certain specific percentage of the Board is specifically required by this Declaration, the Articles, the Bylaws or by applicable law, all approvals or actions required or permitted to be given or taken by the Association shall be given or taken by the Board, without the consent of the Owners, and the Board may so approve an act through the proper officers of the Association without a specific resolution. Where an approval or action of the Association is permitted to be given or taken, such action or approval may be conditioned in any manner the Association deems appropriate or the Association may refuse to take or give such action or approval without the necessity of establishing the reasonableness of such conditions or refusal, except as herein specifically provided to the contrary.

2.6 Management and Service Contracts. The Association shall have the right to contract for professional management or services on such terms and conditions as the Board deems desirable in its sole discretion; provided, however, that any such contract shall not exceed three (3) years in duration and shall be terminable by either party without cause and without payment of a termination or penalty fee upon ninety (90) days or less written notice.

2.7 Membership. All Owners, shall be members of the Association. Membership as to each Lot shall be established and transferred as provided by the Articles and the Bylaws.

2.8 Owners' Voting Rights. The votes of the Owners shall be established and exercised as provided in the Articles and Bylaws.

### 3. Common Areas, Duties and Obligations of the Association.

#### 3.1 Conveyance of Common Areas to Association.

- (a) By Declarant. Declarant, without the necessity joinder by any other Party, shall have the right to convey title to any property or to any easement or to any interest therein owned by it to the Association as a Common Area, and the Association shall be required to accept such conveyance. Any such conveyance shall be effective upon recording the deed or instrument of conveyance in the public records of the county where the Subject Property is located.
- (b) By Any Other Party. Any other Party may also convey title to any property, or to any easement or to any interest therein, owned by such Party to the Association as a Common Area, but the Association shall not be required to accept any such conveyance, and no such Conveyance shall be effective to impose any obligation for the maintenance, operation or improvement of any such property upon the Association, unless the Board expressly accepts the conveyance by executing the deed or other instrument of conveyance or by recording a written acceptance of such conveyance in the public records of the county in which the Subject Property is located.

3.2 Use and Benefit. All Common Areas shall be held by the Association for the use and benefit of the Association, the Owner, the authorized residents of the Units and their respective guests and invitees, the holders of any mortgage encumbering any Lot from time to time, and any other persons authorized to use the Common Areas or any portion thereof by Declarant or the Association, for all proper and reasonable purposes and uses for which the Common Areas are reasonably intended but, subject at all times to the terms of this Declaration and to the terms of any easement, restriction, reservation or limitation of record that affects the Common Area or that is contained in the deed or instrument conveying any portion of the Common Area to the Association and, further subject to any rules and regulations adopted by the Association. An easement and right of such use is hereby created by this Declaration in favor of all Owners, appurtenant to the title of any such Owner's Lot.

3.3 Grant and Modification of Easements. The Association shall have the right to grant, modify or terminate easements over, under, upon and/or across any Common Areas, and shall have the further right to modify, relocate or terminate existing easements in favor of the Association.

3.4 Additions, Alterations or Improvements. The Association shall have the right to make additions, alterations or improvements to the Common Areas, and to purchase such personal property as the Association deems necessary or desirable from time to time, provided, however that the approval of the Owners shall be required in order to remove or to substantially and adversely affect any completed recreational facility, or in order to purchase personal property in an amount exceeding a sum equal to two (2) month's total Assessments for Common Expenses payable by all of the Owners. The foregoing approval shall in no event be required with respect to expenses

incurred in connection with the maintenance, repair or replacement of existing Common Areas, or any existing Improvement or personal property associated therewith. The cost and expense of any such additions, alterations or improvements to the Common Areas or the purchase of any personal property shall be a Common Expense. In addition, for so long as Declarant owns any portion of the Subject Property, Declarant shall have the absolute right to undertake additions, alterations, modifications or improvements to the Common Areas or to otherwise affect the Common Areas as the Declarant may desire in the exercise of the sole and absolute discretion of the Declarant, provided that same shall be undertaken at the expense of the Declarant.

3.5 Utilities. The costs of all utility services for the Common Areas or for any other property to be maintained by the Association shall be a Common Expense and shall be paid for by the Association.

3.6 Taxes. The costs of all real and personal property taxes and assessments, if any, assessed against the Common Areas or any other property owned by the Association shall be a Common Expense and shall be paid for by the Association.

3.7 Default. Any Owner or Institutional Lender may pay for any utilities, taxes or assessments, or insurance premiums that are required to be paid by the Association and that are not so paid by the Association when due, or may secure substantially similar substitute insurance upon the lapse of an insurance policy held by the Association, and any Party undertaking any of the foregoing shall be owed immediate reimbursement therefor from the Association, plus interest and any costs of collection, including attorneys fees.

3.8 Damage or Destruction. In the event all or any portion of the Common Area, including all Improvements thereon (other than landscaping), is damaged or destroyed due to fire, flood, wind or other casualty or reason the Association shall restore, repair, replace or rebuild (hereinafter collectively referred to as a "Repair") the damaged portion of the Common Area to the condition existing immediately prior to such damage or destruction, unless otherwise approved by two-thirds (2/3) of the votes of the Owners. If any landscaping within any Common Area or any other property maintained by the Association is damaged or destroyed, the Association shall only be obligated to make such repairs to such landscaping as may be determined by the Board in the exercise of its sole and absolute discretion. Any excess cost to the Association for the repair or replacement of all or any portion of the Common Area over the insurance proceeds received by the Association on account of any such damage or destruction shall be a Common Expense, and the Association shall have the right to make a special Assessment upon the Owners for any such excess cost.

3.9 Maintenance of Common Areas and Other Property. The Association shall maintain all Common Areas, other property owned by the Association and all Improvements thereon in good condition at all times. If pursuant to any easement the Association is to maintain any Improvement within any Subject Property, then the Association shall maintain such Improvement in good condition at all times. In addition, the Association shall have the right to assume the

obligation to operate and/or maintain any property that is not owned by the Association if the Board, in the exercise of its sole discretion, determines that the operation and/or maintenance of such property by the Association would be in the best interests of the Owners of the Subject Property. In such event, the Association shall so notify any Owner otherwise responsible for such operation and/or maintenance, and, thereafter, such property shall be operated and/or maintained by the Association and not by the Owner until the Board determines that the Association will no longer to assume the obligation to operate and/or maintain such property and so notifies the appropriate Owner in writing. Without limiting the foregoing, the Association shall have the right to assume the obligation to operate and/or maintain any walls, fences on or near the boundaries of the Subject Property and any pavement, landscaping, sprinkler systems, sidewalks, paths, signs, entrance features, or other Improvements in or within ninety (90) feet of any public or private road or rights-of-way within or contiguous to the Subject Property. To the extent the Association assumes the obligation to operate and/or maintain any property that is not owned by the Association, the Association shall have an easement and right to enter upon such property in connection with the operation or maintenance of same, and no such entry shall be deemed a trespass. Such assumption by the Association of the obligation to operate and/or maintain any property that is not owned by the Association may be evidenced by a supplement to this Declaration, or by a written document recorded in the public records of the county in which the Subject Property is located, and may be made in connection with an agreement with any Owner, the Declarant, or any governmental authority otherwise responsible for such operation and/or maintenance, and pursuant to any such document the operation and/or maintenance of any property may be made a permanent obligation of the Association. The Association may also enter into agreements with any other Party or with any governmental authority to share in the maintenance responsibility of any property if the Board, in the exercise of its sole and absolute discretion, determines same would be in the best interest of the Association. If any Owner or any resident of any Unit or their guests or invitees damages any Common Area, any Improvement thereon or any other portion of the Subject Property to be maintained by the Association, the Owner shall be liable to the Association for the cost of repair or restoration, unless such liability is limited under the laws of the State of Florida.

3.10 Mortgage and Sale of Common Areas. The Association shall not encumber, sell or transfer any Common Area owned by the Association without the approval of 2/3 of the vote of all of the Owners; provided, however, that the Association may dedicate any Common Area to any governmental authority without the approval of the Owners. Notwithstanding the foregoing, if Declarant changes the location of any un conveyed Lots such that a portion of the Common Area would be within a relocated Lot, then the Association shall have the right, without the approval of the Owners, to convey such portion of the Common Areas to Declarant, and in connection therewith, Declarant shall convey to the Association any property that will be a Common Area due to the relocation of any of the Lots.

4. Easements. In addition to those easements created on the Plat, each of the following easements are hereby created, all of which shall run with the land and, notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way so as to unreasonably interfere with the proper and intended uses and purposes thereof, and each of

which shall survive the termination of this Declaration. Unless otherwise specifically set forth herein, no grant or creation of easement shall or shall be deemed to constitute a gift or dedication of any property or right to the general public or be for the benefit of the general public. It is the intention of the Declarant that any grant of easement shall be strictly limited to the purposes stated for such easement.

4.1 Easements for Pedestrian and Vehicular Traffic. Easements for Pedestrian traffic over, through and across roads, sidewalks, paths, lanes and walks, as the same may from time to time exist upon the Subject Property and be intended for such purpose; and easements for pedestrian and vehicular traffic and parking over, through, across and upon such portions of the Subject Property as may from time to time be paved and intended for such purposes, such easements being for the use and benefit of the Owners, the authorized residents of the Subject Property and the guests and invitees of the owners and such authorized residents and Institutional Lenders.

4.2 Perpetual Nonexclusive Easement in Common Areas and the Lake Parcels. The Common Areas and the Lake Parcels shall be, and the same are hereby declared to be, subject to a Perpetual nonexclusive appurtenant easement in favor of all Owners and authorized residents of the Subject Property from time to time, and their guests and invitees, for all proper and normal purposes, for all purposes for which same are reasonably intended and for the furnishing of services and facilities.

4.3 Service and Utility Easements. Easements in favor of the Approving Party, governmental and quasi-governmental authorities, utility companies, cable television companies, ambulance or emergency vehicle companies, mail carrier companies, and all other Parties providing services to or for the benefit of the Subject Property (collectively, the "Service Providers") over and across all roads and easements existing from time to time within the Subject Property and such portions of the Subject Property as may from time to time be paved and intended for such purposes, and over, under, upon and across the Subject Property, as may be reasonably required to permit the Service Providers, and their respective agents and employees, to provide the respective authorized services to and for the Subject Property, and as may be required for the installation, maintenance, repair and providing of utility services, equipment and fixtures in order to adequately serve the Subject Property, including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage, television antennae and cable television facilities and electronic security. No Owner shall permit anything to occur on any such Owner's Lot that interferes with or impairs in any way the ability of the Service Providers to use the foregoing easements. The Board or its designee shall have a right of access to each Lot and each Unit to inspect, maintain, repair or replace any utility service facilities contained in upon or under any Lot and in order to remove any Improvements on such Lot that interfere with or impair any utility services required for all or any portion of the Subject Property or interfere with or impair any easement herein reserved; provided, however, such right of access shall not unreasonably interfere with an Owner's permitted use of the Lot, except that same shall not be applicable in the event of an emergency in which event such right of access shall be permitted at any time.

4.4 Encroachments. If any portion of the Common Area encroaches upon any Lot, if any Unit or other Improvement encroaches upon any Lot or upon any portion of the Common Areas or if any encroachment shall hereafter occur as a result of:

- (a) construction or reconstruction of any Unit or other Improvements;
- (b) settling or shifting of any Unit or other Improvements;
- (c) any addition, alteration or repair to the Common Areas made by or with the consent of the Association;
- (d) any repair or restoration of any Unit or other Improvements (or any portion thereof) after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Unit, other Improvements or the Common Areas; or
- (e) any nonpurposeful act or non-negligent act of an Owner;
- (f) any act authorized by the Board then, in any such event, a valid easement shall exist for such encroachment and /or the maintenance of the same so long as the applicable Unit or other Improvements shall exist.

4.5 Additional Easements. Declarant (so long as it owns any Lot) and the Association, on their behalf and on behalf of all Owners, each shall have the right to:

- (a) grant and declare additional easements over, upon, under and/or across the Common Areas and the Lake Parcels in favor of Declarant or any person, entity, public or quasi-public authority or utility company, or
- (b) modify, relocate, abandon or terminate existing easements benefitting or affecting the Subject Property.

In connection with the grant, modification, relocation, abandonment or termination of any easement, Declarant reserves the right to relocate roads, parking areas, utility lines, and other Improvements upon or serving the Subject Property. So long as the foregoing will not unreasonably and adversely interfere with the use of Lots for dwelling purposes, no consent of any Owner or any Institutional Lender shall be required or, if same would unreasonably and adversely interfere with the use of any Lot for dwelling purposes, only the consent of the Owners and Institutional Lenders of Lots so affected shall be required. To the extent required, each and every Owner hereby irrevocably appoints Declarant and/or the Association as the attorney-in-fact for such Owner for the foregoing purposes.



If ingress or egress to any Lot is through any Common Area any conveyance or encumbrance of such Common Area shall be subject to an appurtenant easement for ingress and egress in favor of the Owner of such Lot, unless alternative ingress and egress is provided to such Owner.

4.6 Sale and Development Easement. Declarant reserves and shall have a perpetual easement over, upon, across and under the Subject Property as may be reasonably required by Declarant in connection with the development, construction, sale and promotion or leasing of any Lot or Unit within the Subject Property or within any other property owned by Declarant whether a part of the Subject Property or otherwise.

4.7 Wall Easement. Declarant reserves the right to construct a privacy wall or berms along the parameter of the Subject Property, and there shall be created an easement for such privacy wall and/or berm and an easement for the construction, repair and maintenance of such privacy wall or berm over other necessary portions of the Subject Property. Such easement shall inure to the benefit of the Association, and the Association shall maintain the privacy wall and/or berms so located within the easement in a state of good repair.

5. Maintenance of the Subject Property.

5.1 By the Association. The Association shall operate, maintain, repair and replace the following portions of the Subject Property and shall have an easement over the Lots and the irrevocable right of access to the Lots and the Units from time to time during reasonable hours as may be necessary in connection with such operation, maintenance and replacement obligations of the Association. The cost associated with such operation, maintenance, repairs and replacement shall be borne by the Owners and shall be a Common Expense. The Association shall have the right, in the exercise of its sole and exclusive discretion or as may otherwise be required by applicable Florida law, to establish reserves in connection with the foregoing obligations of the Association.

- (a) Common Areas. The Association shall maintain all Common Areas and the Improvements contained thereon from time to time, and all other areas for which the duty to maintain has been delegated to and accepted by the Association.
- (b) Landscaping. The Association shall be responsible for the maintenance and care of all landscaping contained on the Common Areas, and the Association may, at its option, maintain all landscaping within or along any access easement or right-of-way within or contiguous to the boundary of the Subject Property. The Association shall plant, remove and/or replace sod, plants, flowers, shrubbery and trees when, in the sole and absolute discretion of the Association, same is appropriate and in the best interest of the Subject Property. The Association's responsibility shall include mowing, trimming, pruning, edging, fertilizing, weed control, and landscape

related insect and disease control. The Association shall only replace landscaping installed on the Common Areas that is damaged or destroyed as a direct result of the failure of the Association to fulfill its responsibility as provided for hereby. Any such landscaping that is so replaced by the Association shall, in the Association's sole and exclusive discretion, be of the same type and character as that which was originally installed by the Declarant. The Association shall have no liability whatsoever to replace any landscaping installed by any Owner.

- (c) Utility Services. The Association shall maintain all utility lines and facilities not owned by a governmental authority or utility company, except for utility services located within any Lot, that serve only the Lot or the Unit existing on the Lot.
- (d) Subject Property Wells and Water Sprinkler System. The Association shall maintain and repair wells (if any), pipes and water sprinkler system is contained on the Common Areas, as installed by the Declarant.
- (e) Roadways, Sidewalks and Street Lighting. The Association shall maintain any and all common private roads, drives and parking areas within the Subject Property (excluding any driveway serving only one Lot). The Association shall maintain any common sidewalks or walkways within the Subject Property, but not any sidewalk or walkway exclusively serving only one Lot. The Association shall also maintain any common street lighting within the Subject Property, other than any street lighting exclusively serving one Lot or such lighting that is maintained by a utility company or other governmental agency. The Association shall maintain and pay for as a Common Expense any utility services used in connection with such common street lighting.
- (f) Controlled Entrance: Gates, Manned or Electronic. The Association shall have the right, but not the obligation, to install, operate and maintain entry gates, hire entry control personnel, and obtain other traffic control devices for the benefit of the Subject Property and the Owners, the cost of which shall be a Common Expense.
- (g) Lake Parcels. Any Lake Parcels included in the Plat and which are a part of the Subject Property may be dedicated or conveyed to the District, in which event neither the Association nor Owners will have any rights in and to such Lake Parcels except as may be permitted by

the District. To the extent that the Lake Parcels are not so dedicated or conveyed, the Lake Parcels will be a part of the Common Areas and will be maintained and operated by the Association, the cost of which shall be a Common Expense. Due to low ground water elevations within the immediate area wherein the Subject Property lies, the Lake Parcels may be extremely shallow from time to time depending upon rainfall, the level of water in the ground, the level of drainage canals, and the demand for potable irrigation water. Owners and others claiming by or through Owners acknowledge and agree that Declarant has no control over such water elevations and therefore, agree to release and relieve Declarant from any liability associated with ground water elevations and further agree to indemnify and hold harmless Declarant from and against any and all losses, claims, demands, damages, costs and expenses of whatever nature or kind, including reasonable attorneys' fees and costs and appellate fees and costs related to or arising out of any claim made by Owners and others claiming by or through Owners against Declarant as a result of the ground water elevations.

