

**AMENDED AND RESTATED**

**DECLARATION OF RESTRICTIONS, COVENANTS,**

**AND CONDITIONS**

**FOR**

**COPPER OAKS**

DATED: November 24<sup>th</sup>, 2014

NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS. SEE CURRENT DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, AND SUBSEQUENT AMENDMENTS THERETO FOR PRESENT TEXT.

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FOR  
COPPER OAKS**

**THIS DECLARATION OF RESTRICTIONS, COVENANTS, AND CONDITIONS,** is made on this the 24<sup>th</sup> date of November 2014, by **SOUTHERN HOMES OF ESTERO L.L.C., a Florida Limited Liability Company**, whose address is 9900 SW 107 Ave Suite 103 Miami, FL 33176 and **COPPER OAKS TV, LLC** whose address is 9900 SW 107 Ave Suite 103 Miami, FL 33176, (collectively referred to as **"Declarant"**) and joined in by **COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**, a Florida corporation not for profit, whose address is 9900 SW 107 Avenue, Suite 103, Miami, Florida 33176, (hereinafter referred to as the **"Association"**).

**WITNESSETH**

**WHEREAS**, on December 17, 2004, the Declarant recorded a Declaration of Restrictions, Covenants and Conditions for Copper Oaks in Official Record Book 04531, at Pages 1596 through 1711 in the Public Records of Lee County, Florida (as the same has been amended from time to time, the "Original Declaration"), and Section 15.04 of the Declaration reserves to the Declarant the right to amend the Declaration; and

**WHEREAS**, Declarant desires to amend and restate the Original Declaration to replace and modify certain provisions therein; and

**WHEREAS**, the land subject to the Original Declaration is located within Lee County, Florida, described in Exhibit "A" and Exhibit "A-1" ("Real Property"); and

**WHEREAS**, in connection with the foregoing, Declarant deemed it desirable to create the Association, a corporation not for profit, under the laws of the State of Florida, to which certain rights, power, duties and obligations for the Real Property have been delegated and assigned including, without limitation, operation, administration, maintenance and repair of portions of the Property, including the "Common Properties" (as hereinafter defined), and administering and enforcing the provisions of this Declaration.

**NOW, THEREFORE**, pursuant to the rights reserved to the Declarant as set forth in above, the Declaration of Covenants and Restrictions for Copper Oaks is hereby amended and is restated in its entirety. This Amended and Restated Declaration of Covenants and Restrictions for Copper Oaks and the terms and provisions of this Declaration are sometimes referred to as "Declaration" or "Declaration of Covenants and Restrictions" or Covenants and Restrictions". The Real Property is hereby owned, held, used, transferred, sold, conveyed, demised and

occupied subject to the covenants, restrictions, reservations and regulations, herein set forth and the provisions of this Declaration shall be a covenant running with the Real Property described in Exhibit "A" and Exhibit "A-1" and shall be binding on all parties having any right, title or interest in such Real Property or any part thereof, their heirs, personal representatives, successors and assigns and shall inure to the property of each Lot Owner(s) thereof.

## **ARTICLE 1** **DEFINITIONS**

The following words and phrases when used in the Declaration shall have the following meanings:

1.1 "Affiliation" shall mean an entity related to or affiliated with the Declarant shall be deemed to mean an individual or person related to or affiliated with the Declarant and includes, but is not limited to, a joint venture, partnership or corporation in which the Declarant has an interest.

1.2 "Architectural Control Committee" ("ACC") shall mean and refer to the committee appointed by the Board of Directors of the Homeowners' Association for the purposes set for therein this Declaration of Restrictions, Covenants and Conditions.

1.3 "Articles" shall mean the Articles of Incorporation of the Homeowners' Association.

1.4 "Assessment" shall mean a share of the Homeowners' Association expenses required for the payment of the Homeowners Association expenses which from time to time are assessed against the Lot or Units and Lot Owner(s) or Unit Owner(s) or Home.

1.5 "Board" or "Board of Directors" shall mean the Board of Directors of the Homeowners Association.

1.6 "By-Laws" shall mean the By-Laws of the Homeowners Association, as adopted by the Association, and which may be amended from time to time.

1.7 "Cable Services" shall mean "basic service tier" as described in Section 623(b)(7)(A) of the Cable Television Consumer Protection Act of 1992, video programming services offered on a per-channel or per-program basis, video programming services offered in addition, to the basic service tier any method of delivering video programming to Homes including, without limitation, interactive video programming, and any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax, and the Movie Channel. By way of example, and not of limitation, the term Cable Services may include cable television, satellite master antenna television, multipoint distribution systems, video dial tone, open video system or any combination thereof.

1.8 "Common Assessment" shall mean and refer to the charge against all Owners and their "Lots" (as hereinafter referred), representing their proportionate share of the routine

"Common Expenses" (as hereinafter defined) of the Association. Common Assessments include any reasonable reserves the board finds necessary or appropriate.

1.9 "Common Property" or "Common Properties" shall mean and refer to those tracts designated as Common Property or Common Properties and as those shown on the site plan, as dedicated to the Homeowners' Association on the plat of the Real Property, as well as such other property, both real and personal, as provided in this Declaration. Common Property or Common Properties may consist of recreation areas, facilities and/or building(s) and improvements, unimproved or improved real property, pumps, dikes, ponds, waterways, canals, parks, grass and/or landscaped areas, native open spaces, jogging paths, bike paths, bulkheads, personal property, streets, street lighting, riding trails, easements, guard houses, walls, and such other properties which may be designated Common Properties and such other improvements as described in Article III of this Declaration. The wall to be built in the landscape buffer easement located in the rear of Lots 27 through 33 of Copper Oaks Townvillas shall be maintained by the Association and be considered common property, and that the landscape buffer easement shall be maintained by the Association. It is the intention of the Declarant to designate portions of the lands on the plat of the Real Property as Common Properties and to convey fee simple title to such Common Property or Common Properties to the Homeowners' Association and other lands, as provided on the site plan as hereinafter provided. The Homeowners' Association shall be responsible to maintain, repair and replace the Common Property or Common Properties as hereinafter provided.

**NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON PROPERTY" OR "COMMON PROPERTIES" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DECLARANT TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY' AS TO THE EXTENT OF THE COMMON PROPERTY OR COMMON PROPERTIES TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH OTHER ITEM.**

1.10 "Community" shall mean all of the real property described on "Exhibit "A" and shall include the Common Areas, each Home, each Parcel, Lot, tract, unit or other subdivision of real property, subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Declarant may, when amending or modifying the description of real property that is subject to the operation of this Declaration, also amend or modify the definition of Community.

1.11 "Community Completion Date" shall mean the date upon which all Homes in the Community, as ultimately planned and as fully developed, have been conveyed by Declarant to Unit Owner.

1.12 "County" shall mean and refer to the Lee County, Florida, including all of its agencies, divisions, departments, attorneys, or agents employed to act on its behalf.

1.13 "Declarant" shall mean Southern Homes of Estero, LLC., a Florida Limited Liability Company and Copper Oaks TV, LLC, a Florida Limited Liability Company, its successors, assigns, or Designees.

1.14 "Declaration" or "Homeowners' Declaration" or "Declaration of Covenants and Restrictions" or "Homeowners Declaration of Covenants and Restrictions" or Covenants and Restrictions" shall mean this Amended and Restated Declaration of Covenants and Restrictions.

1.15 "Family" shall mean and refer to (i) a group of natural persons related to each other by blood, or legally related to each other by marriage or adoption, or (ii) a group of persons not so related who maintain a common household on a Lot.

1.16 "Front Yard" shall mean the portion of the yard every Home between the front of the Home and the road providing access to such Home. In the event that there is any question about what portion of a Home is part of the Front Yard, the Association's determination shall be final.

1.17 "Rear Yard" shall mean the portion of the yard between the Home and rear boundary of the Home. In the event that there is any question about what portion of a Home is part of the Rear Yard; the Association's determination shall be final.

1.18 "Home" shall mean each residential home or town home villa and appurtenances thereto constructed within the Community. The term Home may not reflect the same division of property as reflected on a Plat. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy on for such residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of Lot Owner(s) to pay Assessments with respect to such Home. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home.

1.19 "Homeowners' Association" shall mean and refer to Copper Oaks Homeowners' Association, Inc., a Florida corporation not-for-profit whose names appears at the end of this Declaration as "Homeowners' Association," and its successors and assigns, and which Corporation's Articles of Incorporation and By-Laws are attached to this Declaration as Exhibits "B" and "C", respectively. The Homeowners' Association is the entity responsible for the operation of certain aspects of this single family home community as hereinafter provided and has the authority to exercise the functions herein provided.

1.20 "Homeowners' Association expenses" or "Homeowners expenses" shall mean and refer to the actual and estimated costs of ownership, maintenance, management, operation, repair, and replacement of the Common Properties, including reserves for the foregoing to the extent adopted as part of the Association's budget, as provided in the Bylaws, including, without limitation: (a) unpaid- Assessments; (b) the costs of any and all commonly-metered utilities, cable or master television charges, if any, and other commonly-metered charges for the Common Properties; (c) costs of management and administration of the Association, including but not limited to, compensation paid by the Association to managers, accountants, attorneys and other agents, employees, or independent contractors; (d) costs of all gardening and other services

benefitting the Common Properties, and all recreational facilities thereon; (e) costs of fire, casualty, and liability insurance, worker's compensation insurance, and other insurance covering or connected with the Association or the Common Properties; (f) costs of bonding the members of the Board and the "Management Company" (as hereinafter defined); (g) taxes paid by the Association, including real property taxes for the Common Properties, if any; (h) amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Properties, or portions thereof; (i) maintenance and repair of street lights; (j) lake maintenance; (k) preserve and/or maintain green spaces; (l) cost of maintaining unmanned and/or manned guard gate or gatehouse; (m) maintaining and repairing of electronic gate and system; (n) maintenance and repair of irrigation system; (o) maintenance of front and rear yards of homes; (p) cost of repairing or maintaining any Party Roofs (town home villa only); (q) cost of any exterior maintenance and upkeep of Party Walls (town home villa only); and (r) cost of any other items or expenses incurred by the Association for any reason whatsoever in connection with the Common Properties, the Association's rights or duties hereunder, and/or for the benefit of the Lot Owner(s) or the Property.

1.21 "Improvement" shall mean and refer to all structures or artificially created conditions and appurtenances thereto of every type and kind located within the Property, including, but not limited to, buildings, structures, fixtures, walkways, sprinkler pipes and other apparatus, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, antennas or satellite dishes, signs, and exterior air-conditioning and water-softener fixtures or equipment, if any.

1.22 "Incomplete Lot" shall mean any Lot which has not been issued a certificate of occupancy for a Home constructed thereon by the appropriate governmental agency.

1.23 "Incomplete Lot Owner" shall mean the owner of an Incomplete Lot. For the purposes of this Declaration, the owners of incomplete Lots shall not be obligated to pay common assessments.

1.24 "Individual Assessment" shall mean and refer to a charge against one or more Owners and their Lots, directly attributable to such Lot Owner(s)' failure to duly perform or breach their obligations or burdens hereunder, and the Association's enforcement of this Declaration against such Owner(s) and/or Lot(s), as further described herein.

1.25 "Institutional Mortgagee" means: (a) any lending institution having a first mortgage lien upon any unit or any portion of the Real Property, including any of the following Institutions: a Federal or State Savings and Loan or Building and Loan Association, or a Mortgage or Real Estate Investment Trust, or a Mortgage Banking company doing business in the State of Florida, or an Insurance Company, or an Agency of the United States Government, or a Union Pension Funds; or (b) any secondary mortgage market institution, including the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Veterans' Administration, and such other secondary mortgage market institutions as the Declarant or the Board of Directors of the Homeowners' Association shall hereafter approve in writing, which has acquired a first mortgage; or (c) any and all investors or lenders, or the successors and assigns of such investors

or lenders (herein referred to as "Lenders"), which have loaned money to the Declarant to acquire or construct improvements upon the property encumbered by this Declaration; or (d) the Declarant or any person or entity designated by the Declarant as an Institutional Mortgagee by Amendment to the Declaration, which amendment need only be executed by the Declarant, and shall not require the consent or approval of the Homeowners' Association, its members, or any other person or entity whatsoever, or (e) a lender generally recognized in the community as an institutional type lender. "Institutional Mortgage" shall mean the mortgage held by an Institutional Mortgagee. Notwithstanding the foregoing, if an Institutional Mortgage is assigned from time to time to a person(s) or entity(ies) that does not qualify as an Institutional Mortgagee, such person(s) or entity(ies) shall be deemed to be an Institutional Mortgagee for the purposes of this Declaration.

1.26 "Lake" shall mean those bodies of water as defined by the metes and bound legal description of Copper Oaks as recorded in Plat Book 80 at Page 47 of Lee County Records, Florida.

1.27 "Lake Lot" shall mean and refer to any Lot adjacent to the lake as defined by the metes and bound legal description of Copper Oaks.

1.28 "Lot(s)" shall mean and refer to the lots as defined by metes and bounds legal description and as shown on the site plan within the plat of the Real Property, which plat is now of record in Lee County, Florida, or will be recorded in the future, which may refer to a single family home or town home villa.

1.29 "Management Company" shall mean and refer to the person, firm, or other entity employed by the Association as its agent to assist it in fulfilling or carrying out certain duties, powers, obligations or functions of the Association.

1.30 "Monitoring System" shall mean any electric surveillance and/or monitoring system intended to control access, and/or enhance the welfare of the Community. By way of example, and not of limitation, the term Monitoring System may include electronic entrance gates, gatehouses, or any combination thereof. **THE PROVISION OF A MONITORING SYSTEM SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN THE COMMUNITY. DECLARANT AND THE ASSOCIATION DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY MONITORING SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE MONITORING SERVICE IS DESIGNATED TO MONITOR THE SAME. EACH AND EVERY LOT OWNER(S) AND THE OCCUPANT OF EACH HOME ACKNOWLEDGES THAT DECLARANT, THE ASSOCIATION, THEIR EMPLOYEES, AGENTS, MANAGERS, DIRECTORS AND OFFICERS, ARE NOT INSURERS OF LOT OWNER(S) OR HOMES, OR THE PERSONAL PROPERTY LOCATED WITHIN HOMES. DECLARANT AND THE ASSOCIATION WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.**

1.31 "Occupant" shall mean the person or persons other than the Lot Owner(s) or Unit Owner(s) in possession of the Lot or Unit.

1.32 "Owner" shall mean the record owner (whether one or more persons or entities) of fee simple title to any Home. The term "Owner" shall not include Declarant, or any affiliate thereof, or a Lender.

1.33 "Party Roof" shall mean any roof built as part of the original construction of two or more Homes, which roof covers two or more Homes that are connected by one or more Party Walls.

1.34 "Party Wall" shall mean any fence or wall built as part of the original construction of two or more Homes which is placed on the dividing line or platted lot line between such Homes.