- (h) Other Property. The Association shall have the right to maintain such other areas within or contiguous to the Subject Property as the Board may, in the exercise of the sole and absolute discretion of the Board, determine from time to time is in the best interest of the Owners, and the cost of any such maintenance shall be a Common Expense. In particular but not as a limitation, the Association shall have the right to maintain landscaping within any road right-of-way contiguous to the Subject Property to the edge of the pavement within such rights-of-way, and if any lake or canal is contiguous to the Subject Property, the Association shall have the right to maintain landscaping to the waterline of any such lake or canal. The Association may also enter into agreements with any other Party to share in the maintenance responsibility of any property if the Board, in the exercise of its sole and absolute discretion, determines same would be in the best interest of the Subject Property.
- (i) Owners' Lot, Units and Improvements. The Association shall have the right, but not the obligation, to contract, pursuant to such terms and conditions are acceptable to the Association, with any Owner to undertake on behalf of such Owner any maintenance obligation imposed upon Owners pursuant to this Declaration.

5.2 By the Owners. Each Owner shall have the affirmative obligation to maintain and repair such Owner's Lot, Unit, all Improvements contained therein and thereon and, in the event

such Owner's Lot is a Lake Lot, all lake slopes or sales abutting such Lake Lot ill first class condition. Likewise, in order to further protect and preserve the value of the Subject Property and to maintain the plan of development of the Subject Property, in the event of the occurrence of a casualty that affects an Owner's Lot, Unit and the Improvements contained therein and thereon, each Owner so affected shall have the affirmative obligation to repair, replace and reconstruct such Owner's Unit and the Improvements contained therein and thereon in a fashion so that at all times the Owner's Lot, Unit and the Improvements contained therein and thereon shall be in conformity with the overall scheme of development and quality of the community which comprises the Subject Property. In the event any Owner fails to undertake the obligations required by this provision, then the Association may, but shall have no obligation to, undertake the foregoing obligation of the Owner's and, to the extent that the Association incurs any expense therefor, the Owner failing to so undertake the obligations of this provision shall be liable to the Association for all such expenses, including interest, and the Association shall have the right to assess the Owner of such Unit for same.

6. Architectural Control.

6.1 Purpose. The Approving Party shall have the right to exercise architectural control over all Improvements existing or to exist upon the Subject Property in order to assure that the Subject Property will be a community of high standards and aesthetic beauty. Such architectural control shall include but shall not be limited to the right to approve all architectural aspects of any Improvement including, but not limited to, size, height, site planning, set-back, exterior design, materials, colors, open space, landscaping, waterseaping and aesthetic criteria.

6.2 Owner to Obtain Approval. No Owner shall make any Improvement, and no Owner shall apply for any governmental approval or building or other permit for any Improvement, unless such Owner shall first have obtained the written approval of the Improvement from the Approving Party.

6.3 Request for Approval. Any request for approval of any Improvement by an Owner from the Approving Party shall be in writing and shall be accompanied by the plans and specifications or other details as the Approving Party may deem reasonably necessary in connection with making the determination as to whether or not to approve same. The plans and specifications submitted for approval shall show the nature, kind, shape, height, materials, color, and location of all proposed Improvements and may be required to include, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. If the Approving Party deems the plans and specifications deficient, the Approving Party may require such further detail to be incorporated into the plans and specifications as the Approving Party deems necessary in order to make a determination regarding approval of any Improvement. Until receipt of such materials as may be deemed appropriate by the Approving Party, the Approving Party may postpone review of any Improvement submitted for approval. The Approving Party shall have the right to charge a reasonable fee to any Party requesting approval, including where applicable, the fee of any architect or engineer hired by the Approving Party to review any materials submitted by an Owner, and the Approving Party shall not be obligated to review any materials submitted by an

Owner until such fee, if required, is paid. The Approving Party shall not, however, be required to utilize the services of an architect or engineer in connection with the exercise of the approval provided for hereby. Approval of any request of an Owner shall not be withheld in a discriminatory manner or in a manner that unreasonably prohibits the reasonable improvement of an Owners Lot, however disapproval based upon aesthetic considerations shall not under any circumstance be deemed discriminatory or be deemed to unreasonably prohibit improvement of an Owner's Lot.

6.4 Approval. The Approving Party shall notify the Owner of its approval, disapproval, or that the Approving Party requires additions to the plans and specifications or other materials by written notice within thirty (30) days after request for such approval is made in writing and received by the Approving Party. In the event additions to the plans and specifications or other materials are required by the Approving Party in connection with such approval then Approving Party shall have no obligation to approve or disapprove any request until thirty (30) days after receipt by Approving Party of all such additions to the plans and specifications or other materials. In the event the Approving Party fails to disapprove any request within such thirty (30) day period (or as such period may be extended pursuant to the foregoing) the request shall be deemed approved by the Approving Party, and upon request of the Owner, the Approving Party shall provide written notice of such approval. Any such approval may be conditioned upon the payment by Owner of such fees or other costs charged by Approving Party in connection with the approval. In addition, any such approval may be conditioned upon a requirement that the Owner incorporate changes into any such proposed Improvement, and any such conditional approval shall be deemed a disapproval unless and until the Owner satisfies each and every condition of such approval. If the Approving Party approves, or is deemed to have approved any Improvement, the Owner requesting approval may proceed to undertake the Improvement in strict conformity with the plans and specifications and other materials approved or deemed to have been approved, again, subject in all cases to any conditions contained in the approval. Further, an Owner shall not make any material changes to the proposed Improvement without the further approval of the Approving Party. If an approval is granted or deemed to have been granted, the Owner shall commence the Improvement within sixty (60) days after receipt of such approval, and the failure by an Owner to timely commence such Improvement shall terminate the approval. An approval by the Approving Party of any Improvement shall not obligate or otherwise require the Approving Party, or any subsequent Approving Party to approve any similar Improvement in the future, and the Approving Party shall have the right in the future to withhold approval of similar Improvements requested by any other Owner.

6.5 Architectural Guidelines and Criteria. The Approving Party may adopt and modify from time to time, in its sole and absolute discretion, minimum guidelines, criteria and/or standards, which may include but shall not be limited to requirements relating to minimum square footage, maximum height, minimum set-back, and minimum landscaping, that will be used by the Approving Party in connection with the exercise of architectural control. Any changes in any such guidelines, criteria and/or standards shall not be applicable to any existing Improvement or any Improvement approved prior to the date of any such change.

6.6 Inspection. Upon the completion of any Improvement, the applicable Owner shall give written notice (the "Inspection Notice") of the completion to the Approving Party. Within ninety (90) days after receipt of the Inspection Notice, the Approving Party shall have the right to inspect the Improvement and, thereafter notify the Owner in writing (the "Approving Party Notice") of whether the Improvement is accepted, or whether the improvement is deficient due to a failure of the Owner to complete the Improvement in conformity with the approval or otherwise. In the event the Improvement is deemed deficient the Approving Party Notice shall specify the particular of any such deficiencies. The Owner shall correct the deficiencies set forth in the Approving Party Notice within thirty (30) days after Owner shall upon receipt thereof, and upon completion of such corrections the Owner shall provide the Approving Party with a notice (the "Correction Notice") of the completion of the corrections, whereupon the right of the Approving Party to inspect and the procedure associated therewith as set forth in this paragraph shall again become operative. If the Approving Party fails to provide the Owner with the Approving Party Notice within ninety (90) days after receipt of Inspection Notice or the Correction Notice, as the case may be, the Improvement shall be deemed to have been accepted by the Approving Party.

6.7 Remedy of Violations. In the event the provisions of this Declaration regarding architectural control are violated by an Owner in any manner, the Approving Party shall, in addition to all other remedies available to it, have the right to seek injunctive relief, without the necessity of posting a bond therefore, to require the applicable Owner to stop construction of, remove and/or alter any Improvement that has been commenced or completed without an approval or that has been commenced or completed without conforming to an approval. If Declarant is the Approving Party, then in connection with the enforcement of the architectural control provisions of this Declaration, Declarant shall have all of the rights of enforcement granted to the Association pursuant to this Declaration, including but not limited to the right to impose fines, to assess and to lien for costs and expenses incurred in enforcing these architectural control provisions, provided that any such fines or other assessments shall be paid to the Association. In connection with the enforcement of the architectural control provisions of this Declaration, the Approving Party shall have the right to enter onto any Lot and make any inspection necessary to determine that the architectural control provisions of this Declaration have been complied with. Except as specifically provided for hereinabove, the failure of the Approving Party to object to any Improvement prior to the completion of the Improvement shall not constitute a waiver of the Approving Party's right to enforce the architectural control provisions of this Declaration. Any action to enforce the architectural control provisions of this Declaration must be commenced within 1 year after notice by the Approving Party of the existence of any violation, or within 3 years after the date of the violation, whichever occurs first. The foregoing remedies shall be in addition to and not as a limitation of any other right or remedy set forth in this Declaration for any violations of this Declaration. The Approving Party, shall have the sole and exclusive authority to enforce the architectural control provisions of this Declaration.

6.8 No Liability. The Approving Party has by the architectural control provisions been granted the right to exercise architectural control or to otherwise enforce the architectural control provisions of this Declaration. Accordingly, the Approving Party shall have no duty or

obligation to exercise architectural control or to otherwise enforce the architectural control provisions of this Declaration. and Approving Party shall not be liable to any Owner or to any other Party whatsoever as a result of the exercise of or failure to exercise architectural control or to otherwise enforce the architectural control provisions of this Declaration. Furthermore, the approval of any plan, specification or Improvement by the Approving Party shall not be deemed to be a determination by the Approving Party or a warranty of the Approving Party that any such plan, specification or Improvement is complete, is without defect, meets any standard, guideline and for criterion of the Approving Party, is architecturally or aesthetically appropriate or complies with any applicable safety standard or governmental requirement, and the Approving Party shall have no liability whatsoever for any defect or deficiency in any such plan, specification or Improvement or for any damage or injury to any person, property or otherwise associated with any such plan, specification or Improvement.

6.9 Compliance with Governmental Requirements. In addition to the foregoing requirements, every Improvement must be in compliance with the requirements of any and all applicable governmental authorities, and an Owner shall be required to obtain appropriate permits from such applicable governmental authorities. Any approval by the Approving Party of any Improvement may be conditioned upon a requirement that the Owner obtain all governmental permits required for same, or upon a requirement that the Owner provide the Approving Party with written evidence from the applicable governmental authorities that such governmental permits will not be required, and in the event such approval is so conditioned the Owner shall not proceed with any Improvement until such governmental permits, or evidence that such governmental permits are not required, is obtained and submitted to the Approving Party.

6.10 Construction by Licensed Contractor. If applicable governmental permits are required in order for an Owner to undertake any Improvement, then the Improvement must be installed or constructed by a party properly licensed and authorized to undertake work pursuant to such applicable governmental permits. In all cases all Improvements must be constructed and completed in a good and workmanlike manner.

6.11 Certificate. Within ten (10) days after the request of any Owner, the Approving Party shall issue, without charge, a written certification in recordable form acknowledging to the best knowledge of the Approving Party, whether or not the Improvements located upon the Owner's Lot comply with the provisions of this Declaration.

6.12 Effect of Master Association. If any other association is also granted the right to exercise architectural or similar control pursuant to a recorded declaration affecting the Subject Property, then any Owner seeking architectural approval from the Approving Party shall also be required to obtain such approval from such other association; however, no approval given by any other association shall be binding upon the Approving Party.

## 7. Use Restrictions.

7.1 Air Conditioning Units. Only central air conditioning units are permitted within the Subject Property. No window, wall, or portable air conditioning units are permitted, without the prior written consent of the Approving Party.

7.2 Automobiles, Vehicles and Boats. Without the prior written consent of the Approving Party or unless parked within an enclosed garage, only automobiles, vans constructed as private as private passenger vehicles with a carrying capacity of three quarters of a ton or less and other vehicles manufactured and used as private passenger vehicles may be parked overnight within the Subject Property. In particular and not as a limitation, no vehicle containing commercial lettering, signs or equipment, and no truck, recreational vehicle, camper, trailer, no vehicle other than a private passenger vehicle as specified above and no boat may be parked or stored outside of a Unit or otherwise within the Subject Property overnight. Without the prior consent of the Approving Party, no overnight parking whatsoever is permitted on arty streets, lawns or other areas. It is the specific intention hereof to limit all overnight parking for permitted vehicles in driveways and garages. The foregoing restrictions shall not be deemed to prohibit the temporary parking of commercial vehicles while making delivery to or from the Subject Property or while used in connection with providing services to the Subject Property. Likewise, the foregoing restrictions shall not be deemed to prohibit the temporary parking of governmental law enforcement agency, fire agency or emergency vehicles within the Subject Property. Unless parked within an enclosed garage, all vehicles permitted to be parked within the Subject Property must be in good condition and repair, and no vehicle without a current license plate or that cannot operate under its own power may be parked within the Subject Property for more than 24 hours. Likewise, no major repair of any vehicle shall be undertaken while any such vehicle is located on the Subject Property. All vehicles parked within the Subject Property must be painted with colors and in a manner that is customary for private passenger vehicles, and that is not offensive or distasteful in the reasonable opinion of the Approving Party. No motorcycle, motorbike, moped, all-terrain vehicle or other such vehicle is permitted to be operated within the Subject Property unless such vehicle is licensed for street use and is equipped with appropriate noise-muffling equipment so that such operation does not create an annoyance to the residents of the Subject Property. If the Approving Party determines the operation of any such vehicle creates an annoyance to the residents of the Subject Property, that after written demand from the Approving Party to owner of any such vehicle, such vehicle shall not be permitted to operate within the Subject Property.

7.3 Basketball Backboards. No permanently installed basketball backboards are permitted to be affixed to the exterior of any Unit. Free-standing basketball backboards permanently installed shall be permitted, provided that such basketball backboards conform to the standards established, by the Association as to location, color, size and style. No portable basketball backboards may be kept outside of a Unit overnight.

7.4 Business or Commercial Use. No trade, business, profession, or commercial activity, or any other non-residential use shall be conducted by a Unit Owner or resident of a Unit outside of the Unit, if in connection therewith, customers, clients, patients or the like come to the Unit or if such non-residential use is otherwise apparent from the exterior of the Unit. The foregoing



shall not preclude the leasing of Units in accordance with this Declaration or activities associated with the construction, development and sale of the Subject Property or any portion thereof.

7.5 Clotheslines and Outside Clothes Drying. No clotheslines or clothes poles shall be erected, and no outside clothes drying is permitted, except where same is mandated by appropriate, governmental authorities for energy conservation purposes, in which event the Approving Party shall have the right to approve, which approval must be in writing, the portions of any Lot used for outdoor clothes-drying purposes and the types of devices to be employed in this regard. In all events, however, outdoor clothes drying may only be permitted at the rear of a Unit in an area that is screened from the view of adjoining roads and from other Units within the Subject Property, and only portable outdoor clothes-drying facilities which must be removed when not in use will be approved by the Approving Party

7.6 Common Areas. Nothing shall be stored, constructed, placed within or removed from any Common Area by any Owner other than Declarant unless approved by the Approving Party.

7.7 Common Area Swimming Pool. These provisions shall apply in the event that the Common Areas include a swimming pool. Children under the age of 12 years old are not permitted in or around the swimming pool unless accompanied by an adult. All persons must shower before entering the swimming pool, and all suntan lotion or oils must be removed before entering the swimming pool. No rafts or flotation devices are permitted in the swimming pool when others are using the swimming pool. No food or beverages permitted in or around the swimming pool, nor are breakable containers permitted in or around the swimming pool. No diving is permitted in the swimming pool. Anyone using suntan lotion or oil must cover any lounge or chair being used with a towel or other covering. All infants or toddlers must wear a rubberized form-fitted or waterproof garment over a diaper while in the swimming pool. In the event the swimming pool is heated, the Board in the exercise of the sole and absolute discretion of the Board shall have the exclusive right to determine the hours, if any, of operation of the heater.

7.8 Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner of my Lot may obstruct or redirect the drainage flows after installation of drainage swales, storm sewers or storm drains.

7.9 Exterior Changes, Alterations and Improvements. No Owner shall make any improvement without the prior written consent of the Approving Party as required this Declaration.

7.10 Fences and Wall. No fences or walls shall be installed except as originally installed by Declarant or except as otherwise approved by the Association and the Approving Party. In any event, however only vinyl coated chain link, aluminum, wrought iron or PVC fences of 6 feet or less in height shall be permitted, provided that prior to installation, all such fencing shall first be approved by the Approving Party and further provided that no fence shall be installed at a point

forward of the front of a Unit unless first approved by the Approving Party. Natural hedge style "fencing" is encouraged.

7.11 Garages. No garage shall be permanently enclosed, and no portion of a garage originally intended for the parking of a vehicle shall be converted into a living space or storage area, unless first approved by the Approving Party, provided, however, in no event may any Unit have less than a two car garage. All garage doors shall remain closed when not in use.

7.12 Garbage and Trash. Garbage, trash, refuse or rubbish shall be regularly picked up, shall not be permitted to unreasonably accumulate and shall not be placed or dumped on any portion of the Subject Property, including but not limited to any Common Area, or on any property contiguous to the Subject Property not intended for such purpose. Garbage, trash, refuse or rubbish that is required to be placed along any road or in any particular area in order to be collected may be so placed in appropriate containers, dumpsters or garbage facilities only after 5:00 p.m. on the day before the scheduled day of collection, and all trash containers must be removed from such collection areas on the collection day. Except when so placed for collection, all containers, dumpsters or garbage facilities shall be kept inside a Unit or other area intended for such use and which shall be screened from view in a manner approved by the Approving Party and which shall be kept in a clean and sanitary condition. All garbage, trash, refuse or rubbish must be kept in appropriate containers, dumpsters or garbage facilities.