1.35 "Plan of Development". The planning process for the Community is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of Declarant's buyers. Subject to the Title Documents, Declarant may wish and has the right to develop the Community and adjacent property owned by the Declarant into residences, comprised of single family homes, town home villa, zero lot line homes, patio homes, condominiums, and other forms of residential dwellings. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of the Community as finally developed.

1.36 "Site Plan" shall mean the lot and block plan showing lot, tract, common areas, lakes, etc.

1.37 "South Florida Water Management District" shall mean the South Florida Water Management District, a political subdivision of the State of Florida.

1.38 "Special Assessment" shall mean and refer to a charge against all Lot Owner(s) and their Lots, representing their appropriate share of the cost incurred by the Association for: (i) reconstruction on the Common Properties pursuant to the provisions of this Declaration; (ii) installation or construction of any capital improvements on any portion of the Common Properties which the Association may from time to time authorize; or (iii) any other extraordinary expense of the Association, including, but not limited to, amounts necessary to pay shortages in Common Expenses of the Association after collections of Common Assessments, as all are further described herein.

1.39 "Surplus" shall mean the excess of all receipts of the Homeowners' Association from the Lot Owner(s) and Unit Owner(s) and any other income accruing to the Homeowners' Association over and above the amount of the expense of the Homeowners' Association.

1.40 "Telecommunication Provider" shall mean any party contracting with Association to provide Lot Owner(s) with one or more Telecommunication Services. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming Service, One



Telecommunications Provider may provide Association such service while another may own, "maintain and service the Telecommunications Systems which allow delivery of such Multichannel Video Programming Service.

1.41 "Telecommunications Services" shall mean delivered entertainment services; Telephone Services; Cable Services; and Data Transmission Services. Without limiting the foregoing, such Telecommunications Services include the development, promotion, marketing, advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

1.42 "Telecommunications Systems" shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to the COMMUNITY. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, pedestals, wireless cell sites, computers, modems, satellite antennae sites, transmission facilities, amplifiers, junction boxes, trunk distribution, feeder cables, lock boxes, taps, drop cables, related apparatus, converters, connections, head-end antennae, earth stations, appurtenant devices, network facilities, necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunication Services. Ownership and/or control of all or a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenance devices (e.g., individual adjustable digital-units).

1.43 "Telephone Services" shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intralata and interlata voice telephone and data transmission.

1.44 "Tract" or "Parcel" shall mean and refer to and be designated as Tracts or Parcels in the plat of the Real Property which is now of record in Lee County, Florida, or may be recorded in the future, and Tracts or Parcels shall be treated as Lots for the purposes of this Declaration, unless the context requires otherwise.

1.45 "Turnover Date" shall mean and refer to the date upon the Declarant's control of the Board of Directors of the Association terminates and control is turned over to a Board of Directors selected by the Lot Owner(s).

1.46 "Unit" or "Dwelling Unit" shall mean and refer to a structure situated upon a Lot designed and intended for use and occupancy by a single family.

1.47 "Unit Owner(s)" or "Lot Owner(s)" or "Incomplete Lot Owner(s)" shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot or Unit within the Real Property.

**ARTICLE 2**  
**OWNER'S PROPERTY RIGHTS; EASEMENTS**

2.1 "Access". Declarant reserves unto itself, including its designees from time to time, the Association and all Lot Owners, including their respective tenants, guests and invitees, perpetual, non-exclusive easements of ingress and egress over and across any private streets, sidewalks and access ways constructed on the Common Properties from time to time.

2.2 "Association". Non-exclusive easements are hereby granted in favor of the Association and throughout the Real Property as may reasonably be necessary for the Association to perform its services required and authorized hereunder, so long as one shall unreasonably interfere with the use of any Lot. Furthermore, an easement is hereby granted in favor of the Association, including its agents, for purposes of:

- (i) maintaining landscaped areas within the front and rear yards of each Lot;
- (ii) irrigating any and all portions of each Lot pursuant to a common scheme which shall be determined by the Association from time to time; or
- (iii) maintaining any Party Roofs or Party Walls. All easement rights granted hereunder to the Association shall be deemed to have been similarly granted in favor of the Homeowners' Association if any.

2.3 "Declarant". Declarant hereby reserves such non-exclusive easements as are necessary (in Declarant's reasonable discretion) in order to exercise its rights hereunder and otherwise construct, develop and market the Real Property. The Real Property shall be subject to any and all such easements 'deemed necessary' by Declarant. Any easements rights created by this Declaration, generally or specified, in favor of Declarant may be assigned by Declarant, partially or otherwise, without the consent or joinder of the Association or the Lot Owner(s).

2.4 "Delegation of Use". Any Lot Owner(s) may delegate his/her right of enjoyment to the Common Properties and facilities to the members of the Lot Owner's Family, in accordance with the Bylaws. Any Lot Owner(s) may so delegate such rights to the Lot Owner(s)'s tenant(s) who reside on the respective Lot, subject to the Rules and other reasonable regulations imposed by the Board.

2.5 "Execution". If and to the extent that the creation of any of the easements described in this Article II required the joinder of Lot Owners, then Declarant may, by its duly authorized officers, as the agent or the attorney-in-fact for the Lot Owners, execute, acknowledge and deliver such instruments required. The Lot Owner(s), by the acceptance of deeds to their Lots, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal agent or attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such instrument executed pursuant to this Article II shall recite that it is made pursuant to Article II of this Declaration.

2.6 "Lot Line Encroachments". Certain dwellings and other Improvements constructed on Lots may be situated so that a portion thereof, including, without limitation, any

exterior wall of such dwelling, roof overhangs, gutters, or fences, may be located upon, immediately adjacent to, overhang, or encroach upon the boundary line(as well as that portion of the adjoining Lot or Common Properties' subject to such encroachment) between the Lot upon which said dwelling is located and either an adjoining Lot or a portion of the Common Properties. In all such cases, said adjoining Lot or portion of the Common Properties shall be subject to an easement and appurtenant rights, including the right of ingress and egress, in favor of the encroaching Lot and its respective Lot Owner(s), which easement and appurtenant rights shall be for the purpose of (a) permitting the existence of the encroachment, and (b) allowing ingress and egress for the performance of proper and normal maintenance to the encroaching improving, including meter reading. All of such improvements which have been constructed by Declarant and approved by applicable building authorities are deemed to have been reasonably constructed, notwithstanding any such encroachment. In no instance shall the exercise of any such easement and appurtenant rights created pursuant to this Section 2.06 unreasonably interfere with the use of the Lot subject to the same.

2.7 "Owners' Easements of Enjoyment". Every Lot owner(s) shall have a non-exclusive common right and easement of ingress and egress and of enjoyment in, to and over, and use of, the Common Properties, which shall be appurtenant to and shall pass with title to every Lot, subject to the following conditions:

A. The right of the Association to reasonably limit the number of guest or invitees of Lot Owner(s) using the Common Properties at any one time.

B. The right of the Association to establish Rules pertaining to the use of the Common Properties, including, but not limited to, the right and obligation of the Association to enforce all parking and other restrictions within the Common Properties.

C. The right of the Association, in accordance with the Articles, Bylaws and this Declaration, with the vote or written assent of Members entitled to cast two thirds (2/3rds) of the votes of Members in the Association, to borrow money for the purpose of improving the Common Properties, in aid thereof, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinate to the use rights of the Lot Owner(s).

D. The right of the Association to suspend the right of a Lot Owner(s) to use the Common Properties (except for purposes of ingress and egress) for any Lot Owner(s), except Declarant, for: (i) any period during which any Assessment against an Owner's Lot remains unpaid and delinquent; and (ii) a period not to exceed thirty (30) days for any other single infraction of this Declaration or the Rules of the Association, provided that any suspension of such rights to use the Common Properties based upon infractions other than non-payment of Assessments shall be made only by the Board after Notice and Hearing as provided in the Bylaws.

E. The right of the Association or Declarant to dedicate, grant, release, convey, alienate or transfer all or any part of the Common Properties to any public agency, authority, utility or private party or entity.

F. The right of Declarant (and its sales agents, customers, and representatives) to the non-exclusive use of the Common Properties and the facilities thereof, without charge, including ingress and egress, as necessary, for purposes of sales, marketing, advertising, display, signs, access, construction, development and any other activities or purposes.

G. The right of the Association or Declarant to construct, replace or refinish any Improvement or portion thereof upon the Common Properties, in accordance with the provisions of this Declaration.

H. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Common Property.

I. The rights of the Homeowners' Association, if any, and its members as set forth in the Homeowners' Association Covenants and this Declaration.

J. The right of the Association or Declarant to grant such other easements over the Common Properties as Declarant deems appropriate, which easements shall be joined in or similarly granted by the Association as requested by Declarant or sought by the Association.

Anything to the contrary herein notwithstanding, no action authorized in the lettered paragraphs above shall be taken which in any fashion impairs or limits Declarant's rights hereunder without the prior written consent of Declarant, as long as a Declarant owns any portion of the Residential Property.

2.8 "Services". Declarant hereby grants to courier or delivery services, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by Declarant to service the Real Property, and to such other persons as Declarant from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Common Properties for the purposes of performing their authorized services and investigation.

2.9 "Survival". Any and all easements, licenses, or other rights granted or reserved pursuant to this Article II shall survive any termination of this Declaration.

2.10 "Title to the Common Properties". After all improvements anticipated to be constructed in the Residential Property have been constructed and conveyed to purchasers, or sooner at the option of Declarant, Declarant shall convey to the Association by quit-claim deed the fee simple title to the Common Properties and the Association, if any, and shall be bound to accept said conveyance without the joinder to such deed. Declarant, and thereafter the Association, shall hold title to the Common Properties for the benefit of those persons entitled to use the same under the provisions hereof. Declarant may mortgage the Common Properties to finance the original development and construction thereof, provided that the Common Properties shall be free and clear of all mortgages at the time of conveyance to the Association, and the Association shall not be personally liable for payment of the debt secured by such mortgage(s).

2.11 "Utilities". The Real Property shall be subject to such non-exclusive easements as may be determined in the sole discretion of declarant for utilities, including, but not limited to,

water, sewer, telephone, electric and cable television, as may be reasonably required to properly and adequately serve the Property or other portions of the Project as it exists from time to time. Declarant reserves the right to locate water, sewer, electric, and other utility meters serving any buildings or other facilities in one common location on one Lot, and in that event an easement shall exist for the common meters so constructed, and any wires, pipes, or other facilities connecting such meters to the Lot(s), and for the maintenance and repair of the foregoing and for the reading of such meters. Each of said easements, whether now in existence or hereafter created, shall constitute covenants running with the Real Property and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with the proper and intended use thereof.

2.12 "Waiver of Use". No Lot Owner(s) may be exempt from personal liability for Assessments duly levied by the Association, or cause a release of the Lot owned by the Lot Owner(s) from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties or by abandonment of the Lot Owner(s).

### **ARTICLE 3** **LOTS, UNITS, COMMON PROPERTY, COVENANTS,** **AND RULES AND REGULATIONS**

The Real Property shall be held, used, and enjoyed subject to all of the terms, limitations, and restrictions of this Declaration, provided however, that these restrictions shall be further amplified and/or limited by the rules. Declarant is exempt from all these articles, including any rules applicable thereto. Each of the Use Restrictions stated hereinafter may be regulated, enforced, or waived by the Association through its Board or its designees. The Use Restrictions are as follows:

3.1 ACCESS CONTROL. The Board shall have the right to determine, from time to time, the means of any electronic or manned access control for the Property and the Declarant is under no obligations and has not covenanted hereby to provide any such security devices or security personnel for the Property.

3.2 ANTENNAS. No radio or television installation may be permitted on a Lot which interferes with the television or radio reception of another Lot. No exterior antenna, antenna poles, antenna masts, electronic devices, aerial, satellite dish or other apparatus for the transmission of television, radio or other signals of any kind shall be place, allowed or permitted upon any portion of a Lot. Notwithstanding, a satellite dish, not exceeding eighteen (18") inches in diameter, may be permitted outside and in the rear of the Lot, provided that it is not visible from the front of the property, and so long as reception is not impaired, and provided that the prior written consent of the Board of Directors is obtained. The Board of Directors shall maintain the right to require the removal of any satellite dish not meeting the requirements set forth herein. All antennas not covered by the Federal Communications Commission ("FCC") rules are prohibited. Installation, maintenance, and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

3.3 ASSUMPTION OF RISK. Without limiting any other provision herein, each person within any portion of Copper Oaks accepts and assumes all risk and responsibility for

noise, liability, injury, or damage connected with use or occupation of any portion of Copper Oaks (e.g., the Common Areas and Facilities) including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, view restrictions caused by maturation of trees and shrubbery, (d)-reduction in privacy caused by the removal or pruning of shrubbery or trees within Copper Oaks and (e) design of any portion of Copper Oaks. Each person entering onto any portion of Copper Oaks also expressly indemnifies and agrees to hold harmless Declarant and Association and all employees, directors, representatives, officers, agents, and partners of the f-foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas and/or Facilities, including attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas and/or Facilities, including without limitation, all water bodies, lakes, pools or areas adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILD LIFE SUCH AS ALLIGATORS, DOGS, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. DECLARANT, BUILDERS AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUEST AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

3.4 AUTOMOBILES, COMMERCIAL VEHICLES AND BOATS. Except as provided herein, no commercial truck, commercial van, bus, recreational vehicle, mobile home, motor home, camper, trailer, or similar vehicle may be kept overnight on the Property (the "Prohibited Vehicles") unless totally enclosed in a garage and not visible from the outside. Prohibited vehicles include; but are not limited to, those (i). bearing any advertising, logo, or other signs or having printed on the sides, front, or rear of same reference to any commercial undertaking or enterprise, or (ii) containing tool racks, saddle racks, or other elements of a commercial nature. No vehicles shall be repaired within any Real Property, except on an emergency basis. No vehicle shall be left within the Property for more than one business day if not capable of self-propulsion. All vehicles, including motorcycles, mopeds, etc., shall be equipped with effective sound muffling devices. Except as provided below, no boat or watercraft shall be stored overnight in the Property, unless totally enclosed in a garage and not visible from the outside. The Association shall have the authority to establish rules and guidelines regarding prohibited vehicles.

3.5 BUILDING, LANDSCAPING AND OTHER IMPROVEMENTS AND ZONING REGULATIONS. All buildings, improvements, and landscaping, where applicable, shall comply with the applicable minimum standards and zoning laws in force at the applicable time, subject to obtaining variances to such standards or zoning. The foregoing also applies to the location of all buildings and improvements, including landscaping of any type; provided, however, prior to any building or improvement being constructed or landscape installed, the written approval of the Association, through the ACC, shall be first obtained, except as hereinafter provided' as to the Declarant. The term "improvements" as used in this Declaration and Exhibits attached hereto shall mean a building(s), bulkhead, fences, walls, hedges, storage sheds, patios, patio covers, patio awnings, or satellite dishes. It is the intention of the Declarant to empower the Association, through the ACC, with the authority to control not only the initial

unit and improvements, landscaping, walls and fences to be constructed on a Lot, but also to control any additional changes or modifications of the original unit and improvements on any Lot, except all units or buildings constructed by the Declarant as well as landscaping, walls and fences installed or constructed by the Declarant shall be deemed approved by the ACC. This provision shall be interpreted in its broadest sense, it being the intention of the Declarant to permit a Lot Owner(s) or Unit Owner(s) to make alterations, changes and modifications within the interior of the original Unit, without requiring consent or approval of the Homeowners' Association or the ACC. The Association shall have the power to enact rules and regulations to more specifically define the provisions of this paragraph.

3.6 BUSINESS USE. No trade or business may be conducted in or from any Lot, except that a Lot Owner(s) or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements and other applicable governmental regulations for the Property; (c) the business activity does not involve persons 'coming on to the Property who do not reside in the Property, or door-to-door solicitation of residents within the Property; and (d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous' or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The term "business" and "trade" as used in this Section III shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an on-going basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

3.7 CLOTHES LINES. No outdoor clothes drying lines or related facilities shall be allowed within any portion of the Residential Property.

3.8 COMMON PROPERTIES. There shall be no alteration, addition, or improvement of the, Common Properties except as provided in this Declaration, nor shall any person use the Common Properties or any part thereof in any manner contrary to or not in accordance with the rules and regulations pertaining thereto as from time to time may be promulgated by the Homeowners' Association or approved and authorized in writing by the Homeowners' Association. Notwithstanding the foregoing, the Declarant shall have the right to make such improvements to the Common Properties as it determines in its sole discretion as hereinafter provided in this Declaration.

3.9 CONSTRUCTION OF IMPROVEMENTS. During construction of any permitted improvements on a Lot, the Lot and all other portions of the Property shall be kept in a clean, neat and orderly condition at all times. Any debris, trash or mud resulting from the construction shall be promptly removed or remedied, as appropriate, from the Lot and the Property. After commencement of construction of any permitted improvements on any Lot, the work thereon shall be diligently pursued and completed so that the improvements shall not remain in a partly finished condition for any period of time longer than which is absolutely required.

3.10 COOKING. No cooking or barbecuing shall be permitted in any front yards or Common Areas, nor shall any goods or beverages be consumed in any Common Areas.

3.11 EASEMENTS. Easements for vehicular and pedestrian ingress and egress, access, control, installation, and maintenance of utilities and drainage facilities, shall be reserved as shown on the plat of the Real Property, and such easements shall also be deemed to be granted to the Homeowners' Association and its members and their families, guests, servants, invitees, and employees.

3.12 EMERGENCIES. In case of any emergency originating in or threatening any Lot, the Board or any individual authorized by it shall have the immediate right, but not the obligation, to enter any Lot for the purpose of remedying or abating the cause of such emergency, at the Board's discretion, notwithstanding that the Owner of such Lot is present at the time of such emergency.

3.13 EXCEPTIONS. All of the rules set forth in Section III hereof shall not apply with respect to customary and usual activities of Declarant in connection with its construction, development and marketing of the Property. Without limitation, this shall include:

- (a) The construction of buildings, or any other Improvements within the Property;
- (b) The sale of residences by Declarant or any other person or entity initially constructing residences within any portion of the Property.

3.14 EXTERIOR COLOR PLAN. The ACC shall have final approval of all exterior color plans. The repainting and upkeep of the exterior of the dwelling permitted only in color schemes and combinations approved by the ACC. Prior to repainting the exterior of any dwelling, Lot Owner(s) must submit to the ACC a sample of the proposed color scheme or plan, including base and trim colors. Within fifteen (15) days of the submission of said color sample by the Lot Owner(s), the ACC shall either approve or disapprove the color scheme or combination in writing. The failure of the ACC to so approve or disapprove the color scheme or plan within said fifteen (15) days shall be deemed an approval of the color scheme or plan submitted by the Lot Owner(s).

3.15 EXTERIOR OF RESIDENCE. Each Lot Owner(s) shall maintain all structures (including residences) located on a Lot in a neat, orderly and attractive manner and consistent with the general appearance of the development. The minimum (though not sole) standard for the foregoing shall be consistent with the general appearance of the development as originally constructed and approved by the Declarant, or by any other builders who build in accordance with the plans approved by the Declarant (taking into account, however, normal weathering and fading of exterior finishes, but not to the point of unsightliness, in the sole judgment of the ACC). Each Lot Owner(s) shall repaint or restrain, as required, the exterior portion of any unit Owner, in a color scheme or combination approved by the ACC, (as further provided in the Rules and Regulations), as often as is necessary to comply with the foregoing standards. Each Lot Owner(s) shall be responsible for maintaining in good state of repair and safe conditions the brick patterned concrete pavers of the Lot Owner's driveway and the roof tiles of each dwelling,



and such repairs and replacements shall be consistent with the quality, size, color and style initially used on the unit, as approved by the ACC.

3.16 FENCES. Fences, other than any provided by Declarant or permitted by the ACC, shall not be erected, removed or maintained upon the Lot. For all town home villas, backyard fences may be allowed, with the prior approval of the ACC. The approved fences must be a see-through style, consisting of decorative bronze aluminum material, no taller than four feet and located within the owner's lot line. Town home villas owners will be required to install five foot gates along each side of the fence to allow for maintenance of the property. All fences, if permitted, must be kept in good repair, including periodic painting and removal of damaged portions thereof. If fences are permitted, the ACC may, in its discretion, require a parallel shrubbery to camouflage the presence of such fence. Pertaining to the lake, fences must be of a see-through style consisting of bronze aluminum material, no taller than four feet. However, the ACC may, in its discretion, permit other types of fencing other than as described herein from time to time. No fences may be erected on any lake Lots which encroach upon a lake maintenance easement shown on the Plat or otherwise dedicated without obtaining a permit from the Homeowner's Association and all necessary governmental permits and approvals, as well as approval by the ACC. See additional covenants and restrictions set forth in Paragraph 3.26(f) of the Declaration. Furthermore, no fence, wall or other structure shall be erected in any front yard.

In addition, any Lot Owner(s) installing a fence along the boundary line of a Lot shall be responsible for the maintenance of both sides of such fence and to the extent necessary, and shall have and is hereby granted an easement over the adjoining property for such property. Furthermore, no chain link fence shall be permitted on any Lot or portion thereof, unless installed by Declarant or its affiliates or other builders during construction periods, or as otherwise approved by the ACC, on all rear fences installed, locks are not permitted. Notwithstanding anything set forth herein to the contrary, all fences within the Community shall be permitted and installed in accordance with Section 12-284 of the Land Development Code of Lee County.

3.17 GARAGES. No Lot Owner(s) shall cause any garage on his/her Lot to be permanently enclosed, converted, or otherwise remodeled to allow for occupancy of any occupants of the Lot.

3.18 GARBAGE AND REFUSE DISPOSAL. No trash or garbage cans, supplies, milk bottles, or other articles shall be placed on front patios or yards, and the ACC shall have the right to prescribe a "standard" trash or garbage container to be purchased by and used by each Lot Owner(s). To provide a healthy environment and in order to eliminate odors and vermin, all trash and garbage must be placed in plastic bags and deposited only in the areas and on the days designated by the ACC. The Common Properties shall be kept free and clear of rubbish, debris, and other unsightly material.

3.19 HOLIDAY LIGHTS AND OTHER LIGHTING. Holiday lighting and decorations shall be permitted to be placed upon the exterior portion of the Home and upon the Lot in the manner permitted under hereunder commencing on Thanksgiving and shall be removed not later than January 15<sup>th</sup> of the following year. The ACC may establish standards for

holiday lights. The ACC may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to adjacent Home.)

3.20 HURRICANE SHUTTERS. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved by the ACC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season. Any such approved hurricane shutters may be installed upon forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed within seventy two (72) hours after the end of a hurricane watch or warning or as the ACC may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event.

3.21 INSURANCE. Nothing shall be done or permitted by any Lot Owner(s) which would increase the rate for any insurance maintained by the Association, or cause such insurance to be canceled or not renewed by the insurer.

3.22 IRRIGATION SYSTEMS. Due to water quality, irrigation systems may cause staining on Homes, other structures or paved areas. It is each Lot Owner's responsibility to treat and remove any such staining. Each Home shall be equipped with irrigation lines, the maintenance of which shall be the responsibility of the Homeowners' Association. No Lot Owner(s) whose Home adjoins a waterway or Lake may utilize the waterway or Lake to irrigate unless so provided by Declarant as part of original construction, subject to applicable permitting. Association may use waterways and lakes to irrigate areas subject to applicable permitting. **BY ACCEPTANCE OF A DEED TO A HOME OR PARCEL, EACH HOMEOWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL LAKES AND WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DECLARANT OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME.** Declarant, and/or Association shall have the right to use one or more pumps to remove water from lakes and water bodies for irrigation purposes at all times, subject to applicable permitting. Declarant and may utilize a computerized loop system to irrigate the Common Areas and Homes. Any computerized loop irrigation system that is not specifically the maintenance obligation of an Owner, shall be the maintenance obligation of the Association and shall be deemed part of the Common Areas.

### 3.23 LAKE.

(i) The Lake shall always be kept and maintained as a Lake for water retention, drainage, and water management purposes in compliance with all applicable South Florida Water Management District, and other applicable governmental requirements. The Lake is owned by the Homeowners' Association. All maintenance and administration of the lake, except as stated in Paragraph 6.01(h) shall be the responsibility of the Homeowners' Association.

(ii) Lot Owner(s) of a property adjacent to Lake Lots shall be responsible for maintaining the lake bank slope within the limits of the Copper Oaks plat on property Lot Owner(s) property and on the adjacent lake parcel from the property owner's property line to the lake deep cut line. Any erosion or change in grade of the lake bank slope from design grade

within the limits of the Lot Owner(s) property and between the property line and lake deep cut line shall be repaired/corrected by the Homeowners' Association.

(iii) Water levels in the Lake may rise and fall significantly due to among other things, fluctuations in ground water elevations within the surrounding areas. Accordingly, the Homeowners' Association has no control over such water levels and or ground water elevations. Each Lot Owner(s) by acceptance of title to his/her Lot hereby releases the Homeowners' Association and South Florida Water Management from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including without limitation, attorney's fees and court costs at trial and at all appellate levels), relating to, rising out of and/or resulting from water levels in the Lake.

(iv) The Homeowners' Association nor the South Florida Water Management shall not be obligated to provide supervisory personnel, including but not limited to life guards for the Lake. Any individual using the Lake parcel shall do so at his or her own risk and hereby holds the Homeowners' Association and South Florida Water Management harmless from and against any claim or loss arising from such use.

(v) Each Lot Owner(s) by the acceptance of title to his/her Lot, acknowledges that the Lake is deep and dangerous. Neither the Declarant, Homeowners' Association, the South Florida Water Management, or any of their officers, directors, employees, management agents, contractors or subcontractors shall be liable or responsible for maintaining or assuring the safety, water quality or water level of the Lake. Neither the Homeowners' Association, Declarant, the South Florida Water Management, or any of their officers, directors, employees, management agents, contractor or subcontractors shall be liable for any property damage, personal injury or death incurring in, or otherwise related to the Lake parcel or any other water body and all persons using same are doing so at their own risk. All Lot Owner(s) and users of any portion of Copper Oaks shall be deemed, by virtue of their acceptance of the deed to or use of, such property, to have agreed to release the Homeowners' Association, Declarant, the South Florida Water Management, their officers, directors, employees, management agents, contractors or subcontractors from all claims for any and all such changes in the quality and level of the water in the Lake parcel or any other water body. All persons are hereby notified that from time to time, wildlife may habitate or enter the Lake parcel and other water bodies within or nearby Copper Oaks and may pose a threat to persons, pets, and property, but that the Homeowners' Association and the South Florida Water Management, their officers, directors, employees, management agents, contractor or subcontractors are under no duty to protect against, and do not in any manner warrant or insure against, any death, injury or damage caused by such wildlife.

(vi) **BY ACCEPTANCE OF A DEED TO A HOME OR LOT, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DECLARANT OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. AT TIMES, WATER LEVELS MAY BE NONEXISTENT.**

3.24 LAKE ACTIVITIES. All Lot Owner(s) agree that (a) bodies of water located within the Community may not be used for boating, jet skiing, or any other type of water sports.

All Lot Owner(s) may be subject to further restrictions with respect to any water of body within the community as set forth by the rules and regulations established by the Association.

3.25 LAKE BANK SLOPES. Neither the Homeowners' Association or any Lot Owner(s) shall alter the slopes, contours, or cross sections of the lake or lake bank except upon the written approval from the Homeowners' Association or any other applicable governmental authorities. In connection with the Homeowners' Association's obligation for maintaining the lake pursuant to this Declaration, the Lot Owner shall be responsible for maintaining the portion of the lake bank slope in the lake to deep cut line.

### 3.26 LAKE LOTS.

- (a) No planting, fencing or other improvements or additions to the landscape area or grassed area surrounding the Lake and within the Lake maintenance easements surrounding the Lake is permitted.
- (b) No installation of sand or other materials intended to simulate a beach shall be permitted along the Lake banks or within the Lake maintenance easement or rear yards of Lake Lots.
- (c) Swimming in the Lake is prohibited.
- (d) The Lake maintenance easement is for the use of the Homeowners' Association, the South Florida Water Management, and any other governmental agency for access to the Lake for maintenance of the Lake and other proper purposes.
- (e) The boat ramp easement in favor of the Homeowners' Association is for the purpose of accessing the Lake to perform Lake maintenance and to perform stormwater management and drainage facilities maintenance. Lot Owner(s) their guests, invitees, tenants, and other persons are specifically prohibited from utilizing the boat ramp for accessing the Lake for any reason. Nothing shall be planted in the Boat Ramp Easement other than sod.
- (f) Fences on Lake Lot. The only fence types allowed on the back and sides of a Lake Lot shall be bronze aluminum rail picket fence, with the rails no wider than 1 inch and no closer together than four (4) inches on center and having a height of no greater than forty eight (48) inches, unless otherwise required by applicable governmental laws, statutes, ordinances, rules or regulations. Notwithstanding anything to the contrary of this Declaration, such aluminum rail picket fence is the only type of fence which is approved for installation on the back or sides of a Lake Lot, which would not impede the view of any adjacent home.

3.27 LEASING OF A UNIT. Units shall not be leased more than twice per year. Units shall not be leased without the prior written approval of the Association, subject to leasing

guidelines established by the ACC from time to time. All leases shall provide that the Association shall have the right to terminate the respective lease in the event of a default by an Lot Owner's tenant in observing any of the provisions of this Declaration, and applicable Rules duly adopted by the Board from time to time. Notwithstanding the lease of a Lot Owner's Unit or liabilities and obligations of the Lot Owner(s) created hereunder, including the Rules, shall continue unabated.