7.13 Guns. The use of firearms upon the Subject Property is prohibited. The term "firearms" includes but is not limited to "B-B" guns, pellet guns, and all other firearms of all types.

7.14 Improper Use. No improper, offensive or unlawful use shall be made of any Unit or Lot, and all valid laws, zoning ordinances and regulations of all governmental or quasi governmental bodies having jurisdiction shall be strictly observed.

7.15 Insurance Rates. Nothing shall be done or kept on the Lots or any Improvement that will increase the rate of insurance on any portion of the Subject Property insured by the Association; nor shall anything be done or kept on the Lots or any Improvement that would result in the cancellation of insurance on any portion of the Subject Property insured by the Association.

7.16 Lawn Maintenance. All Units and Lots shall be kept in a clean and sanitary manner and shall be maintained in first-class condition with a well maintained lawn and landscaping. In the event grass on a Lot exceeds six (6) inches in height, the Association may, but shall not be required to cut such grass, in which event such Lot Owner shall be obligated to pay to the Association, as an assessment, the actual cost for such grass cutting plus Twenty-Five and No/100 Dollars (\$25.00) as a service fee.

7.17 Mailboxes. All mailboxes shall be of the same type and color as that which was originally installed by the Declarant or which is approved by the Association.

7.18 Hazardous or Toxic Substances. No hazardous or toxic substances, chemicals, pesticides, fertilizers or any other matter shall be placed on any portion of the Subject Property or the surface water management system of the Subject Property, if any. Fertilizers and pesticides shall be used on Lots only in a reasonable manner and only for the purpose for which such products are intended. Owners shall take strict precautions to prevent fertilizers and pesticides from entering any surface water management system of the Subject Property.

7.19 Irrigation Water Supply. No individual water supply system shall be permitted on any Lot, except the installation of an individual water supply system necessary for the purposes of irrigation of the landscaping upon a Lot; provided, however, that the following must be complied with by such Owner:

- (a) Any individual irrigation water supply system must be installed, operated and maintained in such a manner as to prevent stains and/or discoloring of any exterior Improvements upon the Lot, including but not limited to cement areas, Units, the exterior finish of any other building, structure or fencing, or any vehicles. An Owner shall be required to clean, repair or replace any and all Improvements that are discolored due to stains caused by such irrigation water supply system within thirty (30) days of notice by the Association. Further, the Declarant or the Association may require, at any time as determined by the Declarant or the Association, as the case may be in the exercise of the sole and exclusive discretion of the Declarant or the Association, as the case may be, the incorporation of a rust inhibition system (the "Rust System") into any irrigation system located on any Lot, the cost of which shall be borne exclusively by the owner of the particular Lot required to incorporate such a Rust System.
- (b) Unless otherwise determined by the Declarant or the Association, any Lot abutting a Lake Parcel (a "Lake Lot") shall not be permitted to utilize a well as the irrigation water supply system on such Lake Lot, but such Lake Lot shall be permitted to utilize the Lake Parcel that abuts such Lake Lot for such irrigation water supply system; and any Lot that does not abut a Lake Parcel (a "Dry Lot") shall only be permitted to utilize a well on such Dry Lot for irrigation water supply. In either case, the irrigation water supply system shall be an automatic underground system and shall not be connected to the potable water system unless approved by the local municipality exercising jurisdiction over same.

7.20 Oil Drilling and Mining. No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon any Lot and no derrick or other structure

designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot; nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted on any Lot.

7.21 Leases. No Owner shall lease a Unit without first notifying the Association. All leases of a Unit must be in writing and must specifically be subject to this Declaration, the Articles and the Bylaws, and must be delivered to the Association for approval prior to the commencement of occupancy by any tenant. Without the consent of the Approving Party, no lease shall be for a period of less than 4 months, and no Unit may be leased more than three times in any 12 month period, except in the event that any such permitted lease is terminated by the Owner as a result of a default thereunder, then Owner may again lease the Unit during such 12 month period; provided, however, that no Unit may be so leased more than three times during any 12 month period. For purposes of this paragraph, any person occupying a Unit in the absence of the Unit Owner shall be deemed to occupy the Unit pursuant to a lease, regardless of the presence or absence of consideration with respect to the occupancy. Notwithstanding the foregoing and provided the Board is given prior written notice of such occupancy, an Owner may from time to time permit the members of such Owner's immediate family to occupy such Owner's Unit as guests in the absence of the Owner for a cumulative period of one hundred twenty (120) days in any consecutive twelve (12) month period, unless Such time limitation is modified by the Board in the exercise of the sole and absolute discretion of the Board; and provided the Board is given prior written notice of such occupancy, a Unit Owner may from time to time, permit guests to occupy such Owner's Unit, without consideration, provided the occupancy such guest shall not exceed sixty (60) days in any consecutive twelve (12) month period, unless such time limitation is modified by the Board in the exercise of the sole and absolute discretion of the Board.

7.22 Nuisances. No nuisances shall be permitted within the Subject Property. No use or practice that is an unreasonable source of annoyance to the Owners or residents within the Subject Property or that shall interfere with the peaceful possession and proper use of the Subject Property by the Owners and residents of the Subject Property shall be permitted. No unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and regulations of all applicable governmental authorities shall be complied with at all times by the Owners and residents.

7.23 Occupancy. No Unit shall be permanently occupied by more than two (2) persons for each bedroom contained in the Unit. In addition, temporary guests will be permitted so long as such guests do not create an unreasonable source of noise or annoyance to the other Owners or residents of the Subject Property.

7.24 Outside Antennas and Flags. Except for digital satellite dishes not exceeding 18" in diameter that are located in the rear of a Lot and that are not visible from adjoining streets, no outside signal receiving or sending antennas, dishes or devices that are visible from the exterior of a Unit are permitted on any Lot without the consent of the Approving Party which consent may be withheld in the foregoing shall not prohibit the exercise of the sole and absolute discretion of the Approving Party. The foregoing shall not prohibit any antenna or signal receiving dish owned by a

third party that services the entire Subject Property. Likewise, the Association may, but shall have no obligation to, contract with a cable television provider to provide cable television services to all of the Lots, and in such event, the cost thereof shall be a Common Expense. No flag poles are permitted without the consent of the Approving Party, which consent may be withheld in the exercise of the sole and absolute discretion of the Approving Party.

**7.25 Outside Storage of Personal Property.** Except for tasteful patio furniture and accessories, Bar-B-Q grills, playground equipment approved by the Approving Party and other personal property commonly kept outside, the personal property of the Owner or resident of a Unit within the Subject Property shall be kept inside of the Unit or within a fenced or a walled-in yard. Any of the foregoing property that is permitted to be kept outside of a Unit must be kept in the rear of the Lot and must appear neat and in good condition.

**7.26 Pets.** No animals, livestock or poultry of any kind shall be permitted within the Subject Property except for common household domestic pets, provided that in no event shall poultry be deemed as a common household domestic pet. Further, without the written consent of the Approving Party, which consent may be withheld in the sole and absolute discretion of the Approving Party, only 2 such common household pets are permitted in any Unit, no dog weighing more than 100 pounds at maturity is permitted, no pit bull terrier is permitted, and only dogs and cats will be permitted outside of the permanently enclosed air conditioned living space (which includes but is not limited to any screened in porch, patio or fenced in portion of a Lot) of a Unit. All pets permitted outside of a Unit must be carried or kept on a leash when so outside of a Unit or fenced-in portion of a Lot. An "electronic fence", being a fence which by electric signal inhibits a pet from leaving the "fenced zone" shall be deemed acceptable provided the electronic fence is located sufficiently within an Owner's lot-line so as keep the animal no less than ten (10') feet from any lot line. The Owner shall maintain all components of the electronic fence so that it is active at all times. No pet shall be left outside unattended, even with the electronic fence, during hours of darkness. No pet shall be permitted to go or stray onto on any other Lot without the permission of the Owner of such other Lot. No pet will be permitted to create an unreasonable nuisance or annoyance to other Owners or residents of the Subject Property. Each Owner or resident owning a pet shall immediately pick up and remove any solid animal waste deposited by such pet on the Subject Property. No commercial breeding of pets is permitted within the Subject Property. The Approving Party shall have the right to require an Owner or resident of the Subject Property to immediately and permanently remove a pet from the Subject Property in the event of a violation of this paragraph.

**7.27 Portable Buildings.** No portable, temporary or accessory buildings, structures, sheds, or tents shall be erected, constructed or located upon any Lot for storage purposes or otherwise, without the prior Written consent of the Approving Party, which consent may be withheld in the exercise of the sole and absolute discretion of the Approving Party, and in all events each such permitted building, or structure must be shielded by the Owner thereof from the view from adjoining Lots and Common Areas.

7.28 Recreational Facilities. The Board shall have the right to make reasonable rules and regulations regarding the use of the Lake Parcels and other recreational facilities, if any, as the Board deems desirable from time to time.

7.29 Roofs for Porches, Patios or Additions. Any roof or ceiling on any porch, any patio, any screen enclosure or any other addition to any Unit must be approved by the Approving Party and, in general, unless otherwise approved by the Approving Party, any roof must be of the same type and color as on the existing roof of the Unit.

7.30 Signs. Without the prior written consent of the Approving Party, which consent may be withheld in the exercise of the sole and absolute discretion of the Approving Party, no sign shall be placed upon any Lot or any other portion of the Subject Property, and no signs that are visible from the exterior of a Unit shall be placed in or upon any Unit. Any sign installed in violation of this Paragraph may be removed by the Approving Party without notice to the Owner, such removal shall not be deemed a trespass and the Approving Party shall not be liable to the Owner or any other party whatsoever for such removal or for any loss or damage associated with such removal.

7.31 Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board. Declarant, however, reserves the right to change the boundary line of or replat any Lot or Lots. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

7.32 Swimming Pools. No permanent above-ground swimming Pools, spas, or the like, shall be installed on or in any Lot without the consent of the Approving Party, which consent may be withheld in the exercise of the sole and absolute discretion of the Approving Party.

7.33 Tree Removal. No trees on the Lot at the time of acquisition of a Lot by an Owner other than the Declarant shall be removed without the express consent of the Board, except for:

- (a) diseased or dead trees; and
- (b) trees needing to be removed to promote the growth of other trees.

In the event any tree is removed pursuant to the provisions of paragraphs 8.33(a) or 8.33(b) hereof, the Board, in the exercise of the sole and exclusive discretion of the Board, may require the Party or Owner that removed such tree(s) to replace any such removed tree with a tree of the same type, size and quality and in the same location as the tree that previously existed. In the event of an intentional or unintentional violation of this provision, the violator may be required by the Board, in the exercise of the sole and exclusive discretion of the Board, to replace the removed Tree with a tree of the same type, size and quality and in the same location as the tree that previously existed.

7.34 Window Treatments. Permitted window treatments shall consist of draperies, blinds, shutters, decorative panels, or other tasteful window covering. No newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for a period not exceeding twenty (20) days after an Owner or other resident first moves into a Unit or when approved window treatments are being cleaned or repaired.

7.35 Lake Parcels, Docks. Declarant, the Association or the Approving Party may, from time to time, in the exercise of the sole and absolute discretion of such party, standards, rules, establish regulations and other guidelines relating to the erection and maintenance of docks, use of aquatic vehicles and other matters associated with the use and enjoyment of the Lake Parcels by the Owners. In no event, however, shall any Owner engage in any excavation of any portion of any Lake Parcel or establish or maintain any "beach" area adjacent to any Lake Parcel.

7.36 Rules and Regulations. The Association or the Approving Party may from time to time adopt additional reasonable rules and regulations relating to the use, maintenance and operation of the Subject Property. Copies of such rules and regulations nor modifications thereto shall be furnished by the Association or the Approving Party to any Owner upon request.

7.37 Waiver. The Approving Party shall have the right to waive the application of one or more of these restrictions, or to permit a deviation from these restrictions, where in the sole and absolute discretion of the Approving Party, special circumstances exist that justify such waiver or deviation, or whether such waiver or deviation, when coupled with any conditions imposed for the waiver or deviation by the Approving Party, will not materially and adversely affect any other Owners. In granting any waiver or deviation, the Approving Party may impose such conditions and restrictions as the Approving Party may deem necessary, and the Owner shall be required to comply with any such restrictions or conditions in order to make use of any waiver or deviation. The grant of any such waiver or permitted deviation or the failure to enforce any violation of the restrictions set forth in this Declaration, shall not be deemed to prohibit or restrict the right of the Approving Party, or any other Party having the right to enforce such restrictions, from insisting upon strict compliance of these restriction with respect to all other Lots, nor shall any such action be deemed as a waiver of the future applicability of the restrictions contained in this Declaration. Furthermore, any approval given by the Approving Party as to any matter shall not give rise to any future obligation upon the Approving Party to provide the same or similar approval as to any other Lot or Owner.

7.38 Exceptions. The foregoing use and maintenance restrictions shall not apply to Declarant or to any portion of the Subject Property owned by Declarant, and shall not be applied in a manner that would prohibit or restrict the development of any portion of the Subject Property or the construction of any Units and other Improvements thereon, or any activity associated with the sale or leasing of any Units within the Subject Property by Declarant, or any activity associated with the construction, sale or leasing of any Units within any other property owned by Declarant or any affiliate of Declarant. In addition, Declarant shall have the right to exempt any other Party, builder or developer from any of the foregoing use and maintenance restrictions. Specifically, but without

limitation, Declarant shall have the right to, and any other Party, builder or developer who is exempted from the foregoing restrictions by Declarant shall have the right to:

- (a) construct any Units, buildings or Improvements within the Subject Property and make any additions, alterations, improvements, or changes thereto;
- (b) maintain sales, leasing, general office and construction operations on any Lot for use in connection with the Subject Property or any other property;
- (c) place, erect or construct portable, temporary or accessory buildings or structures upon any portion of the Subject Property for sales, leasing, general office, construction, storage or other purposes;
- (d) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with development or construction activities;
- (e) post, display, inscribe or affix to the exterior of a Unit or upon any portion of the Subject Property, signs and other materials used in developing, constructing, selling, leasing, or promoting any portion of the Subject Property or any other property; and
- (f) use all roads, sidewalks, easements and the like as necessary to accomplish the foregoing.

8. Assessment for Common Expenses.

8.1 Assessment Generally. Each Owner of a Unit shall be responsible for the payment to the Association of Assessments for Common Expenses for each Unit owned by the Owner, which amounts shall be assessed to an Owner as described below. In addition, each Owner of a Unit shall be responsible for the payment to the Association of any Assessments owed by the prior Owner of such Unit, except for any Assessments owed by Declarant and except as otherwise provided in this Declaration.

8.2 Budget. Prior to the beginning of each fiscal year of the Association, the Board shall adopt a budget (the "Budget") for such fiscal year. The Budget shall estimate all of the Common Expenses to be incurred by the Association during the current fiscal year. The Board shall then establish the current Assessment for Common Expenses for each Unit by dividing the total amount to be assessed for current Common Expenses by the total number of Lots then existing within the Subject Property. Upon such determination, the Association shall notify each Owner in writing of the amount, frequency and due dates of the current Assessment for Common Expenses. From time to time during the fiscal year, the Board may modify the Budget, and in accordance with



any revised Budget or otherwise, the Board may, upon written notice to the Owners, change the amount, frequency and/or due dates of the current Assessment for Common Expenses. If an amount required for Common Expenses exceeds the amount generated by the regular current Assessment for Common Expenses, the Board may make special Assessments for Common Expenses, which may include Assessments to provide funds to pay for an existing or anticipated deficit of the Association, or for any additions, alterations, or improvements to any Common Area, or for any other purpose as may be deemed appropriate by the Board. Special Assessments for Common Expenses shall be levied in the same manner as hereinbefore provided for regular Assessments of Common Expenses and shall be payable in one lump sum or as otherwise determined by the Board in the exercise of its sole and absolute discretion. Likewise, written notice of the amount of any special Assessment for Common Expenses along with the due date thereof shall be provided to each Owner. In the event any Assessments for Common Expenses are made payable in periodic payments, such period payments shall automatically continue to be due and payable in the same amount and frequency:

- (a) unless the notice specifically provides a date when the periodic payments will terminate, provides that the periodic payments will change upon the occurrence of a specified event or date or provides for the payment of a specified amount; or
- (b) until the Association notifies the Owner in writing of a change in the amount and/or frequency of the periodic payments. In no event shall any Assessments for Common Expenses be due less than ten (10) days from the date of the notice of such Assessments.

8.3 Capital Contribution. In addition to Assessments for Common Expenses, after a Certificate of Occupancy for a Unit constructed upon a Lot is issued by the applicable governmental authority, upon the first to occur of the next conveyance of the Lot or the first occupancy of the Unit, the Owner of the Lot shall pay to the Association a contribution to a working capital fund of the Association in an amount that is the greater of One Hundred Fifty and No/100 Dollars (\$150.00) or an amount equal to three (3) month's Assessments for Common Expenses, which contribution shall be in addition to the Owner's responsibility for Assessments for Common Expenses. The working capital fund shall be used by the Association for start-up expenses or otherwise as the Association shall determine from time to time and such working capital fund shall need not be restricted or accumulated.