3.28 LIVESTOCK AND POULTRY. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Real Property.

3.29 LOT MAINTENANCE. All Lots and Units shall be maintained in good order and condition. The general condition of the other units and lots located within the Association property shall be a determining factor. The Association shall look to the exterior appearance of the Lot as well as the maintenance of the lawn and surrounding landscaping in determining that the Unit or Lot are in general conformance with other Units or Lots located within the Association property. The Association shall have the power to enact rules and regulations or more specifically define, limit or expand the provisions of this paragraph.

3.30 MAILBOXES. All community designated mailboxes shall be installed in accordance with the approved mailboxes of the community, as required by the ACC.

3.31 NO INTERFERENCE WITH CONSTRUCTION. No Lot Owner(s) shall interfere with or impede any of the Declarant's construction and marketing activities within the Property so long as Declarant shall be performing same.

3.32 NO TEMPORARY BUILDINGS. No out-buildings, portable buildings, temporary or accessory buildings or structures, storage buildings shall be erected, constructed or located upon any Lot for storage or otherwise, without the prior written consent of the ACC. No additions or alterations to any structure shall be allowed without the prior written consent of the ACC.

3.33 NUISANCES. No Lot Owner(s) shall make or permit (i) any loud and/or disturbing noises of a continuing nature, (ii) any noxious or offensive activity, (iii) any emanation of unpleasant odors, or (iv) any other nuisance or annoyance by himself, his family, employees, agents, visitors, and licensees, nor do or permit anything by such persons that will interfere with the reasonable rights, comforts, or conveniences of any Lot Owner(s). Any ultra-hazardous activity permitted or undertaken by any Lot Owner(s) within any portion of the Property shall be a nuisance, subject to extra protection and/or assurances of safety provided to the Board.

3.34 OFF-STREET PARKING. No overnight parking on the streets, nor encroaching on sidewalks or swale areas, shall be permitted, except as may be amended or consented to in writing by the Board. No vehicles, boats, trailers or motorized bikes shall be allowed to park on any front, side or rear yard at any time. All vehicles and motorized bicycles must be parked in the driveway or garage of each home. The Association shall maintain a contract with a towing company for towing services if a violation occurs. The Association reserves the right at its

discretion to tow away any vehicle, at the owner's expense, if improperly parked within the development.

3.35 OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, or mining operations of any kind shall be permitted upon any portion of the Real Property, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any portion of the Real Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any portion of the Real Property.

3.36 PETS AND ANIMALS. Only common household pets belonging to Lot Owner(s) (or those occupying Lots through the authority of Owners), and which pets have been approved by the Board, will be allowed within the Property, subject to the following further restrictions: (1) No more than three (3) common household pets may be kept on a Lot, and each pet cannot exceed seventy (70) pounds; (2) No pet shall be permitted outside a Dwelling Unit except on a leash and at all times under the control of its Lot Owner(s); (3) No other animals, livestock or poultry of any kind shall be kept on any portion of the Property; (4) No pets shall be allowed to constitute a breeding or for any commercial purposes whatsoever; (5) No pets shall be allowed to constitute a nuisance; (6) Each Lot Owner(s) shall promptly remove and dispose of waste matter deposited by its pet through a proper sewage receptacle; (7) The Board shall have the right to promulgate Rules further restricting the keeping of pets.

3.37 PEST CONTROL. All Lot Owner(s) shall be responsible for the pest control of their home.

3.38 POOLS. No aboveground pools shall be permitted. All in-ground pools, hot tubs, spas and appurtenances installed shall require the prior written approval of the ACC as set forth in this Declaration. The design must incorporate, at a minimum, the following: (i) the composition of the material must be thoroughly tested and accepted by the industry for such construction; (ii) any swimming pool constructed on any Lot shall have an elevation at the top of the pool of not over two (2) feet above the natural grade unless approved by the ACC; (iii) pool cages and screens must be of a design, bronze color and material approved by the ACC and shall be no higher than twelve (12) feet unless otherwise approved by the ACC; and (iv) pool screening shall in no event be higher than the roof line of the Home. Pool screening shall not extend beyond the sides of the Home without express approval by the ACC. All pools shall be adequately maintained and chlorinated (or cleaned with similar treatment). Unless installed by Declarant, no diving boards, slides, or platforms shall be permitted without ACC approval.

3.39 REMOVAL OF SOIL AND ADDITIONAL LANDSCAPING. Without the prior consent of the ACC, no Lot Owner(s) shall remove sod, topsoil, trees or shrubbery from any portion of the Community, change the level of the land within the Community, or plant landscaping which results in any permanent change in the flow and drainage of surface water within the Community. Lot Owner(s) may not place additional plants, shrubs, or trees within any portion of the Community without the prior approval of the ACC. Lot Owner(s) shall be responsible for maintaining landscaped areas properly mulched.

3.40 RIGHTS OF DECLARANT. Notwithstanding any provisions in this Declaration, to the contrary, the Declarant shall have the right with respect to the development of the Real

Property to construct buildings and units and other improvements, including landscaping on the Real Property described in Exhibit A. The construction of buildings, units and improvements shall be of such type, nature, design, size, shape, height, materials, and location, including the landscaping, which term shall be defined in its broadest sense as including grass, hedges, vines, trees and the like, as Declarant determines in its sole discretion without obtaining consent and approval of the Homeowners' Association or its members, or the ACC; provided, however, that same complies with the applicable building codes and zoning laws in force at that time, subject to obtaining variance to such codes and zoning laws. The Declarant shall be entitled to place on a Lot or Lots or tract(s) temporary construction or sales trailers or other temporary facilities that may be required by the Declarant during the construction and sale of units and other improvements.

3.41 ROOFS. All roofs must conform in color and material with the original scheme of Copper Oaks and must be approved by the ACC, except that all roof tiles previously added by the Declarant may be installed with prior approval of the Board of Directors.

3.42 RULES AND REGULATIONS. The Board of Directors of the Homeowners' Association may from time to time adopt or amend previously adopted Rules and Regulations governing the details of the operation, use, maintenance, management and control of the Common Property.

3.43 SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any Lot unless such system is designed, located, and constructed in accordance with the requirements, standards, and recommendations of all applicable governmental authorities. Approval of such system as installed shall be obtained from all governmental authorities.

3.44 SHORELINES. No Lot shall be increased in size by filling in the waters, if any, which it abuts. See Paragraphs 3.23, 3.24, 3.25, and 3.26 for additional covenants and restrictions.

3.45 SIGNS. No sign, advertisement, notice or other lettering (except street numbers in front of Lots or names and addresses on mail boxes) shall be exhibited, displayed, inscribed, painted or affixed in, on or upon any part of the Property without the written consent of the Board. The Board shall have the right to prohibit any signs offering property for sale or rent, or limit the size of such sign. No Lot Owner(s) shall cause any sign, advertisement, notice or other lettering to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, patios, windows or roof, unless approved by the Board.

3.46 SOLICITATION. There shall be no solicitation by any person anywhere in the Property for any cause, charity, or any purpose whatsoever, unless specifically authorized by the Board.

3.47 SPORTS EQUIPMENT. No recreational, playground or sports equipment shall be installed or placed within or about any portion of the Community without prior written consent of the ACC. No basketball backboards, skateboard ramps, or play structures will be permitted without written approval by the ACC. Such approved equipment shall be located at the rear of the Homes or on the inside of corner Homes within the setback lines. Tree houses or platforms

of a similar nature shall not be constructed on any part of a Home. No basketball hoops shall be attached to a Home and any portable basketball hoops must be stored inside the Home and/or garage.

3.48 TEMPORARY STRUCTURES. No structure of a temporary character, trailer, basement, tent, shack, barn, or other outbuilding shall be used on the Real Property at any time either temporarily or permanently, provided, however, that construction sheds or trailers and temporary sales offices or sales trailers used to facilitate the construction and sales of portions of the Real Property may be located on the Real Property during active construction upon the Real Property by Declarant.

3.49 WATER SUPPLY. No individual water supply system shall be permitted on any Lot, except for irrigation purposes only, as long as the water obtained therefrom will not stain walls, landscape or other improvements on a Lot. Lots abutting canals, waterways, or ponds may use such canals, waterways or ponds for a water supply for irrigation purposes only, as long as the water obtained therefrom will not stain walls, landscape or other improvements on a Lot, and provided that the Lot Owner(s) or Unit Owner(s) obtains the written approval of the Homeowners' Association as to the use of such canals, waterways, or ponds as water supply, as well as the necessary approvals from all applicable governmental agencies permits will be required from South Florida Water Management for any irrigation lines which cross easements dedicated to the South Florida Water Management or within the Lake parcel.

3.50 WINDOWS AND GLASS DOORS. No Lot Owner(s) or Unit Owner(s) shall be permitted to place aluminum foil upon any window or glass doors in or outside of his/her Unit.

3.51 DEED RESTRICTIONS. Unit Owners acknowledge and accept that Declarant, as a developer and builder of the Community, has an interest in ensuring that said Units, and the Community in which they are built, including the Property and Community which the Property is a part (such community being referred to herein as the "Community") are purchased and occupied only by persons who will actually occupy them as a principal or secondary residences or will rent them in accordance with use restrictions and regulations relating to such rentals, to obtain a stabilized community of owner-occupied and/or tenant occupied (pursuant to use restrictions) homes, and to mitigate a shortage of available homes for permanent residents. As such, Unit Owners have represented to Declarant that Unit Owners intend to and will occupy the Property as Unit Owners' principal or secondary residence or will rent the Property in accordance with use restrictions and regulations relating to such rentals for a period of at least eighteen (18) months after Unit Owner's acquisition of the Property (the "Occupancy Period"). Declarant and Unit Owner have entered into a No Investor Addendum (the "Agreement") pursuant to which Unit Owner has agreed to occupy the Property as provided herein, and Unit Owner has agreed not to sell the Property for the duration of the Occupancy Period. This Covenant is to put third parties on notice of such commitments by Unit Owner, and Declarant's rights upon a breach of such commitments by Unit Owner, as provided in the Agreement, and nothing contained in this Covenant shall, or shall be deemed to, modify or amend the Agreement in any respect. In the event of any conflict between the provisions of the Agreement and the provisions of this Covenant, the provisions of the Agreement shall prevail. Notwithstanding the foregoing, this Covenant includes certain mortgagee protections which shall be in addition to, and shall not be superseded by the mortgagee protections in the Agreement.



(a) Occupancy Covenants. Unit Owner, on behalf of itself and its successors and assigns, will covenant to and for the benefit of Declarant that, during the Occupancy Period: (a) Unit Owner will occupy the Property as Unit Owner's principal or secondary residence after closing or will rent the Property in accordance with neighborhood specific rules and regulations relating to such rentals; and (b) Unit Owner shall not enter into any agreement for the sale or other transfer of the Property which would result in Unit Owner's failure to hold title thereto in fee simple for the duration of the Occupancy Period.

(b) Hardship Situations. Declarant recognizes that a transfer of the Property in certain circumstances would not be inconsistent with the intent of this Covenant. Declarant may, in its sole and absolute discretion, decide on a case-by-case basis, and consent to a transfer of the Property during the Occupancy Period.

(c) Automatic Termination of Deed Restriction. The covenants set forth above, and the restrictions on transfer of the Property set forth herein, shall automatically terminate and be of no further force and effect on the date which is eighteen (18) months after the date of recordation of any deed evidencing a sale from the Declarant to the initial Unit Owner.

(d) Remedies for Breach. If Unit Owner breaches, violates, fails to perform or satisfy any of the covenants set forth in the Agreement, Declarant, and Declarant's successors and assigns, may enforce the remedies set forth in the Agreement including, without limitation, the right and option to recover Liquidated Damages (as defined in the Agreement) upon a sale of the Property in violation of the Agreement and Unit Owner's obligation to pay the Liquidated Damages shall constitute a lien on the Property which shall run with the land and shall be binding on successors and assigns and may be foreclosed in the same manner as a mortgage or deed of trust.

In the event that Unit Owner breaches, violates, fails to perform or satisfy any of the covenants set forth in this Restrictive Covenant, Unit Owner agrees that the liquidated damages, under this provision shall be a sum equal to ten percent (10%) of the total sales price received by Unit Owner in the sale of the property to a subsequent Purchaser. In the event Unit Owner breaches this Agreement, Unit Owner acknowledges that such liquidated damages is a fair and reasonable remedy because it is not possible to determine at this time the actual damage Declarant might suffer, if any, should Unit Owner default under this Agreement.

(e) Attorneys Fees. In the event that a dispute, claim, lawsuit or any other action arises out of the interpretation or enforcement of these Covenants, or any part hereof, each party shall be responsible for its attorney's fees, paraprofessional fees and costs at trial and upon appeal. Venue for any such action shall be in the County where the Property is located. Any trial shall be by judge, and not by jury.

(f) No Duty to Enforce. Declarant makes no representation or warranty to Unit Owner that Declarant will impose these requirements on other Unit Owners in the Community and/or that, if Declarant has imposed or in the future imposes these requirements on another purchaser, that Unit Owner will enforce the requirements set forth in this Covenants against other Unit Owners in the Community. Unit Owner specifically acknowledges and agrees

that Declarant is not guaranteeing Unit Owner or assuring Purchaser in any way that the Community will now or in the future be occupied only or primarily by owner occupants and/or that there will not be purchasers in the Community who are purchasing homes in the Community for rentals or as an investment, with no intention of living in the home.

(g) Survival of Covenant on Transfer. Except as provided herein, Unit Owner's obligations, and Declarant's rights hereunder and under the Agreement shall survive any transfer of the Property by Purchaser.

(h) No Unreasonable Restraint. Unit Owner acknowledges that the purpose of these Covenants is (i) to comply with Declarant's intention to sell homes only to persons who will actually occupy them as a principal residence or will rent the homes in accordance with neighborhood specific rules and regulations relating to such rentals, (ii) to obtain a stabilized community of owner-occupied and/or tenant occupied (pursuant to Use Restrictions) homes, and (iii) to prevent an abundance of non owner occupied homes within the Community. Purchaser agrees that the provisions and restrictions set forth in these Covenants do not constitute an unreasonable restraint upon alienation of the Property, and that they may have agreed to those restrictions in accordance with the purchase agreements entered into by each Unit Owner.

(i) Survival; Severability. All of the covenants contained herein shall survive the delivery and recordation of the Deed conveying the Property from Declarant to Unit Owner. The provisions of these Covenants shall be independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision of these Covenants or the Agreement.

3.52 Maintenance Restrictions, Townhome Lots: Lots 27 through Lot 33 of Copper Oaks Townhomes, shall have a restricted covenant imposed thereon which shall prohibit any Unit Owner from trimming or cutting down any trees, in any manner or form, if located within the fifteen (15) foot buffer easement located along the back portions of said lots. The Unit Owners' obligations and rights under this amendment shall survive any transfer of any property by Unit Owner to any subsequent Unit Owner and shall be a covenant running with the land. The provisions of this covenant shall be independent and separate and a determination of any invalidity or partial invalidity of any of the terms set forth herein, shall not affect the validity or enforceability of any other provision of this Declaration. This provision shall be a covenant running with the land.

#### **ARTICLE 4** **COMMON PROPERTIES**

4.1 AMENDMENTS PRIOR TO THE TURNOVER DATE. Prior to the Turnover Date, Declarant shall have the right to amend this Declaration, as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Such amendments may include, without limitation, the creation of easements for telecommunications systems, utility, drainage, ingress and egress and roof overhangs over any portion of the Community; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Homes, and maintenance standards for landscaping. Declarant's right to amend under this provision is to be construed as broadly as possible. By

way of example, and not as a limitation, Declarant may create easements over Homes conveyed to Lot Owner(s) provided that such easements do not prohibit the use of such Homes as Residential Homes. In the event that the Association shall desire to amend this Declaration prior to the Turnover Date, the Association must first obtain Declarant's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Declarant may be adopted by the Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Declarant shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

4.2 CONVEYANCE. The Declarant by the recordation of the plat of the Real Property and by the dedications contained in such plat shall be deemed to have conveyed to the Homeowners' Association the Common Properties, if any, dedicated to the Homeowners' Association as set forth on such plat. The Declarant shall further convey such Common Properties to the Homeowners' Association by Quit Claim Deed. Additionally, the Declarant shall have the unconditional right to amend this Declaration of Covenants and Restrictions for the purposes of designating Common Properties in addition to those which may be designated on the plat of the Real Property now existing or which may be recorded in the future, and such designated Common Properties shall be conveyed by the Declarant to the Homeowners' Association by Quit Claim Deed. Amendments which are for the purpose of adding common properties need only be executed by the Declarant without the joinder or approval by the Homeowners' Association, not any mortgagee or member of the Homeowners' Association, and such Amendments shall be recorded in the Public Records of Lee County, Florida. The Declarant's right to designate and add Common Properties shall terminate at such time as the Declarant conveys ninety (90%) percent of the Real Property described in Exhibit "A" to this Declaration and ninety (90%) percent of all the Lots contained within the existing plat of the Real Property described in Exhibit "A" and conveys ninety (90%) percent of all units which may be constructed on all of such Lots, exclusive of conveyances to entities related to or affiliated with the Declarant or conveyances to other Declarants, or sooner elects to transfer control to the non-declarant members of the Homeowners' Association or three (3) years from the date of this Declaration, whichever shall last occur. The Declarant and the Homeowners' Association hereby covenant for themselves, their successors and assigns that said Common Properties shall be subject to and be bound by the terms of this Declaration and Exhibits hereto. The use and enjoyment of the Common Properties shall be subject to such rules and regulations relating thereto as are adopted or amended by the Homeowners' Association.

4.3 LIABILITY. Without limiting any other provisions herein, each person within any portion of the Community accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupation of any portion of the Community (e.g. the Common Areas) including, without limitation (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers, view restrictions caused by maturation of trees and shrubbery, (c) reduction in privacy caused by the removal or pruning of shrubbery or trees within the Community and (d) design of any portion of the Community. Each person entering onto any portion of the Community also expressly indemnifies and agrees to hold harmless Declarant, the Association, and all employees, directors, representatives, officers, agents, and partners of the foregoing, from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas and/or facilities, including attorney's fees,

paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas and/or facilities, including without limitation, any pool or area adjacent to a lake, do so at their own risk. **BY ACCEPTANCE OF A DEED, EACH LOT OWNER(S) ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. DECLARANT AND THE ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING LOT OWNER(S) OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH LOT OWNER(S) AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.**

Each Lot Owner(s) agrees to indemnify and hold harmless Declarant, the Association, and its officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas and/or facilities, including, without limitation, use of the lakes and other water-bodies within the Community by Lot Owner(s), and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Declarant, the Association, or of any of the Indemnified Parties. Should any Lot Owner(s) bring suit against Declarant, the Association, or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Lot Owner(s) shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorney's fees and paraprofessional fees at trial and upon appeal.

4.4 OBSTRUCTION OF COMMON AREAS. No portion of the Common Areas may be obstructed, encumbered, or used by Lot Owner(s) for any purpose other than as permitted by the Association.

4.5 RESERVATIONS OF RIGHT. The Declarant hereby reserves the right and the Homeowners' Association hereby irrevocably grants Declarant the right to construct or make *such improvements as the Declarant determines to the Common Properties of the Homeowners' Association.* The rights of the Declarant herein reserved and granted by the Homeowners' Association shall entitle Declarant, but not obligate Declarant, to make or construct improvements to the Common Properties, including but not limited to the following: tot Lots with children's outdoor play equipment; jogging paths, bicycle paths; riding trails; street lighting; dikes; waterways; ponds; canals; guardhouses, walls; pumps; pump drainage system(s); picnic area(s); storage area(s); water fountain(s); shelters; recreation buildings or facilities; streets; street lighting; and such other facilities, recreational or otherwise, as the Declarant determines in its sole discretion. The foregoing improvements are not guaranteed to be constructed or made to the Common Properties. The maintenance, repair and replacement of Common Properties, including improvements thereto, shall be the obligation of the Homeowners' Association as hereinafter provided in this Declaration. The Declarant's rights to construct facilities or make other improvements to the Common Properties as provided in this Paragraph shall terminate at such time as the Declarant conveys ninety (90%) percent of the Real

Property described in Exhibit "A" to this Declaration and ninety (90%) percent of all the Lots and Units contained within the existing plat of the Real Property described in Exhibit "A", exclusive of conveyances to entities related to or affiliated with the Declarant or conveyances to other Declarants, or sooner elects to transfer control to the non-declarant members of the Homeowners' Association or three (3) years from the date of this Declaration, whichever shall last occur. **The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED. Notwithstanding the foregoing, any such conveyance or encumbrance of such Common Areas is subject to each irrevocable Lot Owner's ingress and egress easement to his or her Home as set forth in this Declaration.**

## **ARTICLE 5**

### **MEMBERSHIP AND VOTING RIGHTS**

5.1 MEMBERS AND VOTING INTERESTS. Every Lot Owner(s) shall be a member of the Homeowners' Association. There shall be one person, with respect to each Unit or Lot, who shall be entitled to cast one vote at any meeting of the membership of the Homeowners' Association. Such person shall be known as (and is hereinafter referred to as) a "Voting Member," provided, however, where a single unit is situated on more than one Lot, the Unit Owner shall only have one vote in the Homeowners' Association for each Unit owned, and further provided the Lot Owner(s) of an unimproved Lot(s) shall be entitled to one vote for each Lot owned. If a Unit or Lot is owned by more than one person, the Owners of said unit of Lot shall designate one of them as the Voting Member, or in the case of a corporate Unit Owner(s) or Lot Owner(s), an officer or an employee thereof shall be the Voting Member. Designation of the Voting Member shall be made, as provided by and subject to, the provisions and restrictions set or the in the By-laws of the Homeowners' Association. Membership shall be appurtenant to any Unit or Lot and may not be separated from ownership of a Unit or Lot. Transfer of Unit or Lot ownership either voluntarily or by operation of law, shall terminate membership in the Homeowners' Association, and said membership shall thereupon be vested in the transferee. Each Voting Member's right to cast its vote shall be subject to and contingent upon the Voting Member being current with any and all fees or assessments due and any other obligations imposed upon the Voting Member by the Board or the Homeowners' Association. The Board reserves the right to not allow a Voting Member to vote if it fails to meet these conditions.

5.2 RECORDATION OF DOCUMENTS. Neither the Association nor any Lot Owner(s), nor group of Lot Owner(s), may record any documents which, in any way, affect or restrict the rights of Declarant, or conflict with the provisions of this Declaration.

5.3 TERM. Notwithstanding any terms or provisions of this Declaration, in the event that the Homeowners' Association is dissolved, any and all dedicated property and the corresponding infrastructure, shall be conveyed or dedicated to a similar not for profit organization, or entity, to insure the continued maintenance and operation of the Development, as set forth within this Declaration.

5.4 USE AND ENJOYMENT RIGHTS. The transfer of the fee title to a Home, whether voluntary or by operation of law, terminating the Lot Owner's title to that Home shall terminate the Lot Owner's rights to the use of and enjoyment of the Common Areas as it pertains to that Home and shall terminate such Lot Owner's membership in Association. A Lot Owner's rights and privileges under this Declaration are not assignable separately from a Home. The Lot Owner(s) of each Home is entitled to the benefits of, and is burdened with the duties and responsibilities set forth in, the provisions of this Declaration.

**ARTICLE 6**  
**COVENANTS OF HOMEOWNERS' ASSOCIATION AND UNIT OWNER(S)**  
**AND LOT OWNER(S) AS TO MAINTENANCE, TAXES**  
**AND OTHER MATTERS.**

6.1 HOMEOWNERS' ASSOCIATION. The Homeowners' Association shall govern, operate, control and manage the Lots, Units and Common Properties within the real Property pursuant to the terms and provisions of this Declaration and the Homeowners' Association's Articles of Incorporation and By-Laws. The Homeowners' Association shall at all times pay the Real Property ad valorem taxes and any other taxes on the Common Properties if said taxes are billed to the Homeowners' Association as differentiated from being billed to the unit Owner(s) and Lot Owner(s) and pay any governmental liens assessed against the Common Properties. The Homeowners' Association shall further have the obligation and responsibility for the hiring of certain personnel and for the maintenance, repair, upkeep and replacement of Common Properties and facilities, if any, and if permitted by the applicable governmental authorities and this Declaration, commence a lawsuit or defend any lawsuit brought against the Homeowners' Association and other matters as follows:

(a) Maintain, repair, replace and operate the Common Properties and all improvements constructed thereon or made to the Common Properties by the Declarant or Homeowners' Association; pay the real property ad valorem taxes, other taxes and governmental liens assessed against the Common Properties and billed to the Homeowners' Association; obtain and pay premiums for public liability insurance as to the common Properties and obtain and pay the premiums for fire and extended coverage insurance and vandalism and malicious mischief insurance, where applicable, insuring all of the insurable improvements on the Common Properties to the extent determined by the Board of Directors of the Homeowners' Association. The aforesaid insurance policies shall be in the name of the Homeowners' Association and for the benefit of the Homeowners' Association and its members and such other parties as the Homeowners' Association determines, provided, however, the Declarant shall be a named insured in such insurance policies. The aforesaid insurance policies shall be in such amounts, subject to such conditions, and contain such provisions including deductible provisions as the Board of Directors of the Homeowners' Association determines in their sole discretion. The Board of Directors of the Homeowners' Association may obtain such other type of insurance as they deem advisable. The Common Properties shall be maintained, repaired and replaced, if required, by the Homeowners' Association as provided herein and shall be maintained and repaired in first-class condition. Should real property ad valorem taxes or other taxes or government liens as to Common Properties be assessed against and billed to Unit Owner(s) or Lot Owner(s), the Board of Directors of the Homeowners' Association shall have the right to

determine, in their sole discretion, if the Homeowners' Association should pay all of any portion of the tax bill or tax bills for such taxes or liens. The Homeowners' Association and its designees are hereby granted a perpetual easement over, through, repairing and replacing the Common Properties. The Homeowners' Association in addition to maintaining the Common Properties shall pay for all of the cost and expenses of any type or nature as to the Common Properties, including without limitation, expenses, taxes, assessments, insurance premiums, cost of maintenance and repair, and all replacements and undertakings and all other costs applicable thereto.

(b) Should the Declarant in its sole discretion decide to construct a sign or signs identifying Declarant or an affiliated entity, on a portion(s) of the Common Properties, the Declarant shall maintain and repair such sign in a first class condition and shall repair and replace such sign as may be required.

(c) The Declarant, at his sole cost and expense, may construct a sign or signs announcing Declarant or an affiliated entity within the Real Property. The sign(s) shall be of such size, type, design, color and materials as determined by the Declarant and contain such wording as determined by the Declarant. At such time or times as the Declarant may determine to contract such sign or signs, it being understood that there is no obligation on Declarant to construct such sign(s), the Declarant shall amend this Declaration to designate the sign area(s), and such amendment need only be executed by the Declarant without the joinder or approval of the Homeowners' Association or any other person or entity.

(d) The Homeowners' Association shall pay the costs and expenses for electricity for the street lights which may be constructed and located within the road right-of-ways or easement within the plat of the Real Property. The cost and expense of such electricity shall be billed to the Homeowners' Association or to the Declarant, and if the Declarant should pay such bill, the Homeowners' Association shall immediately, upon demand, reimburse the Declarant for such sums as is paid by the Declarant. Any refunds or rebates for the cost or expense of installation or construction of street lights refunded by Florida Power and Light Company or its successors and assigns, shall be the sole and exclusive property of the Declarant and not the Homeowners' Association. The Homeowners' Association shall further be responsible to maintain and repair such street lights, including replacing the light bulbs located thereon, unless the obligations described in this sentence are performed by and at the expense of Florida Power and Light Company.

(e) The Homeowners' Association shall maintain, repair and replace fences, walls, sprinkler systems, including but not limited to pumps, pipes, and sprinkler heads, and landscaping which is installed for the purpose of enhancing the esthetics of Copper Oaks, but which fences, walls, sprinkler systems or landscaping may be located within a road right-of-way or easement owned by a governmental authority or Homeowners' Association. The foregoing includes paying the cost of water for such sprinkler systems, where applicable, and the electricity used in connection with the pumps which are part of such sprinkler systems, where applicable. It is understood that should the applicable governmental authority, Homeowners' Association, or its designee make any repairs within such right-of-ways or easement, and such repairs cause damage to the fences, walls, sprinkler systems or landscaping within such right-of-ways, the cost of the repair and replacement of such fences, walls, landscaping and sprinkler systems shall be

borne solely by the Homeowners' Association unless otherwise paid by the applicable governmental authority of its designee.

(f) In addition, the Homeowners' Association shall be responsible for the following items included but not limited to :

- (i) All painting and maintenance of the Common Properties, and all Improvements thereon, as and when deemed necessary by the Board;
- (ii) Maintenance and care for all landscaped areas within the Common Properties, including front and rear yards of each Lot, Party Roof, and maintenance of irrigation equipment facilities and sprinklers, wherever placed as installed by Declarant;
- (iii) Maintenance and care of all common facilities and areas;
- (iv) Maintenance of any and all streets, street light, roads, driveways, sidewalks, paths and entry features, road and Lot drainage, including curbs, gutters, storm sewers and swales, guardhouse, fountains, and lake maintenance, throughout the Common Properties which have not been dedicated to the public or any governmental body or area which the maintenance is the responsibility of the Homeowners' Association;
- (v) Payment of ad valorem and commercial personal property taxes, if applicable, with respect to the Common Properties, both prior to and after conveyance of same by Declarant to the Association. This provision for payment of taxes prior to conveyance of legal title is fair in light of the Members' use and benefit of such property by virtue of easements created therein;
- (vi) Operation of the Common Properties in accordance with the Rules and other standards adopted by the Board from time to time, both prior to and after conveyance of same by Declarant to the Association;
- (vii) Taking any and all actions necessary to enforce all covenants, restrictions and easements affecting the Property and performing any of the functions or services delegated to the Association in any covenants, conditions or restrictions applicable to the Property, or in the Articles or Bylaws;
- (viii) Conduct business of the Association, including arranging for ancillary administrative services such as legal, accounting and financial, and communication services such as informing Lot



Owner(s) of activities, notice of meetings, and other important events;

- (ix) Purchasing insurance as may be required hereby or by the Bylaws and any other insurance to the extent deemed necessary or desirable by the Board,
- (x) Acceptance of any instrument of conveyance with respect to any Common Properties delivered to the Association by Declarant;
- (xi) Performing any and all management, operation and maintenance of portions of the Real Property if delegated to the Association the obligation;
- (xii) Maintaining any perimeter walls of the Community even if such walls lie within one or more Lots; and
- (xiii) Maintenance of any recreational facilities.