8.4 Declarant Election. Notwithstanding the foregoing, until such time as Declarant is no longer able to appoint any of the directors of the Association, or until Declarant notifies the Association in writing that Declarant elects to pay Assessments for Common Expenses in the same manner as any other Owner, Declarant shall not be liable for any Assessments for Common Expenses for any Lots owned by Declarant, but in lieu thereof, Declarant shall be responsible to pay for all Common Expenses actually incurred by the Association in excess of the amount of Assessments for Common Expenses receivable by the Association, the amount of any

other income receivable by the Association, and the amount of the working capital fund contributions. During such period when Declarant is not liable for Assessments for Common Expenses for Lots owned by Declarant, the Assessments for Common Expenses shall be established by Declarant based upon Declarant's estimate of the expenses of the Association assuming all Lots, Units and Improvements contemplated within the Subject Property were completed, so that Assessments for Common Expenses during such period will be approximately the same as the Assessments would be if the development of the Subject Property as contemplated by Declarant was complete. Notwithstanding the foregoing, in the event the Association incurs any expense not ordinarily anticipated as a part of the day-to-day management and operation of the Subject Property, including but not limited to expenses incurred in connection with lawsuits against the Association, expenses incurred in connection with damage to property or expenses incurred as a result of injury or death to any person, that are not reimbursed by insurance proceeds, the liability of Declarant for such Common Expenses shall not exceed the amount that Declarant would be required to pay if Declarant was liable for Assessments for Common Expenses as any other Owner excluding any such unanticipated expense; and any such excess amounts payable by the Association shall be assessed to the other Owners.

8.5 Reserve Funding. Notwithstanding anything contained herein to the contrary, during the period when Declarant is not liable for Assessments for Common Expenses the Association will not be required to fund any reserves shown in the Association's Budget, and during such period the Association may use funds otherwise allocated for such reserve or other accounts to pay for the Common Expenses incurred by the Association. Thereafter, the Association will only be required to fund that portion of any reserve account which is reflected in the Budget and which is attributable to Lots owned by Owners other than Declarant.

9. Insurance. Other than title insurance, all insurance which shall be carried upon the Common Areas, the Improvements constructed thereon and the personal property of the Association shall be governed by the following provisions.

9.1 Purchase, Custody and Payment of Policies.

- (a) Purchase. All insurance policies covering the Common Areas, the Improvements constructed thereon and the personal property of the Association shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.
- (b) Approval by Institutional Lenders. If determined as appropriate by the Board, each Institutional Lender will be provided with notice following damage to the Common Areas, the Improvements construed thereon and the personal property of the Association whenever the cost of repair or replacement exceeds Twenty Five Thousand and No/100 Dollars (\$25,000.00).

- (c) Named Insured. The named insured on all insurance policies purchased by the Association shall be the Association.
- (d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer on account of a casualty to any portion of the Common Areas, the Improvements constructed thereon and the personal property of the Association shall be paid to the Association; and all policies and endorsements for casualty losses shall be held by the Association.
- (e) Deductible. Any deductible or exclusion under an insurance policy purchased by the Association shall be a Common Expense, and shall not exceed Two Thousand Five Hundred and No/100 (\$2,500.00) or such other amount as is approved by the Board.

9.2 Coverage. The Association shall, in the exercise of the sole and exclusive discretion of the Board, obtain the following coverages:

- (a) Casualty. All Common Areas, the Improvements constructed thereon and the personal property of the Association shall be insured against casualties in an amount equal to one hundred percent (100%) of the then current replacement cost thereof, excluding therefrom items normally excluded from coverage, as determined annually by the Association. Prior to obtaining any casualty insurance or renewal thereof as required by this paragraph, the Association shall use its best efforts to determine such full replacement cost of the Common Areas, the Improvements constructed thereon and all personal property of the Association, without deduction for depreciation. Such insurance coverage shall afford protection against to the Association for:
  - (1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; and (2) such other risks, including but not limited to vandalism and malicious mischief and all other risks normally covered by a standard "All Risk" endorsement, where available, as shall, from time to time, be customarily insured against considering buildings and improvements similar in construction, location and use to the Common Areas, the Improvements constructed thereon and the personal property of the Association.
- (b) Liability. Comprehensive general liability insurance insuring the Association against loss or damage resulting from accidents or occurrences on or about or in connection with the Subject Property,

or any work, matters or things related to the Subject Property or this Declaration and its exhibits, with such coverage as shall be required by the Association, but with a combined single limit liability of not less than One Million and No/100 Dollars (\$1,000,000.00) for bodily injury, death or property damage, arising out of a single occurrence.

- (c) Worker's Compensation. Worker's Compensation insurance with such limits and specifications as shall be required to meet the requirements of the law.
- (d) Fidelity Bonds. The Association shall obtain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. The total amount of fidelity bond coverage, if required, shall in no event be less than a sum equal to three (3) months aggregate Assessments for Common Expenses plus reserve funds held by the Association, if any.
- (e) Flood Insurance. If it is determined that flood insurance is required, all Common Areas, the Improvements constructed thereon and the personal property of the Association shall be insured against floods in an amount equal to one hundred percent (100%) of the then current replacement cost thereof, excluding therefrom items normally excluded from coverage, as determined annually by the Association, provided that such coverage shall be limited to the maximum amount of coverage available from applicable and available governmental flood insurance programs. Prior to obtaining any flood insurance or renewal thereof as required by this paragraph, the Association shall use its best efforts to determine such full replacement cost of the Common Areas, the Improvements constructed thereon and the personal property of the Association.
- (f) Directors' and Officers' Liability Insurance. The Association shall obtain directors' and officers' liability insurance with limits and coverage for all officers and directors of the Association as may be determined by the Board.
- (g) Other Insurance. Such other insurance as the Association shall determine from time to time to be desirable, or as may reasonably be required by an Institutional Lender pursuant hereto or as is customarily obtained with respect to Common Areas, Improvements constructed thereon or the personal property of an Association. Such other insurance shall include but may not be limited to comprehensive

owned and non-owned automobile liability insurance. When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to:

(1) subrogation against the Association and against the Owners individually and as a group;

(2) any pro rata clause that reserves to the insurer the right to pay only a fraction of any loss if other insurance carriers have issued coverage upon the same risk; and

(3) avoid liability for a loss that was caused by an act of one or more of the directors or officers of the Association or by one or more Owner(s) and shall provide that such policies may not be canceled or substantially modified (except for increases in coverage for limits of liability) without at least ten (10) days prior written notice to the Association and to the holder of a first mortgage encumbering any Lot provided that such holder is scheduled as a holder of a first mortgage in the insurance policy.

9.3 Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that any increase in any insurance premium occasioned by misuse, occupancy or abandonment of a Unit by a particular Owner, or by a resident of any Unit, or by a member of the families, guests or invitees of an Owner or resided of a Unit, shall be assessed against and paid by the Owner of such a Unit.

9.4 Insurance Trustee. The Association may, in the exercise of the sole and exclusive discretion of the Board, name an authorized representative of the Association, which may include but shall not be limited to any trustee with whom the Association may have entered into an insurance trust agreement or any successor to such trustee (each of which shall be referred to herein as the "Insurance Trustee"), who may be granted the exclusive authority to negotiate payment of losses under policies of insurance maintained by the Association.

9.5 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed or otherwise utilized in the following manner:

(a) Reconstruction or Repair. If the damage for which the insurance proceeds are paid is to be repaired or reconstructed (as determined in the manner herein elsewhere provided) the proceeds shall be paid to defray the cost thereof.

(b) Failure to Reconstruct or Repair. If the damage for which the insurance proceeds are paid is not to be repaired or replaced (as

determined in the manner herein elsewhere provided) the proceeds shall retained by the Association.

- (c) Limitation on Use of Proceeds. Without the approval of at least 2/3 of the Owners, no hazard insurance proceeds for losses to any portion of the Common Areas, the Improvements constructed thereon and the personal property of the Association may be used for anything other than expenses of the Association associated with the receipt of such proceeds or for repair, replacement or reconstruction of any damage to same.

9.6 Inspection of Insurance Policies. A copy of each insurance policy purchased by the Association shall be made available for inspection and copying by any Owner or Institutional Lender at the office of the Association at reasonable times.

10. Reconstruction or Repair After Casualty.

10.1 Determination to Reconstruct or Repair. If all or any part of the Common Areas, the Improvements constructed thereon and the personal property of the Association is damaged or destroyed by casualty or otherwise such damage shall be reconstructed or repaired, as the case may be, unless 2/3 of the Owners vote to the contrary.

10.2 Plans and Specifications. Any reconstruction, repair or replacement of the Common Areas, the Improvements constructed thereon and the personal property of the Association must be undertaken substantially in accordance with the original plans and specifications for the damaged Common Area, Improvement constructed thereof and/or the personal property of the Association; or, if not, then according to the plans and specifications approved by a majority of the Owners. Any such reconstruction or repair must be undertaken in accordance with the requirements of the applicable required governmental authorities, must be approved by such applicable governmental authorities where so i and must be undertaken pursuant to appropriate construction permits.

10.3 Responsibility. If the damage is to a Unit and the Improvements constructed thereon and thereon for which the responsibility of maintenance and repair is the obligation of an Owner, the Owner shall be responsibility for timely reconstruction and repair and the cost thereof after casualty. if the damage is to the Common Areas, the Improvements constructed thereon and the personal property of the Association, the Association shall be responsibility for reconstruction and repair and the cost thereof after casualty.

10.4 Estimates of Cost. As soon as reasonably practicable after the occurrence of a casualty to the Common Areas, the Improvements constructed thereon or the personal property of the Association, the Association shall obtain reliable and detailed estimates of the costs to rebuild or repair same from one or more reliable licensed contractors.

10.5 Assessments. If it appears to the Association that the proceeds of insurance will not be sufficient to defray the estimated cost of reconstruction and repair by the Association, or if at any time during or after the reconstruction and repair the funds available for the payment of the such costs are insufficient, the Association shall make Assessments upon the Owners in amounts sufficient to provide the necessary funds to pay all of such costs. Such Assessments for damage to Common Areas, the Improvements constructed the-con or the personal property of the Association shall be made against all of the Owners, equally.

10.6 Deductible Provision. The Owners shall be responsible for the payment of any deductible under the policies of insurance maintained by the Association, in the same manner as the Owners are responsible or the payment of any excess costs of reconstruction and repair as set forth hereinabove.

10.7 Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which funds shall consist of proceeds of insurance held by the Association and funds collected by the Association from Assessments upon Owners shall be held and disbursed by the Association as required in order to pay the costs of reconstruction and repair.

## 11. Default.

### 11.1 Monetary Defaults and Collection of Assessments.

- (a) Late Fees and Interest. If any Assessment is not paid within ten (10) days after the due date, or if any check for any Assessment is dishonored, the Association shall have the right to charge the applicable Owner a late fee or a bad check fee equal to ten percent (10%) of the amount of the Assessment or Twenty-five and No/100 Dollars (\$25.00), whichever is greater, plus interest on the unpaid amount of the Assessment at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand therefor by the Association.
- (b) Acceleration of Assessments. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand therefor by the Association, the Association, upon written notice to the defaulting Owner, shall have the right to accelerate and require such defaulting Owner to immediately pay to the Association Assessments for Common Expenses for the next twelve (12) month period, based upon the then existing amount of Assessments for Common Expenses, plus interest on the accelerated Assessments for Common Expenses at the highest rate permitted by law from the date of such notice until the

accelerated Assessments for Common Expenses are paid. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the regular Assessments for Common Expenses, for all special Assessments and/or for all other Assessments payable by an Owner to the Association.

- (c) **Lien for Assessments.** The Association has a lien on each Lot for unpaid Assessments owed to the Association by the Owner of such Lot, for late fees, for interest for reasonable attorneys' fees incurred by the Association incident to the collection of any Assessment enforcement of any lien (whether legal proceedings be filed or otherwise), and for all sums advanced and paid by the Association for on behalf of an Owner in order to preserve and protect the Association's lien, including but not limited to taxes, payments on account of superior mortgages, payments of liens or encumbrances. Such lien is effective from and after recording a claim of lien in the public records in the county in which the Lot is located, stating the description of the Lot, the name of the record Owner and the amount due, as of the date of recording of the claim of lien. A recorded claim of lien shall secure all sums set forth in the claim of lien, together with all Assessments or other monies owed to the Association by the Owner from the date of recording of the claim of lien until the claim of lien is satisfied. The lien shall remain in effect until all sums secured by it have been fully paid or until the lien is barred by law. Any claim of lien must be signed and acknowledged by an officer or agent of the Association. Upon payment in full of all sums secured by the lien, the Association shall provide a satisfaction of the lien in recordable form to the person making the payment.
- (d) **Collection and Foreclosure.** The Association may bring an action in its name to foreclose a lien for Assessments in the same manner as a mortgage upon real property is foreclosed, and the Association may, also, bring an action to recover a money judgment for the unpaid Assessments without waiving any claim of lien. The applicable Owner shall be liable to the Association for all costs and expenses incurred by the Association in connection with the collection of any unpaid Assessments, and the filing, enforcement and/or foreclosure of the Association's lien, including reasonable attorneys' fees, whether or not incurred in legal proceedings, and all sums paid by the Association for taxes and on account of any other mortgage, lien or encumbrance in order to preserve and protect the Association's lien. The Board is authorized to settle and compromise the Association's



lien if the Board deems a settlement or compromise to be in the best interests of the Association.

- (e) Rental and Receiver. If an Owner remains in possession of such Owner's Unit and the claim of lien of the Association against such Owner's Lot is foreclosed, the court, in its discretion, may require the Owner to pay a reasonable rental for the Unit, and if Association is entitled to the appointment of a receiver to collect the rent.
- (f) Subordination of Lien. Where any person obtains title to a Lot pursuant to the foreclosure of a first mortgage of record, or where the holder of a first mortgage accepts a deed to a Lot in lieu of foreclosure of the first mortgage of record, such lender, such acquirer of title and their respective successors and assigns, shall not be liable for any Assessments or for other moneys owned to the Association which are chargeable to the former Owner of the Lot and which became due prior to acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the payment of same is secured by a claim of lien recorded prior to the recording of the mortgage which gave rise to the foreclosure or deed in lieu thereof. The unpaid Assessments or other moneys are Common Expenses collectable from all of the Owners, including any such lender, such acquirer and their respective successors and assigns. Any new Owner, from and after the date of acquiring such title, shall be liable for payment of all Assessments for Common Expenses and such other expenses as may be assessed to the Lot. Any person who acquires a Lot, except by foreclosure of a first mortgage of record or by deed in lieu thereof, including, without limitation, persons acquiring title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable for all unpaid Assessments and other moneys due and owing by the former Owner to the Association, and such new Owner shall not be entitled to occupancy of the Unit or enjoyment of the Common Areas until such time as all unpaid Assessments and other moneys due to the Association have been paid in full.
- (g) Assignment of Claim and Lien Rights. The Association, acting through its Board, shall have the right to assign its claim and lien rights for the recovery of any unpaid Assessments and any other moneys owned to the Association to any third party.
- (h) Unpaid Assessments Certificate. Within fifteen (15) days after written request by any Owner or any Institutional Lender holding or making a mortgage encumbering any Lot, the Association shall provide the

Owner or Institutional Lender with a written certificate indicating whether or not the Owner of the Lot is in default with respect to the payment of Assessments or with respect to compliance with the terms and provisions of this Declaration, and any person or entity who relies on such certificate in purchasing or in making a mortgage loan encumbering any Lot shall be protected thereby.

- (i) Application of Payments. Any payments made to the Association by any Owner shall first be applied by the Association toward any sums advanced and paid by the Association for taxes and for payments on account of superior mortgages, liens or encumbrances which may have been advanced by the Association in order to preserve and protect its lien; next such payments shall be applied toward reasonable attorneys' fees incurred by the Association incidental to the collection of Assessments and other monies owed to the Association by the Owner and/or for the enforcement of its lien; next such payments shall be applied toward interest on any Assessments or other moneys due to the Association, as provided herein; and next such payments shall be applied toward any unpaid Assessments owned to the Association, in the inverse order that such Assessments were due.
- (j) Exception for Declarant. Notwithstanding the foregoing, Declarant shall not be liable for any interest charges or late fees associated with any Assessments or other funds owed to the Association, and the Association shall not have a lien against any Lot, Unit or other monies owed to the other property owned by the Declarant for any Assessments or of Association by Declarant
- (k) Discount for Early Payment of Assessment. The Association may, in the exercise of the sole and exclusive discretion of the Board, offer a discount to Owners for early payment of Assessments.

11.2 Non-Monetary Defaults. In the event of a violation by any Owner or any tenant of an Owner, or any person residing in a Unit, or their guests or invitees (other than the non-payment of any Assessment or other moneys due to the Association,) or any of the provisions of this Declaration the Association shall notify the Owner, any tenant of the Owner or any person residing Unit of the violation by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Owner or tenant fails to commence and diligently proceed to completely cure such violation as soon as practicable after written notice by the Association, or if any similar violation is thereafter repeated, the Association may at its option:

- (a) Fine the Owner or tenant as provided below, and/or
- (b) Commence an action to enforce performance on the part of the Owner or tenant or for such equitable relief as may be necessary under the circumstances, including but not limited to injunctive relief without the necessity of posting a bond therefor, and/or
- (c) Commence an action to recover damages; and/or
- (d) Take any and all actions deemed reasonable necessary to correct such failure, which actions may include, where applicable, but shall not limited to, removing any addition, alteration, improvement or change which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the correction of any such violation, plus a service charge of twenty-five percent (25%) of such expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys' fees whether or not incurred in legal proceedings, shall be an Assessment against the applicable Owner, and such Assessment shall be due upon written demand by the Association. The Association shall have a lien for any such Assessment and any interest, costs or expenses associated therewith, including attorneys' fees incurred in connection with such Assessment, and the Association may take such action to collect such Assessment or foreclose said lien as in the case and in the manner of any other Assessment as provided hereinabove. Any such lien shall only be effective from and after the recording of a claim of lien in the public records of the County in which the Subject Property is located.

11.3 Fines. The amount of any fine shall be determined by the Board, but shall not exceed Fifty and No/100 Dollars (\$50.00) for the first offense and One Hundred and No/100 Dollars (\$100.00) for a second or subsequent similar offense. Notwithstanding the foregoing, if any violation of this Declaration or of any rules and regulations adopted by the Association is of a continuing nature, and if the Owner fails to cure any such continuing violation within thirty (30) days after written notice of such violation, or if such violation is not capable of being cured within such thirty (30) day period, if the Owner fails to commence action reasonably necessary to cure the violation within such thirty (30) day period or shall thereafter fail to diligently proceed to cure the violation as soon as is practical, a fine may be imposed until the violation is cured in an amount not to exceed Fifty and No/ 100 Dollar (\$50.00) per day. Prior to imposing any fine, the Owner, a tenant or other resident of a Unit shall be afforded an opportunity to a hearing after reasonable notice to the Owner, the tenant or other resident of the Unit of not less than fourteen (14) days, which notice shall include:

- (a) a statement of the date, time and place of the hearing;

- (b) a statement of the provisions of the Declaration, Bylaws or rules and regulations which have allegedly been violated; and
- (c) a short and plain statement of the matters asserted by the Association.

The Owner, the tenant or other resident of the Unit shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board, or a committee appointed by the Board to hear such matters (the "Hearing Committee"), shall conduct a reasonable inquiry to determine whether the alleged violation, in fact occurred, and based upon such determination the Board or Hearing Committee, if the Board or Hearing Committee so determines, may impose such fines as it deems appropriate by written notice to the Owner, the tenant or other resident of the Unit. If the Owner, the tenant or other resident of the Unit fails to attend the hearing as set by the Board or Hearing Committee, the Owner, the tenant or other resident of the Unit shall be deemed to have admitted the allegations contained in the notice to the Owner, the tenant or other resident of the Unit. Any fine imposed by the Board or Hearing Committee shall be due and payable within ten (10) days after written notice of the Board's or Hearing Committee's decision at the hearing. Any fine levied against an Owner shall be deemed an Assessment and if not paid when due all of the provisions of this Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a tenant or other resident of the Unit and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant or other resident of the Unit as hereinafter provided. In any event, however, the Association shall not have the right to impose any fine against Declarant.

11.4 Negligence. An Owner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by the such Owner's act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense it not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot, a Unit or the Common Area.

11.5 Responsibility of an Owner for Occupants, Occupants Guests and Invitees. Unless otherwise provided by law, each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing in such Owner's Unit (including tenants), and for all guests and invitees of the Owner or of any such resident, and in the event the acts or omissions of any of the foregoing Parties shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles or of the Bylaws by any resident of any Unit, or any guest or invitee of an Owner or of any resident of a Unit, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

11.6 Right of Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant, any resident of any Unit or any person present in any Unit or in any portion of the Subject Property, other than an Owner and the members of such Owner's immediate family permanently residing with such Owner in a Unit, if such Party shall materially violate any provision of this Declaration, the Articles, or the Bylaws, or shall create a nuisance or an unreasonable and continuous source of annoyance to other residents of the Subject Property, or shall willfully damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association to such Party, such person shall be required to immediately leave the Subject Property, and if such person does not do so, the Association shall be authorized to commence an action to evict such Party or compel such Party to leave the Subject Property and, where necessary, to enjoin such Party from returning to the Subject Property. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same in the same manner as is herein elsewhere provided. The foregoing shall be in addition to any other remedy available to the Association.

11.7 No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, or the Bylaws, shall not constitute a waiver of the right of the Association to enforce such right, provision, covenant or condition in the future.

11.8 Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any of the terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from exercising any additional remedies, rights or privileges as may be granted to the Association or as the Association might have by applicable law.

11.9 Enforcement By or Against Other Parties. In addition to the foregoing, this Association, by any Declaration may be enforced by Declarant (so long as Declarant is an Owner) or the Association, by any procedure at law or in equity against any Party violating or attempting to violate any provision hereof, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein, the expense of any litigation to enforce this Declaration, including attorneys' fees, shall be borne by the party against whom enforcement is sought, provided such proceeding results in a finding that such Party, is in violation of the Declaration. In addition to the foregoing, any Owner shall have the right to bring an action to enforce this Declaration against any Party violating or attempting to violate any provision herein, to restrain such violation or to require compliance with the provisions contained herein, but no Owner shall be entitled to recover damages or to enforce any lien created herein as a result of a violation or failure to comply with the provisions contained herein by any Party, and the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees.

12. Term of Declaration. All of the foregoing covenants, conditions, reservations and restrictions shall run with the land and continue and remain in full force and effect at all times as

against all Owners, their successors, heirs or assigns, regardless of how the Owners acquire title, for a period of fifty (50) years from the date of this Declaration, is recorded in the public records of the County in which the Subject Property is located, unless within such time, one hundred percent (100%) of the Owners execute a written instrument declaring a termination of this Declaration (as it may have been amended from time to time). After such fifty (50) year period, unless sooner terminated as provided above, this Declaration (as it may have been amended from time to time) and the covenants, conditions, reservations and restrictions contained herein shall be automatically extended for successive periods of ten (10) years each, until the Owners by a majority vote elect to terminate this Declaration and execute a written instrument declaring a termination of this Declaration (as it may have been amended from time to time). Any such termination of this Declaration shall be effective on the date the instrument of termination is recorded in the public records of the county in which the Subject Property is located, provided, however, that any such instrument, in order to be effective, must be approved in writing and signed by the Declarant so long as the Declarant owns any Lot, or holds any mortgage encumbering any Lot and by all Institutional Lenders holding any mortgage encumbering any Lot.

### 13. Amendment.

13.1 Generally. This Declaration may be amended upon the approval of not less than two-thirds of the Owners, except that if any provision of this Declaration requires more than a two-thirds vote of the Owners to approve any action, such provision may not be amended to require a lesser vote, and may not be deleted, without the same number of votes required to approve such action. In addition, so long as Declarant owns any portion of the Subject Property, this Declaration may be amended from time to time, by Declarant and without the consent of the Association, any other Party or any Owner, and no amendment may be made by the Owners without the written joinder of Declarant. Such right of Declarant to amend this Declaration shall specifically include, but shall not be limited to:

- (a) amendments adding any property which will be developed in a similar manner as the Subject Property, or deleting any property from the Subject Property which will be developed differently than the Subject Property (provided that any such amendment shall require the joinder of the owners of such property or any portion thereof if the owners are different than Declarant, and further provided that Declarant shall not have the obligation to add any property to or delete any property from the Subject Property), and
- (b) amendments required by applicable laws, any Institutional Lender or governmental authority in order to comply with the requirements of same.

After Declarant no longer has the right to amend this Declaration, this Declaration may be amended solely by the Board if such amendment is required by law, any controlling governmental authority

and provided that the Board determines the amendment does not materially and adversely affect the Owners. In order to be effective, any amendment to this Declaration must first be recorded in the public records of the county in which the Subject Property is located, and in the case of an amendment made by the Owners, such amendment shall contain a certification by the President and Secretary of the Association that the amendment was duly adopted.

13.2 Effect of Amendment. To the extent that any Party may be deemed to have any vested rights (the "Rights") pursuant to the terms of this Declaration, any amendment to this Declaration shall be superior to and take precedence over any such Rights and may be undertaken without any consideration of such Rights. Additionally, any amendment to this Declaration may be undertaken without the requirement of the joinder by any Party claiming to have such Rights.

13.3 Exceptions. No amendment shall discriminate against any Owner or class or group of Owners, unless the Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Owner or increase any Owner's proportionate share of the Common Expenses, unless the Owners affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to Declarant, unless Declarant joins in the execution of the amendment.

13.4 Voting. Except as otherwise indicated herein, amendments to this Declaration or to the Articles or to the Bylaws must be approved by an affirmative vote of not less than two-thirds (2/3) of the Owners and by an affirmative vote of the Institutional Lenders holding mortgages encumbering at least one-half (1/2) of the Lots that are subject to mortgages held by Institutional Lenders, if any such amendments materially change any of the provisions of this Declaration, or the Articles or Bylaws concerning the following:

- (a) voting rights;
- (b) Assessments, Assessment liens, or the priority of Assessment liens;
- (c) reserves for maintenance, repair and replacement of Common Areas;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the Common Areas or rights to the use thereof;
- (f) expansion or contraction of the Subject Property, or the addition, annexation, or withdrawal of property to or from the Declaration;

- (g) insurance or fidelity bonds;
- (h) leasing of Units;
- (i) imposition of any restrictions or an Owner's right to sell or transfer such Owners Unit;
- (j) any provision that expressly benefits mortgage holders, insurers or guarantors.

14. Special Provisions Regarding Institutional Lenders.

14.1 Notice of Action. Upon written request of the Association by an Institutional Lender holding, insuring or guaranteeing a first mortgage encumbering any Lot which notice identifies the name and address of the holder, insurer or guarantor and identifies the Lot by number or by address, any such holder, insurer or guarantor will be entitled to timely written notice of:

- (a) Any condemnation or casualty loss which affects a material portion of the Subject Property or the Lot;
- (b) Any sixty (60) day default by the Owner of the Lot in the payment of Assessments or charges owed to the Association or any default in the performance of any obligation hereunder by the Owner of the Lot;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Institutional Lenders.

14.2 Consent of Institutional Lenders. Whenever the consent or approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s) encumbering any Lots is required by this Declaration, the Articles, the Bylaws, or any applicable statute or law, to amend this Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Subject Property, the Association may request such consent or approval of such holder(s) by written request sent by certified mail, return receipt requested (or equivalent delivery evidencing that such request was delivered to and received by such holders). Any holder receiving such request shall be required to consent to or disapprove the matter for which the consent or approval is requested, in writing, by certified mail, return receipt requested (or equivalent delivery evidencing such request was delivered to and received by the Association), within thirty (30) days after the holder receives such request, and if such response is not timely received by the Association, the holder shall be deemed to have consented to and approved the matter for which such approval or consent was requested. Such consent or approval given or deemed to have been given, where



required, may be evidenced by an affidavit signed by all of the directors of the Association, which affidavits where necessary, may be recorded in the public records of the county where the Subject Property is located, and which affidavit shall be conclusive evidence that the applicable consent or approval was given as to the matters therein contained. The foregoing shall not apply where an Institutional Lender is otherwise required to specifically join in an amendment to this Declaration.

14.3 Payment of Taxes and Insurance. Any Institutional Lender may pay such taxes or assessments owed to any governmental authority by the Association which are in default, or pay any overdue insurance premiums required to be purchased by the Association pursuant to this Declaration, or may secure new insurance upon the lapse of a policy, and shall such Institutional Lender shall be owed immediately reimbursement therefor from the Association plus interest at the highest rate permitted by law and any costs of collection, including attorneys' fees.

15. Miscellaneous.

15.1 Conflict with Articles or Bylaws. In the event of any conflict between the Articles and the Bylaws and this Declaration, this Declaration, the Articles, and the Bylaws, in that order, shall control.

15.2 Authority of Association and Declaration. Nothing contained in this Declaration shall be deemed to prohibit the Board from delegating to any one of its members, or to any officer, or to any committee or to any other person, any power or right granted to the Board by this Declaration including, but not limited to, the right to exercise architectural control and to approve any deviation from any use restriction, and the Board is expressly authorized to so delegate any power or right granted by this Declaration.

15.3 Severability. The invalidation in whole or in part of any of these covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause, phrase, word or other provision of this Declaration shall not affect the validity of the remaining portions which shall remain in full force and effect.

15.4 Validity. In the event any court shall hereafter determine that any provision as originally included herein violates the rule against perpetuities, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period allowed under such rules of law.

15.5 Assignment of Declarant's Rights. Any or all of the rights, privileges, or options provided to or reserved by Declarant in this Declaration, the Articles, or the Bylaws, may be assigned by Declarant, in whole or in part, as to all or any portion of the Subject Property, to any person or entity pursuant to an assignment recorded in the public records of the county in which the Subject Property is located. Any partial assignee of any of the rights of Declarant shall not be deemed the Declarant and shall have no other rights, privileges or options other than as are

specifically assigned. No assignee of Declarant shall have any liability for any acts of Declarant or any prior Declarant unless such assignee is assigned same and agrees to assume such liability.

15.6 Performance of Association's Duties by Declarant. Declarant shall have the right from time to time, at its sole discretion, to perform, at Declarant's expense, the duties and obligations required hereunder to be performed by the Association, and in connection therewith, to reduce the budget of the Association and the Assessments for Common Expenses payable by the Owners, provided, however, that any such performance on the part of Declarant may be discontinued by Declarant at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of Declarant.

15.7 Actions Against Declarant. The Association shall not institute any legal proceedings against Declarant, or against any principal of Declarant, or against any other person or entity related to or affiliated with Declarant, or spend or commit to spend any Association funds in connection with such legal proceedings, or make a special Assessment for funds to pay for costs or attorneys' fees in connection with any such legal proceedings, without the affirmative vote of seventy-five percent (75%) of all of the Owners, which vote shall be obtained at a special meeting of the Owners called expressly for the purpose of approving such action.

15.8 Modification of Development Plan. Declarant reserves the right at any time and from time to time to modify the development plan for all or any portion of the Subject Property, and in connection therewith, modify the Plat or develop Units that are different from the Units presently or hereafter planned from time to time; in the event Declarant changes the type, size or nature of the Lots or the Units, or changes or modifies the Common Areas, or constructs other improvements within the Subject Property. Declarant shall have no liability therefor to any Owner. In addition, Declarant makes no representations or warranties as to the manner in which any other property outside of the Subject Property will be developed, and Declarant shall have no liability to any Owner regarding the development of any other property in or around the Subject Property.

15.9 Utility Deposits. It is acknowledged that various utility deposits may be required for utility services for the Common Areas that will be supplied as a Common Expense, and in the event Declarant pays for such deposits, Declarant shall be entitled to reimbursement from the Association when funds are available for such reimbursement, and until Declarant is reimbursed for any deposits paid by it, Declarant shall be entitled to any refunds of any utility deposits from the appropriate authority holding same, and if any deposit is refunded to the Association, same shall be promptly paid to Declarant by the Association upon receipt.

15.10 No Public Right of Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Areas or Subject Property to the public, or for any public use.

15.11 Master Declaration for Orange Tree. It is acknowledged the Subject Property is subject to the master declaration for Orange Tree recorded in Official Records Book 1310 at Page

1536 of the Public Records of Collier County, Florida, and any amendments thereto (the "Master Declaration"). It is, further, acknowledged that the Master Declaration contains various provisions, involving, other things, maintenance obligations and use restrictions, all of which various provisions must be complied with by the Association and by the Owners. Furthermore, as a result of the Master Declaration, it is acknowledged that Owners will be members of Orange Tree Homeowner's Association, Inc., (the "Community Association") and that Owners will be required to pay assessments to the Community Association. Such assessments by the Community Association may be collected directly by the Community Association or its agents from Owners or such assessments by the Community Association may be collected by the Association, in which event such assessments by the Community Association shall be deemed as Common Expenses. Such assessments shall include charges for cable television services as defined in the Master Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Covenants and Restrictions on this 1 day of March, 2001.

WITNESSES:

VALENCIA LAKES AT ORANGETREE, INC.

a Florida Corporation

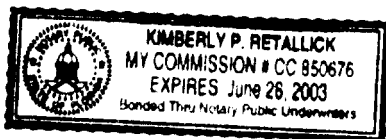
Witness: [Signature] By: [Signature]  
Deborah A. B... ROBERTO BOLLT, PRESIDENT

Witness: [Signature]

STATE OF FLORIDA  
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared ROBERTO BOLLT, President, to me known to be the President of the Corporation named as Declarant in the foregoing instrument, and that he acknowledged executing the same in the presence of two subscribing witnesses freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed thereto is the true seal of said corporation, such individual [ ☒ ] being personally known to me or [ ☐ ] having produced the following identification \_\_\_\_\_.

WITNESS my hand and official seal in the County and State last aforesaid this 1 day of March, 2001.



[Signature]  
Notary Public, State of Florida

JOINDER AND CONSENT

FLORIDA COMMUNITY BANK, the owner and holder of that certain Mortgage and Security Agreement recorded in O.R. Book 2719, Page 2509, Public Records of Collier County, Florida, hereby joins in the execution of the Declaration of Covenants and Restrictions of Valencia Lakes for the purpose of acknowledging the consent of said Lender thereto.

Executed this 26 day of March, 2001.

Witnesses:

Karen C. Shirley  
Print Name KAREN C. SHIRLEY  
Maricela S. Nunez  
Print Name MARICELA S. NUNEZ

FLORIDA COMMUNITY BANK

By:

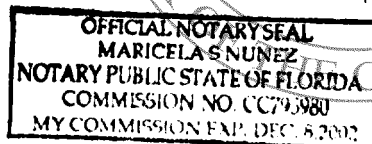
Raymond T. Holland  
RAYMOND T. HOLLAND  
Its: President  
Florida Community Bank

STATE OF FLORIDA )

) SS

COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 26 day of March, 2001, by Raymond T. Holland as President of FLORIDA COMMUNITY BANK, who ☒ is personally known to me or ☐ produced \_\_\_\_\_ as identification.