(g) Furthermore, the Association shall be authorized, but not required, to provide the following functions and services and shall have easement rights necessary to perform the following:

- (i) Lighting of roads, sidewalks, walks and paths throughout the Property;
- (ii) Conducting recreation, sport, craft and cultural programs of interest to Lot Owner(s), including their families, tenants, guests and invitees;
- (iii) Protection and security, including, but not limited to, the employment of stationary or patrolling security guards within the Property and operation of a guardhouse;
- (iv) Maintenance of electronic and other surveillance devices;
- (v) Installation, operation and maintenance of cable television facilities, or other communication systems throughout the Property;
- (vi) Such other services are authorized in the Articles or Bylaws;
- (vii) Clean-up, landscaping, maintenance, dredging, water treatment or other care of canals, roads or other property (public or private) adjacent to the Property to the extent such care would, in the reasonable determination of the Board, be beneficial to the Property and to the extent that the Association has been granted the right to so care for the affected property by the Owner thereof or

other person authorized to grant such right, including, but not limited to, any appropriate governmental authority; and

- (viii) Emergency repairs and other work on Lots reasonably necessary for the proper maintenance and operation of the Project.

(h) The surface water management and drainage system for the Property is part of one integrated system throughout the Project. An easement is hereby created over the Common Properties in favor of the Association, including its agents or other designees, for surface water drainage and for the installation and maintenance of the surface water management and drainage system for the Property; provided, however, that such easement shall be subject to improvements constructed within the Property as permitted by controlling governmental authority from time to time. The surface water management and drainage system shall be developed, operated and maintained in conformance with the requirements and approval (prior to the commencement of any work) of the South Florida Water Management District, and/or any other controlling governmental authority. The Homeowners' Association shall maintain the entire surface water management and drainage system including, but not limited to, all lakes, canals, swale areas, retention areas, culvert, pipes, and related appurtenances regardless of location or whether owned by the Homeowners' Association. Any amendments made to this Declaration which will affect any aspect of the storm water management system must receive the prior approval of South Florida Water Management District.

(i) Anything herein to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating or otherwise abetting any legal action, claim or extra-judicial action except for (i) imposition, enforcement and collection of Assessments, including lien rights, pursuant to Article VIII hereof, (ii) collecting of debts owed to the Association, (iii) bringing any contest or appeal of tax assessments relating to any property owned by the Association, (iv) actions brought by the Association to enforce the provisions of this Declaration, and (v) counterclaims brought by the Association in proceedings instituted against it, unless such legal action, claim or extra-judicial action shall be specifically approved for such purposes by 50% of the total votes of all Members of the Association in existence at any time. If the Association's actions have been approved by the Members in accordance herewith, all expenses incurred shall be deemed Common Expenses. In any action brought by or against the Association, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing party.

The foregoing constitutes the basic and general expenses of the Homeowners' Association and said expenses are to be shared as hereinafter provided. It shall be the duty and responsibility of the Homeowners' Association, through its Board of Directors to fix and determine from time to time the sum or sums necessary and adequate to provide for the expense of the Homeowners' Association. The procedure for the determination of such assessments shall be as hereinafter set forth in this Declaration or the By-Laws of the Homeowners' Association. The Board of Directors shall have the power and authority to levy special assessments should they become necessary as determined by the Board in their sole discretion and said special assessments should they become necessary as determined by the Board of Directors in their sole discretion and said special assessments shall be determined, assessed, levied, and payable in the manner determined by the Board as hereinafter provided in this Declaration or the Exhibits hereto. A regular

assessment shall be payable in advance on a monthly, quarterly, semi-annual basis or as otherwise determined by the Board of Directors.

**ARTICLE 7**  
**MAINTENANCE OF UNITS AND LOTS AND IMPROVEMENTS**  
**THEREON AND LANDSCAPING THEREON.**

7.1 MAINTENANCE OF LOTS. In the event a Lot Owner(s) shall fail to maintain a Lot and improvements thereon, as required by this Declaration, and such Lot Owner(s) fails to take the necessary action to correct such failure after fifteen (15) days written notice from the Homeowners' Association to the applicable Lot or Unit Owner, then pursuant to its right, to take such action, the Homeowners' Association after approval by two-thirds (2/3) vote of the Board of Directors of the Homeowners' Association and after fifteen (15) days written notice to the applicable Lot Owner(s) or Unit Owner(s), shall have the right, but not the obligation, through its agents, employees, or designees, to enter upon said Lot or Unit and to repair, maintain, and restore the Lot and improvements thereon and landscaping thereon or unit to the state required by this Declaration. The sums expended by the Homeowners' Association to repair, maintain, and restore a Lot and improvement thereon or unit thereon shall be added to and become part of the assessment to which such Lot or Unit, as applicable, is subject and said cost shall be a lien upon said Lot or Unit, as applicable, with the same force and effect as the liens on Lots or units for assessments as provided in this Declaration and the Articles of Incorporation and By-Laws of the Homeowners' Association, and such lien shall be entitled to be foreclosed as elsewhere provided in this Declaration. In addition to the foregoing, the Homeowners' Association, after approval by two-thirds (2/3) vote of the Board of Directors of the Association, and after thirty (30) days from date written notice is first sent to the Lot Owner(s) or Unit Owner(s), shall have the right to file an action against the applicable Lot Owner(s) for mandatory injunctions, damages and such other relief as the court may entertain. Should the Homeowners' Association file an action in the applicable court, it shall be entitled to recover its court costs and attorneys' fees, including court costs and attorneys' fees in any appellate action.

**ARTICLE 8**  
**COVENANT FOR ASSESSMENTS.**

8.1 AMOUNT OF COMMON ASSESSMENTS; WHEN PAYABLE. At least ten (10) days prior to the beginning of each fiscal year, the Board of Directors shall prepare, adopt and distribute to all Members a written, itemized, estimated budget of the Common Expenses to be incurred by the Association, for single family homes and town home villa during the coming year in performing its functions under this Declaration. The annual Common Assessments for each Lot shall equal the amount of the estimated operating budget, as adopted pursuant to the Bylaws (single family homes and town home villa shall be assessed separately based on the respective budget) (less any surplus or plus any deficit from prior years), divided by the Lots. From time to time during the fiscal year, the Board may modify the budget for the fiscal year and, upon written notice to members, change the amount, frequency, or due dates of Common Assessments. Subject to the right of the Association to accelerate Assessments for delinquencies as provided herein, annual Common Assessments shall be payable in full in advance unless determined by the Board, from time to time, to be payable more frequently. In the event any Assessments for Common Expenses are made payable in equal periodic payments, as provided in

the notice from the Association, such periodic payments shall automatically continue to be due and payable in the same amount and frequency unless and until (i) the notice specifically provides that the periodic payments will terminate or change upon the occurrence of a specified event or date or the payment of the specified amount, or (ii) the Association notifies the Lot Owner(s) 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 notification of such Assessments. The budget and Assessment procedure shall be further subject to the provisions of the Bylaws.

8.2 ASSESSMENT ROSTER AND NOTICES. The Association shall maintain a roster of the amount of all Assessments against each Lot, which shall be calculated in accordance with this Article VIII. The roster shall be kept in the office of the Association and shall be open to inspection by any Lot Owner(s). Written notice of such Assessments and the due date(s) thereof shall be sent to every Lot Owner(s) subject to such Assessments. The Association shall, upon reasonable request of any Lot Owner(s), furnish to such Lot Owner(s) or any prospective purchaser on the purchaser's mortgagee a certificate in writing signed by an officer of the Association setting forth the amount of current Assessments and whether any delinquencies exist. Such certificate may be relied upon by any prospective purchaser or mortgagee named in the certificate and, as to such purchaser or mortgagee shall be conclusive as to the information set forth therein.

8.3 COMMON ASSESSMENTS. The Common Assessments levied by the Association shall be used exclusively to pay Common Expenses. Disbursements shall be made by the Board of Directors for such purposes as are deemed necessary for the discharge of its responsibilities herein for the common benefit of the Lot Owner(s) and to reimburse Declarant for any start-up expenses advanced by Declarant.

8.4 DECLARANT FUNDING OF DEFICIT. Until such time as Declarant no longer controls a majority of the Board of Directors, or such earlier date on which Declarant notifies the Association in writing that Declarant elects to pay Common Assessments for Common Expenses, as in the case of any other Lot Owner(s), Declarant shall not be liable for Common Assessments for Common Expenses for any Lot owned by Declarant, but in lieu thereof, Declarant shall be responsible for all Common Expenses in excess of the Common Assessments for Common Expenses receivable from the other Lot Owner(s). During such period when Declarant is not liable for Common Assessments from Common Expenses for Lots owned by Declarant, the Common Assessments for Common Expenses shall be established by Declarant based upon Declarant's good faith estimate of what the expenses of the Association would be if all Lots within the Real Property were improved, so that Common Assessments for Common Expenses during such period will be approximately what said Common Assessments would be if the development of the Real Property, as contemplated by Declarant, was complete. Such obligation of Declarant shall be deemed a Common Assessment and if Declarant fails to pay the same, then the Association shall have all remedies for collection provided in this Declaration.

8.5 DUE DATES FOR SPECIAL INDIVIDUAL ASSESSMENTS. Any Individual Assessment or Special Assessment shall be payable pursuant to written notice to each Lot Owner(s) by the Board, unless any such Assessment is deemed by the Association to be of an

emergency nature, in which case such Assessment shall be payable within ten (10) days after notice thereof.

8.6 FINANCIAL REPORTS. Within one hundred twenty (120) days following the end of each fiscal year, the Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures on the Association for the preceding fiscal year, and shall cause to be distributed a copy of each such statement to each members, and to each Institutional Mortgagee who has filed a written request for copies of the same with the Board. Such financial report shall be, at a minimum, reviewed and certified by an independent certified public accountant, and, at the election of the Board, may be audited.

8.7 INDIVIDUAL ASSESSMENTS. Any maintenance, repair, or replacement within the Real Property arising out of or caused by the willful or negligent act of a Lot Owner(s), including the Lot Owner's family, tenants, guests or invitees, shall be effected at the Lot Owner's expense and an Individual Assessment therefore shall be made against the Owner's respective Lot, to the extent proceeds of insurance are not collected with respect to such loss. Additionally, any fine imposed by the Board in accordance with the Bylaws or other expense of the Association incurred as a result of any Lot Owner's failure to comply with the provisions of this Declaration, the Articles, Bylaws, or Rules, shall be charged to such Lot Owner(s) and the Lot Owner's respective Lot as an Individual Assessment.

8.8 LATE FEES, INTEREST AND BAD CHECK FEE. On any Individual Assessments or Special Assessments made if the amounts due are not received by the Homeowners' Association by the fifteenth (15) day after the due date, or if any check for any Assessment is dishonored, the Association shall have the right to charge the applicable Owner equal to the maximum amount allowable by law 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. The Association shall also have the right to charge the delinquent Owner a bad check fee in the amount the Association's bank charges the Association in the amount any check for any Assessment is dishonored, all due as an assessment.

8.9 NOTICE FOR ANY SPECIAL ASSESSMENT. Written notice of any meeting of Members called for the purpose of authorizing a Special Assessment, or as part of an annual meeting of Members, shall be sent to all Members not less than ten (10) days, nor more than sixty (60) days, in advance of the meeting. If the required quorum is not presented, such meeting may be rescheduled, subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding scheduled meeting.

8.10 OBLIGATIONS FOR ASSESSMENTS. Each Lot Owner(s), by acceptance of a deed therefore, whether or not is shall be so expressed in such deed, is deemed to covenant and agree, to pay the Association including: (a) annual Common Assessments for Common Expenses; (b) individual Assessments; and (c) Special Assessments, all of which are hereinafter collectively described as the "Assessments". All Assessments are to be imposed and collected as hereinafter provided. The obligation of each Lot Owner(s) thereof for its respective Assessments shall commence the day on which title to the Lot is conveyed to Declarant or to Declarant's first

purchaser thereof (in accordance with Declarant's contractual obligation with the Project's Declarant) and shall be prorated from such date.

All Assessments, together with interest, costs, late charges and reasonable attorney's fees for the collection thereof, shall be a charge of each Lot (except for Declarant-owned Lots) and shall be a continuing lien thereon as more particularly described hereof. Each Assessment, together with interest, costs, late charges and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Subject to the provisions of this Declarant protecting Institutional Mortgages, the personal obligation for delinquent Assessments shall be the joint and several obligation of such Lot Owner(s) and the successors in title to such Lot Owner(s).

8.11 PROPORTIONATE SHARE OF ASSESSMENT. Common Assessments and Special Assessments provided for in this Article VIII shall be allocated and assessed among all Lots required to make such payments, as determined by the Board.

8.12 SPECIAL ASSESSMENTS. In addition to the Common and Individual Assessments authorized above, the Board may levy at any time, in accordance with the Bylaws, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, painting, repair or replacement of a structure, paving of common properties, or capital Improvement, upon the Common Properties, including fixtures and personal property related thereto, or for defraying any other Common Expenses of the Association not originally budgeted, including shortfalls in Common Assessments. No action authorized in this Section 8.13 shall be taken without the prior written consent of Declarant as long as Declarant owns any Lot. Such consent may be granted on the condition that the Special Assessment only be applied to Lot Owners and Lots other than Declarant and Declarant-owned Lots, in which event Declarant and Lots owned by them shall be exempt from such Special Assessment.

8.13 RESALE CAPITAL ASSESSMENT. A capital assessment shall be due and payable to the Association upon the conveyance of a Unit and/or Lot ("Capital Assessment"). The amount of the Capital Assessment shall be established and amended by the Board of Directors by resolution; provided, however, all Lots and/or Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. Payment of the Capital Assessment shall be the legal obligation of the transferee and shall be secured by a continuing lien as provided for in this Declaration. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Unit and/or Lot by deed or other authorized means of conveyance, with or without valuable consideration, including, without limitation, as a result of the issuance of a certificate of title or deed in lieu of foreclosure or a transfer of possession and beneficial ownership by means of an agreement for deed. The following conveyances shall be exempt from payment of the resale capital assessment: (a) by a co-Owner to any person who was a co-Owner immediately prior to such conveyance; (b) to the owner's estate, surviving spouse or other heirs resulting from the death of the Owner; (c) to a trustee or the Owner's spouse, without a change in occupancy, solely for estate planning or for tax reasons; (d) to the Association pursuant to a final judgment of foreclosure or deed in lieu of foreclosure; and (e) to a first mortgage holder pursuant to a final judgment of foreclosure or deed

in lieu of foreclosure. Provided, however, that upon a resale that occurs following an exempt resale described in (a) through (e) above, the resale capital assessment shall be due and payable.