Maricela S. Nunez  
Notary Public, State of Florida

JOINDER AND CONSENT

FLORIDA INTERNATIONAL FIDELITY INVESTMENT CORP., the owner and holder of that certain Mortgages recorded in O.R. Book 2475, Page 1260, and in O.R. Book 2475, Page 1081, Public Records of Collier County, Florida, hereby joins in the execution of the Declaration of Covenants and Restrictions of Valencia Lakes for the purpose of acknowledging the consent of said Lender thereto.

Executed this 1 day of March, 2001.

Witnesses:

FLORIDA INTERNATIONAL FIDELITY  
INVESTMENT CORP.

Kimberly P. Retallick  
Print Name Kimberly P. Retallick

By:

Roberto Bolit, President

Its:

Roberto Bolit  
President

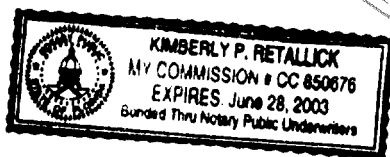
Debbie L. Baker  
Print Name Debbie L. Baker

STATE OF FLORIDA )

) SS:

COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 1 day of March, 2001, by Roberto Bolit as President of FLORIDA INTERNATIONAL FIDELITY INVESTMENT CORP., who [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.



Debbie L. Baker  
Notary Public, State of Florida

JOINDER AND CONSENT

PHOENIX HOMES AT ORANGETREE, INC., the owner of certain property located within the parcel which is to be subject to the Declaration of Covenants and Restrictions of Valencia Lakes, hereby joins in same for the purpose of acknowledging the consent thereto.

Executed this 1 day of March, 2001.

Witnesses:

PHOENIX HOMES AT ORANGETREE, INC.

[Signature]  
Print Name KIMBERLY P. RETALICK

By:

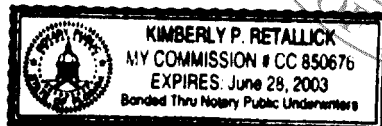
[Signature]  
Roberto Bollt, Its President

[Signature]  
Print Name Roberto Bollt

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF COLLIER )

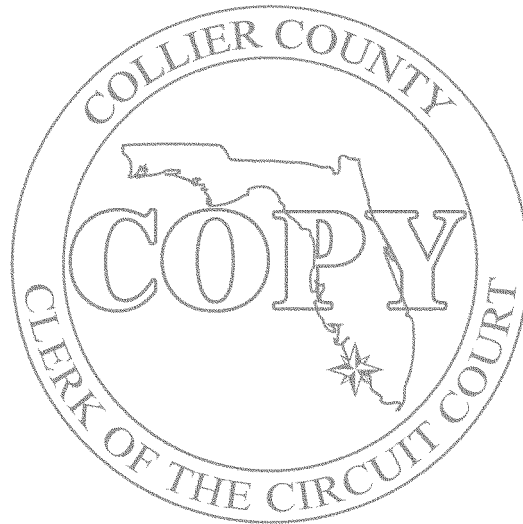
The foregoing instrument was acknowledged before me this 1 day of March, 2001, by Roberto Bollt, President of Phoenix Homes at Orangetree, Inc., who [☒] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida



**EXHIBIT A**

**ARTICLES OF INCORPORATION**



OR: 2799 PG: 2186



## FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

January 22, 2001

VALENCIA LAKES AT ORANGETREE HOMEOWNERS ASSOCIATION, I  
3000 ORANGE GROVE TRAIL  
NAPLES, FL 34120

The Articles of Incorporation of VALENCIA LAKES AT ORANGETREE HOMEOWNERS' ASSOCIATION, INC. were filed on January 22, 2001, and assigned document number N01000000450. Please refer to this number whenever corresponding with this office.

This document was electronically received and filed under FAX audit number H01000009117.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file date. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have any questions regarding corporations, please contact this office at the address given below.

Sincerely,  
Becky McKnight  
Document Specialist  
New Filings Section  
Division of Corporations

Letter Number: 601A00003401



ARTICLES OF INCORPORATION  
OF  
VALENCIA LAKES AT ORANGETREE  
HOMEOWNERS' ASSOCIATION, INC.

The undersigned incorporator, for the purpose of forming a corporation not-for-profit pursuant to the laws of the State of Florida, Florida Statutes Chapter 617, hereby adopts the following Articles of Incorporation:

PREAMBLE

ROBERTO BOLLT, SUCCESSOR TRUSTEE OF LAND TRUST AGREEMENT RECORDED IN OFFICIAL RECORDS 1347, PAGE 2331, PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA ("DECLARANT"), owns certain property in Collier County, Florida (the "SUBJECT PROPERTY"), and intends to execute and record a Declaration of Covenants and Restrictions of VALENCIA LAKES AT ORANGETREE (the "DECLARATION") which will affect the SUBJECT PROPERTY. This association is being formed as the association to administer the DECLARATION, and to perform the duties and exercise the powers pursuant to the DECLARATION, as and when the DECLARATION is recorded in the Public Records of Broward County, Florida, with these Articles of Incorporation attached as an exhibit. All of the definitions contained in the DECLARATION shall apply to these Articles of Incorporation, and to the Bylaws of the Association.

ARTICLE I - NAME

The name of the corporation is VALENCIA LAKES AT ORANGETREE HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the ASSOCIATION.

ARTICLE II - PURPOSE

The purposes for which the ASSOCIATION is organized are as follows:

1. To operate as a corporation not-for-profit pursuant to Chapter 617 of the Florida Statutes.
2. To enforce and exercise the duties of the ASSOCIATION as provided in the DECLARATION.
3. To promote the health, safety, welfare, comfort, and social and economic benefit of the members of the ASSOCIATION.

### ARTICLE III - POWERS AND DUTIES

The ASSOCIATION shall have the following powers and duties:

1. All of the common law and statutory powers of a corporation not-for-profit the laws of the State of Florida.

2. To administer, enforce, carry out and perform all of the acts, functions, rights and duties provided in, or contemplated by, the DECLARATION, including but not limited to, the following:

2.1. To own, purchase, sell, mortgage, encumber, lease, administer, manage, operate, maintain, improve, repair and/or replace real and personal property.

2.2. To make and collect ASSESSMENTS against OWNERS to defray the costs, expenses and losses incurred or to be incurred by the ASSOCIATION, and to use the proceeds thereof in the exercise of the ASSOCIATION'S powers and duties.

2.3. To enforce the provisions of the DECLARATION, these ARTICLES, and the BYLAWS.

2.4. To make, establish and enforce reasonable rules and regulations governing the use of COMMON AREAS, LOTS, UNITS and other property under the jurisdiction of the ASSOCIATION.

2.5. To grant and modify easements, and to dedicate property owned by the ASSOCIATION to any public or quasi-public agency, authority or utility company for public, utility, drainage and cable television purposes.

2.6. To borrow money for the purposes of carrying out the powers and duties of the ASSOCIATION.

2.7. To exercise control over exterior alterations, additions, improvements, or changes in accordance with the terms of the DECLARATION.

2.8. To obtain insurance as provided by the DECLARATION.

2.9. To employ personnel necessary to perform the obligations, services and duties required of or to be performed by the ASSOCIATION and for proper operation of the properties for which the ASSOCIATION is responsible, or to contract with others for the performance of such obligations, services and/or duties.

2.10. To sue and be sued.

#### ARTICLE IV - MEMBERS

1. The members of the ASSOCIATION shall consist of all of the record owners of LOTS. Membership shall be established as to each LOT upon the recording of the DECLARATION. Upon the transfer of ownership of fee title to, or fee interest in, a LOT, whether by conveyance, devise, judicial decree, foreclosure, or otherwise, and upon the recordation amongst the public records in the county in which the SUBJECT PROPERTY is located of the deed or other instrument establishing the acquisition and designating the LOT affected thereby, the new OWNER designated in such deed or other instrument shall thereupon become a member of the ASSOCIATION, and the membership of the prior OWNER as to the LOT designated shall be terminated, provided, however, that the ASSOCIATION shall not have the responsibility or obligation of recognizing any such change in membership until it has been delivered a true copy of the applicable deed or other instrument, or is otherwise informed of the transfer of ownership of the LOT. Prior to the recording of the DECLARATION, the incorporator shall be the sole member of the ASSOCIATION.

2. The share of each member in the funds and assets of the ASSOCIATION, and the COMMON SURPLUS, and any membership in this ASSOCIATION, cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the LOT for which that membership is established.

3. On all matters upon which the membership shall be entitled to vote, there shall be only one vote for each LOT. In the event any LOT is owned by more than one person and/or by an entity, the vote for such LOT shall be cast in the manner provided by the BYLAWS. Any person or entity owning more than one LOT shall be entitled to one vote for each LOT owned. In addition to the foregoing, DECLARANT shall have three votes for each vote of any member other than DECLARANT so long as DECLARANT is entitled to appoint the Directors of the ASSOCIATION.

4. The BYLAWS shall provide for an annual meeting of the members of the ASSOCIATION and shall make provision for special meetings.

#### ARTICLE V - TERM OF EXISTENCE

The ASSOCIATION shall have perpetual existence.

#### ARTICLE VI - INCORPORATOR

The name and street address of the incorporator is:

Roberto Bollt, Trustee  
3000 Orange Grove Trail  
Naples, FL 34120

ARTICLE VII - DIRECTORS

1. The property, business and affairs of the ASSOCIATION shall be managed by a BOARD which shall consist of not less than three (3) directors, and which shall always be an odd number. The BYLAWS may provide for a method of determining the number of directors from time to time. In the absence of a determination as to the number of directors, the BOARD shall consist of three (3) directors. Directors are not required to be members of the ASSOCIATION.

2. All of the duties and powers of the ASSOCIATION existing under the DECLARATION, these ARTICLES and the BYLAWS shall be exercised exclusively by the BOARD, its agents, contractors or employees, subject to approval by the members only when specifically required.

3. The DECLARANT shall have the right to appoint all of the directors until DECLARANT has conveyed ninety (90%) percent of the LOTS within the SUBJECT PROPERTY, or until 5 years after the DECLARATION is recorded in the public records in the county in which the SUBJECT PROPERTY is located, whichever occurs first, and thereafter shall have the right to appoint one director so long as the DECLARANT owns any LOT. The DECLARANT may waive its right to elect one or more directors by written notice to the ASSOCIATION, and thereafter such directors shall be elected by the members. When the DECLARANT no longer owns any LOT within the SUBJECT PROPERTY, all of the directors shall be elected by the members in the manner provided in the BYLAWS.

4. Directors may be removed and vacancies on the BOARD shall be filled in the manner provided by the BYLAWS, however any director appointed by the DECLARANT may only be removed by the DECLARANT, and any vacancy on the BOARD shall be appointed by the DECLARANT if, at the time such vacancy is to be filled, the DECLARANT is entitled to appoint the directors.

5. The names and addresses of the initial directors, who shall hold office until their successors are appointed or elected, are as follows:

Roberto Bollt  
3000 Orange Grove Trail  
Naples, FL 34120

Stephen Lowitz  
3000 Orange Grove Trail  
Naples, FL 34120

Jeffrey Estes  
3000 Orange Grove Trail  
Naples, FL 34120

### ARTICLE VIII - OFFICERS

The officers of the ASSOCIATION shall be a president, vice president, secretary, treasurer and such other officers as the BOARD may from time to time by resolution create. The officers shall serve at the pleasure of the BOARD, and the BYLAWS may provide for the removal from office of officers, for filling vacancies, and for the duties of the officers. The names of the officers who shall serve until their successors are designated by the BOARD are as follows:

President/Treasurer:	Roberto Bollt
Secretary:	Stephen Lowitz

### ARTICLE IX - INDEMNIFICATION

1. The ASSOCIATION shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the ASSOCIATION) by reason of the fact that he is or was a director, employee, officer or agent of the ASSOCIATION, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the ASSOCIATION; and with respect to any criminal action or proceeding, if he had no reasonable cause to believe his conduct was unlawful; except, that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or willful misfeasance or malfeasance in the performance of his duties to the ASSOCIATION unless and only to the extent that the court in which the action or suit was brought shall determine, upon application, that despite the adjudication of liability, but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, in and of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in, or not opposed to, the best interest of the ASSOCIATION; and with respect to any criminal action or proceeding, that he had no reasonable cause to believe that his conduct was unlawful.

2. To the extent that a director, officer, employee or agent of the ASSOCIATION has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Paragraph 1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and appellate attorneys' fees) actually and reasonably incurred by him in connection therewith.

3. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the ASSOCIATION in advance of the final disposition of such action, suit or proceeding as authorized by the BOARD in the specific case upon receipt of an undertaking by or on behalf of the directors, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the ASSOCIATION as authorized herein.

4. The indemnification provided herein shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the laws of the State of Florida, any BYLAW, agreement, vote of members or otherwise, and as to action taken in an official capacity while holding office, shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5. The ASSOCIATION shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the ASSOCIATION, or is or was serving at the request of the ASSOCIATION as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in any such capacity, as arising out of his status as such, whether or not the ASSOCIATION would have the power to indemnify him against such liability under the provisions of this Article.

#### ARTICLE X - BYLAWS

The first BYLAWS shall be adopted by the BOARD and may be altered, amended or rescinded by the DECLARANT, the Directors and/or members in the manner provided by the BYLAWS.

#### ARTICLE XI - AMENDMENTS

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

1. A majority of the BOARD shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members, which may be the annual or a special meeting.

2. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote thereon within the time and in the manner provided in the BYLAWS for the giving of notice of a meeting of the members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

3. At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of a seventy-five percent (75%) of the votes of the entire membership of the ASSOCIATION.

4. Any number of amendments may be submitted to the members and voted upon by them at any one meeting.

5. If all of the directors and all of the members eligible to vote sign a written statement manifesting their intention that an amendment to these articles be adopted as though the above requirements had been satisfied.

6. No amendment shall make any changes in the qualifications for membership nor in the voting rights of members without approval by all of the members and the joinder of all INSTITUTIONAL LENDERS holding mortgages upon the LOTS. No amendment shall be made that is in conflict with the DECLARATION. Prior to the closing of the sale of all LOTS within the SUBJECT PROPERTY, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors pursuant to Article VII.

7. No amendment to these ARTICLES shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS within the SUBJECT PROPERTY, without the written approval of all the OWNERS so discriminated against or affected.

8. Upon approval of an amendment to these ARTICLES, the articles of amendment shall be executed and delivered to the Department of State as provided by law, and a copy certified by the Department of State shall be recorded in the public records of the county in which the SUBJECT PROPERTY is located.

#### ARTICLE XII - DISSOLUTION

In the event of dissolution or the final liquidation of the ASSOCIATION, the assets, both real and personal, of the ASSOCIATION, shall be dedicated to an appropriate public agency or utility to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the ASSOCIATION. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust or other organization, to be devoted to purposes as nearly as practicable to the same as those to which they were required to be devoted by the ASSOCIATION. No such disposition of ASSOCIATION properties shall be effective to divest or diminish any right or title of any member vested in him under the recorded DECLARATION unless made in accordance with the provisions of such DECLARATION.

ARTICLE XIIIINITIAL REGISTERED OFFICE AND ADDRESS AND NAME OF REGISTERED AGENT

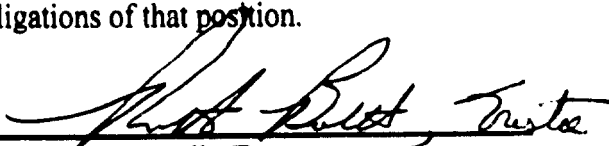
The ASSOCIATION'S principal address is 3000 Orange Grove Trail, Naples, FL 34120, and the initial registered office and registered agent of the ASSOCIATION shall be:

Burt E. Eisenberg, Esq.  
5100 Tamiami Trail N., Suite 123  
Naples, FL 34103

ARTICLE XIV

If any mortgage encumbering any UNIT is guaranteed or insured by the Federal Housing Administration or by the Veterans Administration, then upon written demand to the ASSOCIATION by either such agency, the following actions, if made by DECLARANT or if made prior to the completion of 75% of the UNITS which may be built within the SUBJECT PROPERTY, must be approved by either such agency: (i) any annexation of additional property; (ii) any merger or consolidation of the ASSOCIATION; (iii) any mortgaging or dedication of any COMMON AREA; (iv) any dissolution of the ASSOCIATION; and (v) any amendment of these ARTICLES, except for an amendment made to correct errors or omissions, or required by any INSTITUTIONAL LENDER so that such lender will make, insure or guarantee mortgage loans for the LOTS, or is required by any governmental authority. Such approval shall be deemed given if either agency fails to deliver written notice of its disapproval of any such action to DECLARANT or to the ASSOCIATION within 20 days after a request for such approval is delivered to the agency by certified mail, return receipt request, or equivalent delivery, and such approval may be conclusively evidenced by a certificate of DECLARANT or the ASSOCIATION that the approval was given or deemed given.

WHEREFORE, the incorporator, and the initial registered agent, have executed these ARTICLES on this 18 day of January, 2001. By executing these ARTICLES, the undersigned registered agent accepts the appointment as registered agent and states that the undersigned is familiar with, and accepts, the obligations of that position.

  
Roberto Bollt, Trustee

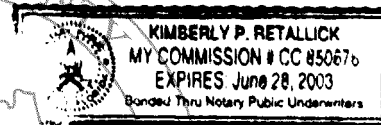
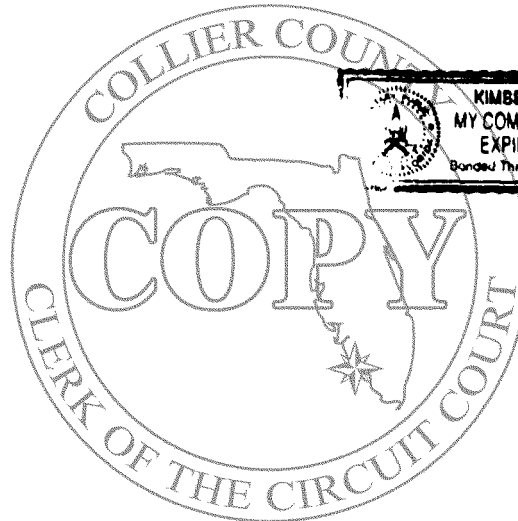


STATE OF FLORIDA       )  
                                      ) SS  
COUNTY OF COLLIER     )

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared Roberto Bollt, Successor Trustee of Land Trust Agreement Recorded in Official Records 1347, Page 2331, Public Records of Collier County, Florida [☒] who is personally known to me [    ] who has produced \_\_\_\_\_ as identification to be the person described in and who executed the foregoing instrument.

WITNESS my hand and official seal in the County and State last aforesaid this 18<sup>th</sup> day of January, 2001.

  
NOTARY PUBLIC, STATE OF FLORIDA



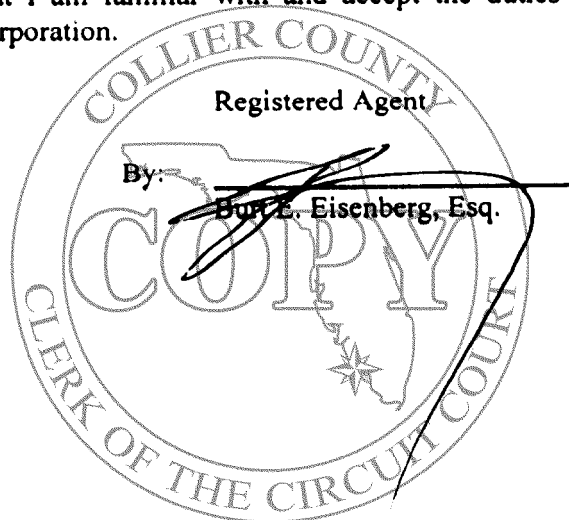
**Certificate Designating Place of Business or Domicile for the Service of Process Within This State, Naming Agent Upon Whom Process May be Served**

In compliance with Section 48.091, Florida Statutes, the following is submitted:

That VALENCIA LAKES AT ORANGETREE HOMEOWNERS' ASSOCIATION, INC., desiring to organize under the laws of the State of Florida, with its principal office, as indicated in the Articles of Incorporation at 3000 Orange Grove Trail, Naples, FL 34120, County of Collier, State of Florida, has named Burt E. Eisenberg, Esq., 5100 Tamiami Trail N., Suite 123, Naples, FL 34103, County of Collier, State of Florida, as its agent to accept service of process within this state.

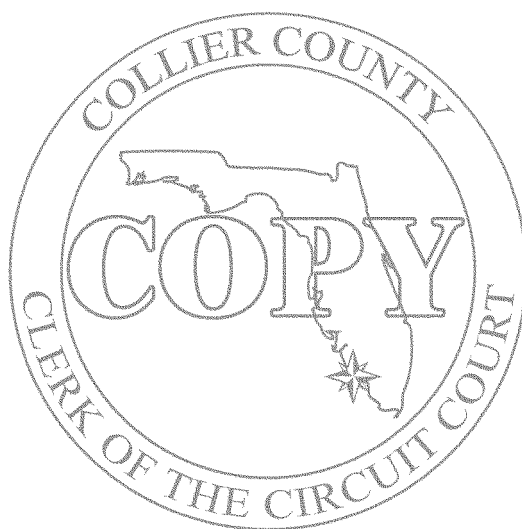
**ACKNOWLEDGMENT:**

I hereby certify that I am familiar with and accept the duties and responsibilities as registered agent for said Corporation.



**EXHIBIT B**

**BYLAWS**



**BYLAWS**

**OF**

**VALENCIA LAKES AT ORANGETREE HOMEOWNERS' ASSOCIATION, INC.**

**1. GENERAL PROVISIONS.**

1.1. Identity. These are the BYLAWS of VALENCIA LAKES AT ORANGETREE HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "ASSOCIATION", a corporation not-for-profit, formed under the laws of the State of Florida. The ASSOCIATION has been organized for the purposes stated in the ARTICLES, the DECLARATION, and any statute or law of the State of Florida, or any other power incident to any of the above powers.

1.2. Principal Office. The principal office of the ASSOCIATION shall be at such place as the BOARD may determine from time to time.

1.3. Fiscal Year. The fiscal year of the ASSOCIATION shall be the calendar year.

1.4. Seal. The seal of the ASSOCIATION shall have inscribed upon it the name of the ASSOCIATION, the year of its incorporation and the words "Corporation Not-For-Profit". The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed or otherwise reproduced upon any instrument or document executed in the name of the ASSOCIATION.

1.5. Inspection of Books and Records. The books and records of the ASSOCIATION shall be open to inspection by all OWNERS or their authorized representatives, and all holders, insurers or guarantors of any first mortgage encumbering a LOT. Such records of the ASSOCIATION shall include current copies of the DECLARATION, ARTICLES and BYLAWS, and any amendments thereto, any contracts entered into by the ASSOCIATION, and the books, records and financial statements of the ASSOCIATION. The ASSOCIATION shall be required to make available to prospective purchasers of LOTS current copies of the DECLARATION, ARTICLES and BYLAWS, and the most recent annual financial statement of the ASSOCIATION. Notwithstanding the foregoing, any inspection of any books or records of the ASSOCIATION will only be permitted upon reasonable notice, during normal business hours or under reasonable circumstances, and must be for a proper purpose which is reasonably related to an interest that the person making the inspection has or may have in the ASSOCIATION.

1.6. Definitions. Unless the context otherwise requires, all terms used in these BYLAWS shall have the same meaning as are attributed to them in the ARTICLES, and the DECLARATION.

## 2. MEMBERSHIP IN GENERAL

2.1. Qualification. Pursuant to the ARTICLES, all of the record owners of LOTS shall be members of the ASSOCIATION. Membership for each LOT shall be established upon the recording of the DECLARATION. Prior to the recording of the DECLARATION, the incorporator shall be the sole member of the ASSOCIATION, but its membership shall terminate upon the recording of the DECLARATION, unless it owns any LOT(S).

2.2. Changes in Membership. The transfer of the ownership of any LOT, either voluntarily or by operation of law, shall automatically terminate the membership of the prior owner, and the transferee or new owner shall automatically become a member of the ASSOCIATION. It shall be the responsibility of any such transferor and transferee of a LOT to notify the ASSOCIATION of any change in the ownership of any LOT, and the corresponding change in any membership, by delivering to the ASSOCIATION shall not be obligated to recognize any change in membership or ownership of a LOT for purposes of notice, voting, ASSESSMENTS, or for any other purpose.

2.3. Member Register. The secretary of the ASSOCIATION shall maintain a register in the office of the ASSOCIATION showing the names and addresses of the members of the ASSOCIATION. It shall be the obligation of each member of the ASSOCIATION to advise the secretary of any change of address of the member, or of the change of ownership of the member's LOT, as set forth above. Any member who mortgages his LOT shall notify the ASSOCIATION of the name and address of his mortgagee. Any member who satisfies the mortgage encumbering his LOT shall also notify the ASSOCIATION thereof, and shall file a copy of the satisfaction of mortgage with the ASSOCIATION. The names and addresses of any such mortgagee shall also be maintained in the member register.

## 3. MEMBERSHIP VOTING.

3.1. Voting Rights. The voting rights of the members and of DECLARANT shall be as provided in the ARTICLES.

3.2. Majority Vote and Quorum Requirements. The acts approved by a two-thirds (2/3rds) of the votes present in person or by proxy at a meeting at which a quorum is present shall be binding upon all members and OWNERS for all purposes, except where otherwise provided by law, in the DECLARATION, in the ARTICLES, or in these BYLAWS. Unless otherwise so provided, at any regular or special meeting, the presence in person or by proxy of persons entitled to cast the votes for sixty percent (60%) of the LOTS shall constitute a quorum.

3.3. Determination as to Voting Rights.

3.3.1. In the event any LOT is owned by one person, his right to cast the vote for the LOT shall be established by the record title to his LOT.

3.3.2. In the event any LOT is owned by more than one person or by an entity, the vote for the LOT may be cast at any meeting by any co-owner of the LOT provided, however, that in the event a dispute arises between the co-owners as to how the vote for the LOT shall be cast, or in the event the co-owners are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to cast the vote for the LOT on the matter being voted upon at that meeting, but their membership shall be counted for purposes of determining the existence of a quorum. For purposes of this paragraph, the principals or partners of any entity (other than a corporation) owning a LOT shall be deemed co-owners of the LOT, and the directors and officers of a corporation owning a LOT shall be deemed co-owners of the LOT.

3.3.3. Proxies. Every member entitled to vote at a meeting of the members, or to express consent or dissent without a meeting, may authorize another person or persons to act on the member's behalf by a proxy signed by such member or his attorney-in-fact. Any proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for delivering proxies. Any proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the member executing it. Every proxy shall specifically set forth the name of the person voting by proxy, and the name of the person authorized to vote the proxy for him. Every proxy shall contain the date, time, and place of the meeting for which the proxy is given, and if a limited proxy, shall set forth those items which the proxy holder may vote, and the manner in which the vote is to be cast.

#### 4. MEMBERSHIP MEETINGS

4.1. Who May Attend. In the event any LOT is owned by more than one person, all co-owners of the LOT may attend any meeting of the members. In the event any LOT is owned by a corporation, any director or officer of the corporation may attend any meeting of the members. However, the vote for any LOT shall be cast in accordance with the provisions of Paragraph 3 above. INSTITUTIONAL LENDERS have the right to attend all members meetings.

4.2. Place. All meetings of the members shall be held at the principal office of the ASSOCIATION or at such other place and at such time as shall be designated by the BOARD and stated in the notice of meeting.

4.3. Notices. Written notice stating the place, day and hour of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by first-class mail or personal delivery to each member entitled to vote at such meeting not less than 10 nor more than 60 days before the date of the meeting, either personally or by first-class mail, by or at the direction of the president, the secretary or the officer or persons calling the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears in the records of the ASSOCIATION, with postage thereon pre-paid. For the purpose of determining members entitled to notice of, or to vote at, any meeting of the members of the ASSOCIATION, or in order to make a determination of the members for any

other purpose, the BOARD shall be entitled to rely upon the member register as same exists ten days prior to the giving of the notice of any meeting, and the BOARD shall not be required to take into account any changes in membership occurring after that date but may, in their sole and absolute discretion, do so. Notwithstanding the foregoing, if a LOT is owned by more than one person or by an entity, only one notice shall be required to be given with respect to the LOT, which may be given to any co-owner as defined in Paragraph 3.3.2 of these BYLAWS. Notice to any member or co-owner shall be sent to the LOT of such member or co-owner, unless the LOT OWNER(S) of the LOT otherwise request.

4.4. Waiver of Notice. Whenever any notice is required to be given to any member under the provisions of the ARTICLES or these BYLAWS, or as otherwise provided by law, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a member at a meeting shall constitute a waiver of notice of such meeting, except when the member objects at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.

4.5. Annual Meeting. The annual meeting for the purpose of electing directors and transacting any other business shall be held once each year at a time and place to be determined by the BOARD and as is contained in the notice of such meeting. However, so long as DECLARANT is entitled to appoint a majority of the directors of the Association, no annual meetings will be required.

4.6. Special Meetings. Special meetings of the members may be called at any time by any director, the president, or at the request, in writing, by not less than 50% of the members, or as otherwise provided by law. Such request shall state the purpose of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice of meeting. Notice of any special meeting shall be given by the secretary, or other officer of the ASSOCIATION, to all of the members within thirty (30) days after same is duly called, and the meeting shall be held within forty-five (45) days after same is duly called.

4.7. Adjournments. Any meeting may be adjourned or continued by a majority vote of the members present in person or by proxy and entitled to vote, or if no member entitled to vote is present, then any officer of the ASSOCIATION may adjourn the meeting from time to time. If any meeting is adjourned or continued to another time or place, it shall not be necessary to give any notice of the adjourned meeting, if the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, and any business may be transacted at the adjourned meeting that might have been transacted at the original meeting. If the time and place to which the meeting is adjourned are announced at the meeting at which the adjournment is taken, notice of the adjourned meeting may be given to members not present at the original meeting, without giving notice to the members which were present at such meeting.

4.8. Organization. At each meeting of the members, the president, the vice president, or any person chosen by a majority of the members present, in that order, shall act as chairman of the

meeting. The secretary, or in his absence or inability to act, any person appointed by the chairman of the meeting, shall act as secretary of the meeting.

4.9. Order of Business. The order of business at the annual meetings of the members shall be:

- 4.9.1. Determination of chairman of the meeting;
- 4.9.2. Calling of the roll and certifying of proxies;
- 4.9.3. Proof of notice of meeting or waiver of notice;
- 4.9.4. Reading and disposal of any unproved minutes;
- 4.9.5. Reports of directors, officers or committees;
- 4.9.6. Nomination and election of inspectors of election
- 4.9.7. Determination of number of directors;
- 4.9.8. Election of directors;
- 4.9.9. Unfinished business;
- 4.9.10. New business; and
- 4.9.11. Adjournment.

4.10. Minutes. The minutes of all meetings of the members shall be kept in a book available for inspection by the members or their authorized representatives, and the directors, upon reasonable notice, during reasonable times, for a proper purpose. The ASSOCIATION shall retain these minutes for a period of not less than seven years.

4.11. Actions Without a Meeting. Any action required or permitted to be taken at any annual or special meeting of the members of the ASSOCIATION, may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, shall be signed by the members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all members entitled to vote thereon were present and voted. Within ten days after obtaining such authorization by written consent, notice shall be given to those members who have not consented in writing. The notice shall fairly summarize the material features of the authorized action. If a LOT is owned by more than one person or by a corporation, the consent for such LOT need only be signed by one person who would be entitled to cast the vote for the LOT as a co-owner pursuant to Paragraph 3.3.2 of these BYLAWS.



## 5. DIRECTORS.

### 5.1. Membership.

5.1.1. The affairs of the ASSOCIATION shall be managed by all of the OWNERS of the ASSOCIATION. So long as the DECLARANT is entitled to appoint any director pursuant to the ARTICLES, the number of directors will be determined, and may be changed from time to time, by the DECLARANT by written notice to the BOARD. After the DECLARANT is no longer entitled to appoint any director, the number of directors may be changed at any meeting where the members are to elect any directors (i) by the then existing BOARD, if prior to such meeting of the members the BOARD votes to change the number of directors and such change is indicated in the notice of the meeting sent to the members, or (ii) by the members at the meeting prior to the election of directors. If the number of directors on the BOARD is not changed, then the number of directors shall be the same as the number on the BOARD prior to such meeting (plus any unfilled vacancies created by the death, resignation or removal of a director). In any event there shall always be an odd number of directors.

5.2. Election of Directors by Members. Election of directors to be elected by the members of the ASSOCIATION shall be conducted in the following manner:

5.2.1. Within 60 days after the members other than the DECLARANT are entitled to elect any directors, as provided in the ARTICLES, or within 60 days after the DECLARANT notifies the ASSOCIATION that it waives its right to appoint one or more directors, the ASSOCIATION shall call, and give not less than 30 days nor more than 45 days notice of, a special meeting of the members to elect any directors the members are then entitled to elect, or to replace the appropriate number of directors previously appointed by the DECLARANT. Such special meeting may be called and the notice given by any member if the ASSOCIATION fails to do so. At such special meeting the members shall be required to elect any directors which they are entitled to elect, and if they fail to do so any directors appointed by DECLARANT which would have been replaced by any directors elected by the members may resign without further liability or obligation to the ASSOCIATION. In the event such a special meeting is called and held, at the meeting the members may elect not to hold the next annual meeting of the members if such next annual meeting would be less than 4 months after the date of the special meeting, and upon such election the next annual meeting of the members shall not be held.

5.2.2. Except as provided above, the members shall elect directors at the annual members' meetings.

5.2.3. Prior to any special or annual meeting at which directors are to be elected by the members, the existing BOARD may nominate a committee, which committee shall nominate one person for each director to be elected by the members, on the basis that the number of directors to serve on the BOARD will not be altered by the members at the members meeting. Nominations for additional directorships created at the meeting shall be made from the floor, and other nominations may be made from the floor.

5.2.4. The election of directors by the members shall be by ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast, each member voting being entitled to cast his votes for each of as many nominees as there are vacancies to be filled. There shall be no cumulative voting.

5.3. Term of Office. All OWNERS shall serve as directors until they have sold their UNIT to another, who will replace said OWNER or as otherwise provided by statute or by the ARTICLES.

5.4. Organizational Meeting. The newly elected BOARD shall meet for the purposes of organization, the election of officers and the transaction of other business immediately after their election or within ten (10) days of same at such place and time as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary.

5.5. Regular Meetings. Regular meetings of the BOARD may be held at such time and place as shall be determined, from time to time, by a majority of the directors. During the period when DECLARANT appoints a majority of the Directors, no regular meetings of the BOARD will be required.

5.6. Special Meetings. Special meetings of the BOARD may be called by any director, or by the president, at any time.

5.7. Notice of Meetings. Notice of each meeting of the BOARD shall be given by the secretary, or by any other officer or director, which notice shall state the day, place and hour of the meeting. Notice of such meeting shall be delivered to each director either personally or by telephone or telegraph, at least 48 hours before the time at which such meeting is to be held, or by first class mail, postage prepaid, addressed to such director at his residence, or usual place of business, at least three days before the day on which such meeting is to be held. Notice of a meeting of the BOARD need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting, an objection to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the BOARD need be specified in any notice or waiver of notice of such meeting.