**ARTICLE 9**  
**COVENANT FOR MAINTENANCE AND OTHER ASSESSMENTS**

9.1 ANNUAL ASSESSMENTS. The Board of Directors shall fix and determine from time to time the sum or sums necessary and adequate to pay for the expenses of the Homeowners' Association. The expenses of the Homeowners' Association are those expenses as set forth in this Declaration of Covenants and Restrictions and such other expenses as are determined by the Board of Directors. The annual assessment for regular expenses shall be determined by the Board of Directors based upon an estimated annual budget, which may be prepared and adopted by the Board of Directors prior to the commencement of the applicable calendar year. Should the Board of Directors fail to adopt a budget for a particular calendar year as required, the budget for the year preceding such calendar year shall continue in force; provided, however, the Board of Directors shall have the right to adopt a budget for a calendar year after commencement of the applicable calendar year. The Association shall be on a calendar year basis beginning with the calendar year in which this Declaration is recorded in the Public Records of Lee County, Florida. Assessments shall be payable monthly, quarterly, semi-annually or annually or at such period, in advance, unless otherwise ordered by the Board of Directors. Expenses shall be shared by all Lot Owner(s) within the Real Property on an equal basis. Each unit shall commence its share of the Homeowners' Association expenses on the day title to the unit or Lot on which such Unit(s) is located is conveyed by deed of conveyance from the Declarant or any entity related to or affiliated with the Declarant to the first grantee thereof. A conveyance by the Declarant to a related or affiliated entity shall not be deemed a conveyance to the first grantee as provided in the preceding sentence. Notwithstanding the foregoing, where the Declarant conveys an unimproved Lot or Lots to a person or entity not related to or affiliated with the Declarant, such Lot or Lots shall commence paying their share of the Homeowners' Association expense commencing with the day title to the Lot or Lots is conveyed; provided, however, an unimproved Lot shall be deemed for purposes of assessments to be one Unit and at such time as said Lot is improved and receives a certificate of occupancy or similar permit from the applicable governmental authority, the assessment due shall be based upon the number of Units on said Lot or Lots. Notwithstanding anything in this Declaration or exhibits hereto to the contrary, the Declarant shall not pay any regular assessments or special assessments on account of any unimproved real property owned by it or on account of any sales offices or model units owned by it within the Real Property described in Exhibit A.

9.2 CREATION OF THE LIEN AND PERSONAL OBLIGATION FOR ASSESSMENTS. The Declarant, as Lot Owner(s) of the Real Property described in Exhibit "A", to secure the Homeowners' Association in the payment of all assessments of any type or nature for Homeowners' Association expenses, hereby gives and grants the Homeowners' Association a lien against all Lots and units thereon and Units for their applicable share of the assessments due the Homeowners' Association, being understood and agreed that one of the reasons the Declarant has executed this Declaration is for the purpose of making all assessments due the Homeowners' Association under this Declaration a lien against all Lots and Units therein and Units within the plat of the Real Property described in Exhibit A (which plat is now recorded or may be recorded

in the future) for their applicable share of all of the assessments to the Homeowners' Association. The lien herein granted shall be effective and relate back to the date of recording of the Original Declaration in the Public Records of Lee County, Florida. The Declarant for each Lot or Unit owned by it, and each Lot Owner(s), by acceptance of a deed thereto, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to pay to the Homeowners' Association: (1) annual assessments or charges, and (2) special assessments for deficiencies, other purposes and capital improvements, such assessments to be established and collected as herein provided. (3) resale capital assessment. The annual, special and capital assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the Lots and units thereon and shall be a continuing lien thereon against which each such assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorneys' fees shall also be the personal obligation of the person (or persons) who was the Lot Owner(s) of such Lot and Unit thereon at the time when the assessment fell due. Any 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 and Unit. Except as may be limited to first mortgagees, any person or entity who acquires a Lot and/or Unit, including, without limitation, pursuant to a foreclosure of a first mortgage of record or deed in lieu thereof, or by sale, gift, devise, or operation of law or by purchase at a judicial sale, shall be liable for all unpaid Assessments, Capital Contributions and other moneys due and owing by the former Owner to the Association, including interest, late fees, attorneys fees and costs, 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, Capital Contribution and other moneys due to the Association have been paid in full.

9.3 CUMULATIVE REMEDIES. The Assessment lien and the rights to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and under law or in equity, including a suit to recover a money judgment for unpaid Assessments, as above provided.

9.4 CURING OF DEFAULT. Upon the timely curing of any default for which a Lien was filed by the Association (including payment of all delinquent principal, interest, late charges, and cost of collection), a duly authorized officer or agent of the Association shall record an appropriate release of the Assessment Lien upon payment by the defaulting Lot Owner(s) of a fee, to be determined by the Association, but not to exceed Four Hundred and 00/100 Dollars (400.00), to cover the cost of preparing and recording such release.

9.5 DUTIES OF THE BOARD OF DIRECTORS. The duties of the Board of Directors of the Homeowners' Association is to fix and determine the regular annual assessments and special assessments of the Homeowners' Association and those duties as are specifically provided for in this Declaration and in the Homeowners' Association's By-Laws and Articles of Incorporation. The Homeowners' Association shall upon demand at reasonable times furnish to any Lot Owner(s) or Unit Owner(s) liable for said assessments a certificate in writing by an officer of the Homeowners' Association, setting forth whether assessments have been paid. Such certificate shall be conclusive evidence of any assessment herein stated to have been paid.



There shall be a charge for each certificate as to payment of assessments after the first certificate request in each calendar year, and such charge shall be as determined by the Board of Directors of the Homeowners' Association.

9.6 EFFECT OF NON-PAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. A lien is hereby imposed upon each Lot to secure the payment of all Assessments now or hereinafter imposed on the Lot by the Association (the "Assessment Lien"). The Assessment Lien shall relate back to and be effective from the date of recording the Original Declaration, and shall include all costs of collection, including reasonable attorneys' and legal assistants' fees and costs incurred at all tribunal levels, as well as late charges and interest as herein provided. Any installment of a Common Assessment, Individual Assessment, Resale Capital Assessment, or Special Assessment not paid within the time periods as provided hereof, shall bear interest from the due date of such installment at the highest rate of interest allowed to be charged under applicable law, or not greater interest which may be lawfully charged under any amendments to applicable law, or if no such rate is applicable, then at the rate of eighteen percent (18%) per annum computed from the due date until such payment is made. If any installment of an Assessment is not paid when due, as extended by grace periods provided hereunder, the Lot Owner(s) responsible therefore may be required further by the Board to pay a late charge equal to the maximum amount allowed by law. The Association may bring an action at law against the Lot Owner(s) personally obligated to pay the same, or foreclose its Assessment Lien against the Lot of such Lot Owner(s), or both. No Lot Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Properties or abandonment of his/her Lot. If any installment of a Common Assessment is not paid when due, as extended by grace periods provided hereunder, the Board may mail an acceleration notice to the Lot Owner(s) and to each Institutional Mortgagee which has requested in writing a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than fifteen (15) days from the date the notice is mailed to the Lot Owner(s), by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the Common Assessments for the then current fiscal year. If the delinquent installment(s) of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare all of the unpaid balance of the annual Common Assessment to be immediately due and payable upon written notice of such election by the Association, which may enforce the collection thereof and all charges thereon in the manner authorized by law and this Declaration.

Any payments made to the Association by any Lot Owner(s) shall be applied or be disbursed by the Association, in order, for (i) any sums advanced and paid by the Association for taxes and payment of account of superior mortgages, liens, or encumbrances which may have been advanced by the Association in order to preserve and protect its Assessment Lien; (ii) reasonable attorney's fees and costs incurred by the Association incidental to the collection of assessments and other monies owed to the Association by the Lot Owner(s) for the enforcement of its Assessment Lien; (iii) interest on any Assessments or other monies due to the Association, as provided herein; and (iv) any unpaid Assessments owed to the Association with application to the oldest Assessments first.

9.7 FORECLOSURE SALE. The Assessment Lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through a duly authorized officer or agent, shall have the power to bid on the Lot at foreclosure sale, with credit given for the amount of the judgment, and to acquire and hold, lease, mortgage and convey the same.

9.8 NOTICE OF LIEN. No action shall be brought to foreclose the Assessment Lien herein created unless at least forty-five (45) days expired following the date a "Claim of Lien" is deposited in the United States mail, certified or registered, postage prepaid, addressed to the Lot Owner(s), and a copy thereof has been recorded by the Association in the Public Records of the County. The Claim of Lien must recite a good and sufficient legal description of the Lot, the name of the the record Lot Owner(s), the amount due and the due date, and the name and address of the Association. Such Claim of Lien shall be signed and acknowledged by a duly authorized officer or agent of the Association. Filing a Notice of Lien shall not be a prerequisite to creating the lien (which is created by this Declaration), nor shall the lien's priority be established by such Claim of Lien (priority being based on the date of recording the Original Declaration, subject to the provisions of hereof). The Assessment Lien shall continue until fully paid or otherwise satisfied, and shall secure any and all Assessments, costs, charges, interest and reasonable attorney's fees which accrue subsequent to filing the Claim of Lien.

9.9 PURPOSE OF ASSESSMENTS. The assessments levied by the Homeowners' Association shall be for the purpose as defined and set forth in this Declaration of Covenants and Restrictions and for such other purposes as the Board of Directors of the Homeowners' Association determines.

9.10 SPECIAL ASSESSMENTS. In addition to the annual assessments authorized herein, the Homeowners' Association may levy in any assessment year applicable to that or the previous years for such purposes as are determined by the Board of Directors. This section related to special assessments as opposed to regular annual assessments. Special assessments shall be shared equally by each Unit and it shall be due and payable in the amount and as of the time determined by said Board of Directors. The procedure for the determination of assessments and otherwise shall be as set forth in the By-Laws and Articles of Incorporation of the Homeowners' Association. Notwithstanding the foregoing, certain special assessments may be charged against certain units and Units Owners and in differing amounts pursuant to this Declaration. Notwithstanding anything in this Declaration or Exhibits hereto to the contrary, the Declarant, shall not pay any regular annual assessments or special assessments on account of any unimproved real property owned by it or on account of any sales offices or model units owned by it within the Real Property described in Exhibit A.

9.11 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, painting, repair or replacement of a structure, or paving of common improvements, or capital improvement upon the Common Maintenance Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the majority of the votes of members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members not

less than ten (10) days not more than sixty (60) days in advance of the meeting setting for the purpose of the meeting.

9.12 LIEN PRIORITY. When a first mortgagee obtains title to a Lot pursuant to the foreclosure of its first mortgage of record, or where the holder of a first mortgage accepts a deed to a Lot and/or Unit in lieu of foreclosure of the first mortgage of record, such first mortgagee, or its successor or assignee as a subsequent holder of the first mortgage, who acquires title shall be liable for all unpaid Assessments, except as may be limited by Chapter 720 Florida Statutes, the "Homeowners Association Act" as it now exists and as it may be amended from time to time, plus interest at the maximum rate of law, late fees, collection costs and attorneys' fees and costs incurred by the Association to collect such unpaid Assessments and other amounts including, without limitation, the costs to defend any legal action to which the Association was joined or has an interest, unless the unpaid Assessments, Capital Contributions, and/or any other amounts due the Association are secured by a claim of lien recorded prior to the recording of the first mortgage which gave rise to the foreclosure or deed in lieu thereof in which event the first mortgagee who obtains title (or its successor or assignee as a subsequent holder of the first mortgage) shall be liable for all unpaid Assessments, Capital Assessment and/or other amounts due the Association plus interest at the maximum rate of law, late fees, collection costs and attorneys' fees and costs incurred by the Association to collect such unpaid Assessments, Capital Assessment and other amounts including, without limitation, the costs to defend any legal action to which the Association was joined or has an interest. 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 and or Unit. Except as may be limited above as to first mortgagees, any person or entity who acquires a Lot and/or Unit, including, without limitation, pursuant to a foreclosure of a first mortgage of record or deed in lieu thereof, or by sale, gift, devise, or operation of law or by purchase at a judicial sale, shall be liable for all unpaid Assessments, Capital Assessments and other moneys due and owing by the former Owner to the Association, including interest, late fees, attorneys fees and costs, 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, Capital Assessments and other moneys due to the Association have been paid in full.

9.13 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 owed to the Association to any third party.

9.14 RENTAL AND RECEIVER. If an Owner remains in possession of such Owner's Unit after a foreclosure judgment has been entered, the court, in its discretion, may require the Owner to pay a reasonable rental for the Unit, and if the Unit is rented or leased during the pendency of the foreclosure action, the Association is entitled to the appointment of a receiver to collect the rent. The expenses of the receiver must be paid by the party who does not prevail in the foreclosure action.

9.15 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.

9.16 ENFORCEMENT AGAINST LESSEE. If a Lot and/or Unit is leased during a period when an owner is delinquent in the payment of Assessments and/or during the pendency of a foreclosure action whether by an Owner's lender or the Association, the Association is entitled to the appointment of a receiver to collect the rent from such tenant to be applied towards the delinquent Assessments. Further, the tenant shall, upon demand by the Association, remit rental monies owed under the lease period to the Association directly in payment of any delinquent amounts owed to the Association under this Declaration.

#### **ARTICLE 10**

#### **DAMAGE OR DESTRUCTION TO COMMON PROPERTIES**

10.1 DAMAGE OR DESTRUCTION TO COMMON PROPERTIES. Damage to or destruction of all or any portion of the improvements on Common Properties shall be handled in the following manner:

A. In the event of damage to or destruction of improvements on the Common Properties, if insurance proceeds are sufficient to effect total restoration, then the Association shall cause such improvements on Common Properties to be repaired and reconstructed substantially as they previously existed.

B. If the insurance proceeds are within Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or less of being sufficient to effect total restoration to the improvements on the Common Properties, then the Association shall cause such improvements on the Common Properties to be repaired and reconstructed substantially as they previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment against each of the Lot Owner(s) and no consent of Lot Owner(s) shall be required as otherwise would be the case in the event of a Special Assessment over Twenty Five Thousand and 00/100 Dollars (\$25,000.00). Declarant and Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section IX.