5.8. Quorum and Manner of Acting. The presence of sixty percent (60%) of the OWNERS/directors determined in the manner provided in these BYLAWS shall constitute a quorum for the transaction of any business at a meeting of the BOARD. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the BOARD, unless the act of a greater number of directors is required by statute, the DECLARATION, the ARTICLES, or by these BYLAWS. A director may join by written concurrence in any action taken at a meeting of the BOARD but such concurrence may not be used for the purposes of creating a quorum.

5.9. Adjourned Meetings. A majority of the directors present at a meeting, whether or not a quorum exists, may adjourn any meeting of the BOARD to another place and time. Notice of any such adjourned meeting shall be given to the directors who are not present at the time of the adjournment, and, unless the time and place of the adjourned meeting are announced at the time of the adjournment, to the other directors. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice.

5.10. Presiding Officer. The presiding officer of the BOARD meetings shall be the chairman of the BOARD if such an officer is elected and if none, the president of the ASSOCIATION shall preside. In the absence of the presiding officer, the directors shall designate one of their members to preside.

5.11. Order of Business. The order of business at a BOARD meeting shall be:

- 5.11.1 Calling of roll;
- 5.11.2. Proof of due notice of meeting;
- 5.11.3. Reading and disposal of any unapproved minutes;
- 5.11.4. Reports of officers and committees;
- 5.11.5. Election of officers;
- 5.11.6. Unfinished business;
- 5.11.7. New business; and
- 5.11.8. Adjournment.

5.12. Minutes of Meetings. The minutes of all meetings of the BOARD shall be kept in a book available for inspection by the members of the ASSOCIATION, or their authorized representatives, and the directors, upon reasonable notice, during reasonable times, for a proper purpose. The ASSOCIATION shall retain these minutes for a period of not less than seven years.

5.13. Committees. The BOARD may, by resolution duly adopted, appoint committees. Any committee shall have and may exercise such powers, duties and functions as may be determined by the BOARD from time to time, which may include any powers which may be exercised by the BOARD and which are not prohibited by law from being exercised by a committee.

5.14. Resignation. Any director may resign at any time by giving written notice of his resignation to another director or officer. Any such resignation shall take effect at the time specified therein or, if the time when such resignation is to become effective is not specified therein,

immediately upon its receipt, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**5.15. Removal of Directors.** Directors may be removed as follows:

5.15.1. Any director other than a director appointed by the DECLARANT may be removed by majority vote of the remaining directors, if such director has been absent for the last three consecutive BOARD meetings, and/or adjournments and continuances of such meetings.

5.15.2. Any director other than a director appointed by the DECLARANT may be removed with or without cause by the vote of a majority of the members of the ASSOCIATION at a special meeting of the members called by not less than ten percent of the members of the ASSOCIATION expressly for that purpose. The vacancy on the BOARD caused by any such removal may be filled by the members at such meeting or, if the members shall fail to fill such vacancy, by the BOARD, as in the case of any other vacancy on the BOARD.

**5.16. Vacancies.**

5.16.1. Vacancies in the BOARD may be filled by a majority vote of the directors then in office, though less than a quorum, or by a sole remaining director, and a director so chosen shall hold office until the next annual election and until his successor is duly elected, unless sooner displaced. If there are no directors, then a special election of the members shall be called to elect the directors. Notwithstanding anything contained herein to the contrary, the DECLARANT at all times shall have the right to appoint the maximum number of directors permitted by the ARTICLES, and any vacancies on the BOARD may be filled by the DECLARANT to the extent that the number of directors then serving on the BOARD which were appointed by the DECLARANT is less than the number of directors the DECLARANT is then entitled to appoint.

5.16.2. In the event the ASSOCIATION fails to fill vacancies on the BOARD sufficient to constitute a quorum in accordance with these BYLAWS, any LOT OWNER may apply to the Circuit Court of the County in which the SUBJECT PROPERTY is located for the appointment of a receiver to manage the affairs of the ASSOCIATION. At least thirty (30) days prior to applying to the Circuit Court, the LOT OWNER shall mail to the ASSOCIATION a notice describing the intended action giving the ASSOCIATION the opportunity to fill the vacancies. If during such time the ASSOCIATION fails to fill the vacancies, the LOT OWNER may proceed with the petition. If a receiver is appointed, the ASSOCIATION shall be responsible for the salary of the receiver, court costs, and attorneys' fees. The receiver shall have all powers and duties of a duly constituted member of the BOARD, and shall serve until the ASSOCIATION fills vacancies on the BOARD sufficient to constitute a quorum.

**5.17. Directors Appointed by the DECLARANT.** Notwithstanding anything contained herein to the contrary, the DECLARANT shall have the right to appoint the maximum number of directors in accordance with the privileges granted to the DECLARANT pursuant to the ARTICLES. All directors appointed by the DECLARANT shall serve at the pleasure of the DECLARANT, and

the DECLARANT shall have the absolute right, at any time, and in its sole discretion, to remove any director appointed by it, and to replace such director with another person to serve on the BOARD. Replacement of any director appointed by the DECLARANT shall be made by written instrument delivered to any officer or any other director, which instrument shall specify the name of the person designated as successor director. The removal of any director and the designation of his successor by the DECLARANT shall become effective immediately upon delivery of such written instrument by the DECLARANT.

5.18. Compensation. The Directors shall not be entitled to any compensation for serving as Directors unless the members approve such compensation, provided however, the ASSOCIATION may reimburse any Director for expenses incurred on behalf of the ASSOCIATION without approval of the members.

5.19. Powers and Duties. The directors shall have the right to exercise all of the powers and duties of the ASSOCIATION, express or implied, existing under these BYLAWS, the ARTICLES, the DECLARATION, or as otherwise provided by statute or law.

## 6. OFFICERS.

6.1. Members and Qualifications. The officers of the ASSOCIATION shall include a president, a vice president, a treasurer and a secretary, all of whom shall be elected by the directors and may be preemptively removed from office with or without cause by the directors. Any person may hold two or more offices except that the president shall not also be the secretary. The BOARD may, from time to time, elect such other officers and designate their powers and duties as the BOARD shall find to be appropriate to manage the affairs of the ASSOCIATION from time to time. Each officer shall hold office until the meeting of the BOARD following the next annual meeting of the members, or until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned, or until he shall have been removed, as provided in these BYLAWS.

6.2. Resignations. Any officer may resign at any time by giving written notice of his resignation to any director or officer. Any such resignation shall take effect at the time specified therein, or if there is no time specified therein, immediately upon its receipt; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make such resignation effective.

6.3. Vacancies. A vacancy in any office, whether arising from death, resignation, removal or any other cause may be filled for the unexpired portion of the term of the office which shall be vacant in the manner prescribed in these BYLAWS for the regular election or appointment of such office.

6.4. The President. The president shall be the chief executive officer of the ASSOCIATION. He shall have all of the powers and duties which are usually vested in the office of president of an association or corporation including, but not limited to, the power to appoint

committees from among the members from time to time, as he may in his discretion deem appropriate to assist in the conduct of the affairs of the ASSOCIATION.

6.5. The Vice President. The vice president shall, in the absence or disability of the president, exercise the powers and perform the duties of the president. He shall also assist the president generally and exercise such other powers and perform such other duties as may be prescribed by the directors.

6.6. The Secretary. The secretary shall prepare and keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors and other notices required by law. He shall have custody of the seal of the ASSOCIATION and affix the same to instruments requiring a seal when duly executed. He shall keep the records of the ASSOCIATION, except those of the treasurer, and shall perform all other duties incident to the office of secretary of an association, and as may be required by the directors or the president.

6.7. The Treasurer. The treasurer shall have custody of all property of the ASSOCIATION, including funds, securities, and evidences of indebtedness. He shall keep books of account for the ASSOCIATION in accordance with good accounting practices, which, together with substantiating papers, shall be made available to the BOARD for examination at reasonable times. He shall submit a Treasurer's Report to the BOARD at reasonable intervals and shall perform all other duties incident to the office of treasurer. He shall collect all ASSESSMENTS and shall report to the BOARD the status of collections as requested.

6.8. Compensation. The officers shall not be entitled to compensation unless the BOARD specifically votes to compensate them. However, neither this provision, nor the provision that directors will not be compensated unless otherwise determined by the members, shall preclude the BOARD from employing a director or an officer as an employee of the ASSOCIATION and compensating such employee, nor shall they preclude the ASSOCIATION from contracting with a director for the management of property subject to the jurisdiction of the ASSOCIATION, or for the provision of services to the ASSOCIATION, and in either such event to pay such director a reasonable fee for such management or provision of services.

## 7. FINANCES AND ASSESSMENTS.

7.1. ASSESSMENT ROLL. The ASSOCIATION shall maintain an ASSESSMENT roll for each LOT, designating the name and current mailing address of the OWNER, the amount of each ASSESSMENT against such OWNER, the dates and amounts in which the ASSESSMENTS come due, the amounts paid upon the account of the OWNER, and the balance due.

7.2. Depositories. The funds of the ASSOCIATION shall be deposited in such banks and depositories as may be determined and approved by appropriate resolutions of the BOARD from time to time. Funds shall be withdrawn only upon checks and demands for money signed by such

officers, directors or other persons as may be designated by the BOARD. Fidelity bonds as required by the DECLARATION shall be required of all signatories on any account of the ASSOCIATION.

7.3. Depositing of Payments. All sums collected by the ASSOCIATION from ASSESSMENTS may be deposited in a single fund or divided into more than one fund, as determined by the BOARD.

7.4. Accounting Records and Reports. The ASSOCIATION shall maintain accounting records according to good accounting practices. The records shall be open to inspection by OWNERS and INSTITUTIONAL LENDERS or their authorized representatives, at reasonable times. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) the ASSESSMENT roll of the members referred to above. The BOARD may, and upon the vote of a majority of the members shall, conduct a review of the accounts of the ASSOCIATION by a certified public accountant, and if such a review is made, a copy of the report shall be furnished to each member, or their authorized representative, within fifteen days after same is completed. In addition to the foregoing, any OWNER or INSTITUTIONAL LENDER shall have the right to have an audited statement prepared at such OWNER's or INSTITUTIONAL LENDER's expense.

7.5. Reserves. The budget of the ASSOCIATION shall provide for a reserve fund for the periodic maintenance, repair and replacement of improvements to the COMMON AREAS and those other portions of the SUBJECT PROPERTY which the ASSOCIATION is obligated to maintain.

## 8. PARLIAMENTARY RULES.

8.1. Robert's' Rules of Order (latest edition) shall govern the conduct of the ASSOCIATION meetings when not in conflict with any DECLARATION, the ARTICLES or these BYLAWS.

## 9. AMENDMENTS.

Except as otherwise provided, these BYLAWS may be amended in the following manner:

9.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

9.2. Initiation. A resolution to amend these BYLAWS may be proposed either by any director, or by or at the direction of fifty percent (50%) or more of the members of the ASSOCIATION.

### 9.3. Adoption of Amendments.

9.3.1. A resolution for the adoption of the proposed amendment shall be adopted by not less than sixty percent (60%) of the votes of the entire membership of the ASSOCIATION. Any

amendment approved by the members may provide that the BOARD may not further amend, modify or repeal such amendment.

9.3.2. Notwithstanding anything contained herein to the contrary, so long as the DECLARANT is entitled to appoint a majority of the directors, the DECLARANT shall have the right to unilaterally amend these BYLAWS without the joinder or approval of the BOARD or any member, and so long as the DECLARANT owns any LOT. No amendment to these BYLAWS shall be effective without the written approval of the DECLARANT.

9.4. No amendment shall make any changes in the qualification for membership nor in the voting rights or property rights of members without approval by all of the members and the joinder of all record owners of mortgages upon the LOTS. No amendment shall be made that is in conflict with the Declaration or the ARTICLES. Prior to the closing of the sale of all LOTS, no amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, the DECLARANT, unless the DECLARANT shall join in the execution of the amendment, including, but not limited to, any right of the DECLARANT to appoint directors.

9.5. No amendment to these BYLAWS shall be made which discriminates against any OWNER(S), or affects less than all of the OWNERS, without the written approval of all of the OWNERS so discriminated against or affected.

9.6. Execution and Recording. No modification of, or amendment to, the BYLAWS shall be valid until recorded in the public records of the county in which the SUBJECT PROPERTY is located.

9.7. Any amendment made by DECLARANT and any amendment made by the members prior to the completion of 75% of the UNITS that may be constructed within the SUBJECT PROPERTY, must be approved by the Federal Housing Administration or by the Veterans Administration if any mortgage encumbering a LOT is guaranteed or insured by either such agency, if such amendment materially and adversely affects the OWNERS or materially and adversely affects the general scheme of development created by the DECLARATION. Such approval shall specifically not be required where the amendment is made to correct errors or omissions or is required to comply with the requirement of any INSTITUTIONAL LENDER so that such lender will make, insure or guaranty mortgage loans for the LOTS, or is required by any governmental authority. Such approval shall be deemed given if either agency fails to deliver written notice of its disapproval of any amendment to DECLARANT or to the ASSOCIATION within 20 days after a request for such approval is delivered to the agency by certified mail, return receipt requested, or equivalent delivery, and such approval shall be conclusively evidenced by a certificate of DECLARANT or the ASSOCIATION that the approval was given or deemed given.



10. MISCELLANEOUS.

10.1. Tenses and Genders. The use of any gender or of any tense in these BYLAWS shall refer to all genders or to all tenses, wherever the context so requires.

10.2. Partial Invalidity. Should any of the provisions hereof be void or become unenforceable at law or in equity, the remaining provisions shall, nevertheless, be and remain in full force and effect.

10.3. Conflicts. In the event of any conflict, the DECLARATION, the ARTICLES, and these BYLAWS, shall govern, in that order.

10.4. Captions. Captions are inserted herein only as a matter of convenience and for reference, and in no way are intended to or shall define, limit or describe the scope of these BYLAWS or the intent of any provisions hereof.

10.5. Waiver of Objections. The failure of the BOARD or any officers of the ASSOCIATION to comply with any terms and provisions of the DECLARATION, the ARTICLES, or these BYLAWS which relate to time limitations shall not, in and of itself, invalidate the act done or performed. Any such failure shall be waived if it is not objected to by a member of the ASSOCIATION within ten (10) days after the member is notified, or becomes aware, of the failure. Furthermore, if such failure occurs at a general or special meeting, the failure shall be waived as to all members who received notice of the meeting or appeared and failed to object to such failure at the meeting.

IN WITNESS WHEREOF, we being all of the Directors of VALENCIA LAKES AT ORANGETREE HOMEOWNER'S ASSOCIATION, INC., have hereunto set our hands this 1 day of November, 2001.

Kimberly P. Rinaldi  
Witness: Kimberly P. Rinaldi

Roberto Bollt  
ROBERTO BOLLT

Robert J. Bickel  
Witness: Robert J. Bickel

Robert J. Bickel  
Witness: Robert J. Bickel

Stephen Lowitz  
STEPHEN LOWITZ

Robert J. Bickel  
Witness: Robert J. Bickel

Kimberly P. Retallick  
Witness: Kimberly P. Retallick

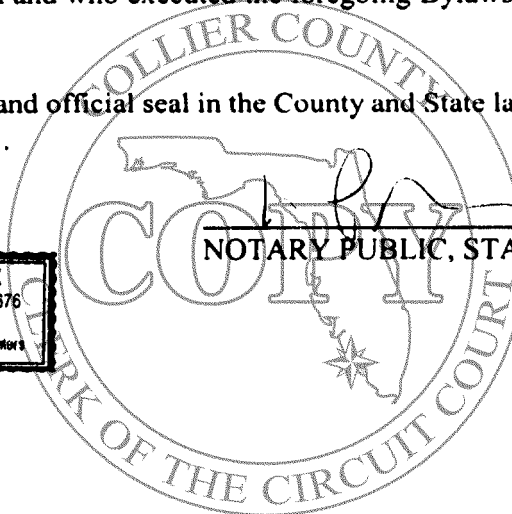
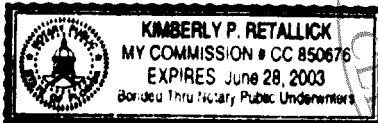
Jeffrey Estes  
JEFFREY ESTES

Glenn E. Smith  
Witness: Glenn E. Smith

STATE OF FLORIDA       )  
  ) SS  
COUNTY OF COLLIER    )

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared ROBERTO BOLLT, STEPHEN LOWITZ, and JEFFREY ESTES [ X ] who are known to me [    ] who has produced \_\_\_\_\_ as identification to be the person described in and who executed the foregoing Bylaws for the purposes expressed therein.

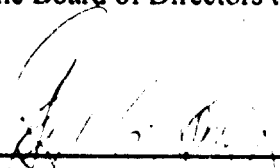
WITNESS my hand and official seal in the County and State last aforesaid this   1   day of   MAY  , 2001.



\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of VALENCIA LAKES AT ORANGETREE HOMEOWNERS ASSOCIATION, INC., a Florida Corporation not for profit, and that the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 11 day of \_\_\_\_\_, 2001.

  
\_\_\_\_\_, Secretary



**EXHIBIT C**

**LEGAL DESCRIPTION**

Plat of Valencia Lakes - Phase 1-A, according to the Plat thereof, as recorded in  
Plat Book 36, Pages 25-27, Public Records of Collier County, Florida.