C. If the insurance proceeds are insufficient by more than Twenty Five Thousand and 00/100 Dollars (\$25,000.00) to effect total restoration to the Improvements on the Common Properties, then the Members shall determine, by vote of two-thirds (2/3) of Members votes present in person or by proxy at a special meeting of the Members, duly called, whether (1) to rebuild and restore the improvements on the Common Properties in substantially the same manner as they existed prior to damage and to raise the necessary funds over the insurance proceeds by levying a Special Assessment against all Lots, or (2) to rebuild and restore in a way which is less expensive than replacing these improvements in substantially the same manner as they existed prior to being damaged, or (3) to not rebuild and to retain the available insurance proceeds. If a decision is made to rebuild in a manner which would result in a change in the improvements such new plans must receive the written approval of the Board, which may pre-approve plans to be submitted to the Members at a special meeting of Members. Declarant and

Declarant-owned Lots shall be exempt from such Special Assessments, in accordance with Section IX hereof.

Each Lot Owner(s) shall be liable to the Association for any damage to the Common Properties which may be sustained by reason of the negligence or willful misconduct of any Lot Owner(s), as well as the Lot Owner's family, tenants, guests, and invitees, both minor and adult. In addition, the Association shall have the right to charge such Lot Owner an Individual Assessment equal to the increase, if any, in any insurance premium due from the Association directly attributable to the damage caused by such Owner. In the case of Co-Owners of a Lot, defined in Section I of this Declaration, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be an Individual Assessment against the Lot and may be collected as provided herein for the collection of Assessments.

#### **ARTICLE 11** **INSURANCE**

11.1 COMMON PROPERTIES. The Association shall keep all buildings, structures, fixtures, and other improvements located on the Common Properties insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with reasonable deductibles), and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to, the Association. Insurance proceeds may be used by the Association for the repair or replacement of the property for which the insurance was carried, at the option of the Board. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

11.2 LIABILITY AND OTHER INSURANCE. The Association shall have the power to and shall obtain comprehensive public liability insurance, including medical payments and malicious mischief coverage, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross-liability endorsement insuring each Owner against liability to each other Lot Owner(s) and to the Association and vice versa. The Association may also obtain Worker's Compensation insurance and other liability insurance as it may deem desirable, insuring each Lot Owner(s) and the Association, Board of Directors and Management Company, from liability in connection with the Common Properties, the premiums for which shall be Common Expenses and included in the Common Assessments made against the Lot Owner(s). All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and the Management Company against any liability for any act or omission in carrying out its obligations hereunder, or resulting from their membership on the Board or any committee thereof.

11.3 REPLACEMENT OR REPAIR OF PROPERTY. In the event of damage to or destruction of any part of the Common Properties, the Association shall repair or replace the same from the insurance proceeds available, subject to the provisions of Declaration.

11.4 WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Management Company, Declarant, and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only on the extent that insurance proceeds are received in compensation for such loss.

## **ARTICLE 12**

### **ARCHITECTURAL CONTROL**

12.1 ARCHITECTURAL CONTROL. All "improvements" as defined herein, constructed on any portion of the Property by any of the Lot Owner(s) shall be subject to approval, as necessary, provided, however, the Board shall hereby retain the right, to be exercised at any time in the future, at its option, to create an Architectural Control Committee ("ACC"), whereby, the ACC shall create certain building criteria and have the right to require the improvements constructed within the Property be in compliance with such criteria.

12.2 CERTIFICATE. In the event that any Owner fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ACC, Association and/or ACC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Home stating that the improvements on the Home fail to meet the requirements of this Declaration and that the Home is subject to further enforcement remedies.

12.3 COMPENSATION FOR MEMBERS. The members of the ACC shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

12.4 COMMUNITY PLAN. Declarant has established an overall Community Plan. However, notwithstanding the above, or any other document, brochures or plans, Declarant reserves the right to modify the Community Plan or any site plan at any time as it deems desirable in its sole discretion and in accordance with applicable laws and ordinances. **WITHOUT LIMITING THE FOREGOING, DECLARANT MAY PRESENT TO THE PUBLIC, OR TO OWNERS, RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS RESPECTING THE COMMUNITY. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS ARE NOT A GUARANTEE OF HOW THIS COMMUNITY WILL APPEAR UPON COMPLETION AND DECLARANT RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS DECLARANT DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.**

12.5 COMMUNITY STANDARDS. Each Lot Owner(s) and its contractors and employees shall observe, and comply with the Community Standards which now or may hereafter be promulgated by the ACC and approved by the Board from time to time. The Community Standards shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as set forth herein verbatim. The Community Standards shall not require any Owner to alter the improvements previously constructed. Until the Community Completion Date, Declarant shall have the right to approve the Community Standards, which approval, may be granted in its sole discretion.

12.6 COURT COSTS. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, Association and/or ACC shall be entitled to recover court costs, expenses and attorney's fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, in connection therewith.

12.7 DECLARANT'S EXEMPTION. Anything herein to the contrary notwithstanding, Declarant and any builder designated by Declarant, and all property owned by any of the foregoing shall be exempt from the provisions of this Article. Declarant and any builder designated by Declarant, shall not be obligated to obtain ACC approval for and construction or changes in construction which Declarant or other builder designated by Declarant may elect to make.

12.8 INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the applicant for such approval ("Applicant") shall give written notice of completion to the ACC.

B. Within sixty (60) days thereafter, the ACC or its duly authorized representative may inspect such completed work. If the ACC finds that such work was not effected in substantial compliance with the approved plans, it shall notify the Applicant in writing of such noncompliance within such sixty (60) day period, specifying the particulars of noncompliance, and shall require the Applicant to remedy the same.

C. If, upon the expiration of thirty (30) days from the date of such notification, the Applicant shall have failed to remedy such noncompliance, the ACC shall notify the Board of Directors in writing of such failure. Upon proper notice and hearing, the Board of Directors shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Applicant shall remedy or remove the same within a period of not more than forty five (45) days from the date of announcement of the Board of Directors ruling. If the Applicant does not comply with the Board of Directors ruling within such period, the Board of Directors, at its option, may either remove the noncomplying improvement or remedy the noncompliance (an easement therefor being hereby created), and the Applicant shall reimburse the Association, upon demand, for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the

Applicant to the Association, the Board of Directors may levy an Individual Assessment against such Applicant for the reimbursement.

D. If for any reason the ACC fails to notify the Applicant of any noncompliance within sixty (60) days after receipt of written notice of completion from the Applicant, the improvement shall be deemed to have been made in accordance with the approved plans.

E. Any and all costs incurred by the ACC, and paid to third parties, shall be paid by the Applicant.

12.9 LIABILITY OF THE ACC. No member of the ACC (or Declarant or the Board of Directors which appointed them or any representative designated by the ACC) shall be liable to any Lot Owner(s) or other person by reason of mistake in judgment, failure to point out deficiencies in plans, or any other act or omission in connection with the approval of any plans. Any Lot Owner(s) submitting plans hereunder by the submitting of same, agrees (i) not to seek any damages or make any claim arising out of approval of plans hereunder, and (ii) to indemnify and hold the ACC members (and the Declarant and/or Board which appointed them and any representative designated by the ACC) harmless from any cost, claim, damage, expense or liability whatsoever, including attorney's fees and costs at all tribunal levels, arising out of the approval of any plans regardless of the negligence of the ACC members, their representative, or appointing entity.

12.10 MEETINGS OF THE ACC. The ACC shall meet from time to time as necessary to perform its duties hereunder. The ACC may, from time to time, by resolution unanimously adopted in writing, designate a ACC representative (who may, but need not be one of its members) to take any action or perform any duties of the ACC on its behalf. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an act of the ACC.

12.11 MEMBERS OF THE ACC. The ACC shall initially consist of one (1) person who shall be designated by Declarant from time to time, which number of ACC members may be increased by Declarant at any time. The ACC member appointed by Declarant shall hold office until the membership ceases pursuant to this Declaration. Thereafter, the ACC shall consist of three (3) members who shall be appointed by the Board and shall hold office until such time as they shall resign or be removed by the Board. Members of the ACC not appointed by Declarant may be removed by the Board at any time without cause.

12.12 NO WAIVER OF FUTURE APPROVALS. The approval of the ACC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the ACC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

12.13 REVIEW OF PROPOSED CONSTRUCTION. No improvement of any kind, including but not limited to, a fence, wall or other addition, structure, or equipment (including landscaping, antennas, awnings, and shutters) shall be installed, painted, erected, removed or



maintained within the Property, until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to, and approved in writing by, the ACC, in accordance with the "Community-Wide Standard". The "Community-Wide Standard" shall mean the conduct, maintenance or other activity generally prevailing throughout the Property, but may be more specifically determined by the Board or the ACC, though not inconsistent with any standard created by the Declarant. The ACC shall approve proposals or plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated thereby in the locations indicated will not be detrimental to the appearance of the surrounding area of the property and that the appearance of any improvement or other structure affected thereby will in harmony with surrounding structures and improvements and is otherwise desirable. The ACC may condition its approval of proposals and plans and specifications as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving material submitted. The ACC may also issue rules or guidelines setting forth procedures for the submission of plans for approval. The ACC may require such detail in plans and specifications submitted for its review as it deems proper, including, without limitation, floor plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Until receipt by the ACC of any required plans and specifications, the ACC may postpone review of any plans submitted for approval. The ACC shall have thirty (30) days after delivery of all required materials to approve or reject any such plans, and if not rejected within such thirty (30)-day period, said plans shall be deemed approved. Any approval of additional landscaping by the ACC may be made on the condition that such landscape be maintained by and at the sole cost of the Owner of the affected dwelling unit. All changes and alterations shall be subject independently to all applicable governmental laws, statutes, ordinances, rules, regulations, orders and decrees. Any alteration or modification to the location and/or placement of exterior walls of any dwelling unit shall be further conditioned on compliance with Town ordinances and the obtaining of applicable governmental approvals, if any.

### **ARTICLE 13**

#### **RIGHTS OF INSTITUTIONAL MORTGAGEES**

13.1 AMENDMENTS. Any Institutional Mortgagee who has registered its name with the Association shall be provided with written notice prior to the effective date of any proposed, material amendment to this Declaration, or the Articles or Bylaws, or prior to the effective date of any termination of an agreement with the Management Company.

13.2 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 any amendment of the Declaration, the Articles, or the Bylaws, or to any action of the Association, or to any other matter relating to the Property, the Association may request such consent or approval of such holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery evidencing 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), which response must be received by the Association within thirty (30) days after the holder received 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 affidavit, where necessary, may be recorded in the public records of the County, 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.

13.3 FINANCIAL STATEMENT. Any Institutional Mortgagee, upon written request, shall be entitled to receive from the Association a financial report for the immediate preceding fiscal year, pursuant to the terms hereof.

13.4 GENERAL LENDER RIGHTS. Upon written request to the Association by an Institutional Mortgagee, or the insurer or guarantor or any Institutional Mortgage held by an Institutional Mortgagee encumbering a Lot or residence on a Lot, conditioned on such notice or request specifying the name and address of the requesting party, then such party shall be entitled to prompt written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the Property or any Lot or residence on a Lot encumbered by its Institutional Mortgage;
- B. Any sixty (60) day delinquency in the payment of Assessments or charges owed by the Owner of any Lot or residence on a Lot on which it holds the Institutional Mortgage;
- C. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and
- D. Any proposed action which requires the consent of a specified percentage of Institutional Mortgages.

#### **ARTICLE 14** **MAINTENANCE AND REPAIR OBLIGATIONS**

14.1 MAINTENANCE OBLIGATIONS OF ASSOCIATION. The Association shall maintain, or provide for the maintenance of, all the Common Properties, and all Improvements thereon. The maintenance obligations of the Association shall include all recreational facilities, commonly metered utilities, the interior and exterior of the recreation buildings, and any and all utility facilities and buildings or other structures situated on the Common Properties, except if such facilities are to be maintained by either private or public utility companies, or some governmental agency. In addition, the Association shall provide all necessary landscaping and gardening to properly maintain and periodically replace when necessary the trees, plants, grass and other vegetation which are on the Common Properties. The Association shall further maintain, reconstruct, replace and refinish any paved surface on the Common Properties. All of the foregoing obligations of the Association shall be discharged when and in such manner as the

Board shall determine, in its sole judgment, to be appropriate, which shall, at the Board's election.

14.2 MAINTENANCE OBLIGATIONS OF OWNERS. Except for the duty of the Association to provide for maintenance and other services as enunciated in this Declaration, it shall be the duty of each Lot Owner(s), at the Lot Owner's sole cost and expense, to maintain, repair, replace and restore the Lot, including all improvements located thereon in a neat, sanitary and attractive condition, as may be subject to the Lot Owner's respective control in accordance with the terms of this Declaration. In the event that any portion of such Lot (i) falls into disrepair, (ii) is not properly maintained so as to create a dangerous, unsafe, unsightly, or unattractive condition, or (iii) otherwise violates any of the obligations stated in this Declaration, then the Association shall have the right, but not the duty, upon fifteen (15) days prior to written notice, to correct such condition and to enter upon such Lot to make such repairs or to perform such maintenance as is required in the Association's reasonable discretion; provided, however, the Association shall have the right of immediate entry with respect to those portions of the lot lying outside of the house or other enclosed structures in the event of an emergency. The cost thereof shall be charged to the appropriate Lot Owner and shall be an Individual Assessment as to the respective lot. The Lot Owner of such lot shall pay promptly all amounts due for such work, pursuant to written notice received from the Association in like fashion to an Individual Assessment. Any costs and expenses or collection may be added, at the option of the Board of Directors, to the Individual Assessment.

## **ARTICLE 15**

### **GENERAL PROVISIONS**

15.1 ADDITIONAL DEFINITION. The terms "section" and "paragraph," were used in this Declaration and the Homeowners' Association's By-Laws and Articles of Incorporation are synonymous unless the context otherwise requires. The terms "land" and "property" are synonymous unless the context otherwise requires.

15.2 ADDITIONAL RIGHTS OF DECLARANT. For so long as Declarant and its assigns owns any property in the Community, is affected by this Declaration, or maintains a sales office or administrative office within the Community, Declarant shall have the right to take such action reasonably necessary to transact any business necessary to consummate the development of the Community and sales and re-sales of Homes and/or other properties owned by Declarant or others outside of the Community. This right shall include, but not be limited to, the right to maintain models, sales offices and parking associated therewith, have signs on any portion of the Community, including Common Areas, employees in the models and offices, without the payment of rent or any other fee, maintain offices in models, and use of the Common Areas to show Homes. The sales office, models, signs and all items pertaining to development and sales remain the property of Declarant. Declarant shall have all of the foregoing rights without charge or expense. The rights reserved hereunder shall extend beyond the Turnover Date.

15.3 AFFIRMATIVE OBLIGATION OF ASSOCIATION. In the event that the Association believes that the Declarant has failed in any respect to meet Declarant's obligations under this Declaration or has failed to comply with any of Declarant's obligations under law or the Common Areas are defective in any respect, the Association shall give written notice to

Declarant detailing the alleged failure or defect. Association agrees that once the Association has given written notice to Declarant pursuant to this Section, Association shall be obligated to permit Declarant and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacement deemed necessary by Declarant to respond to such notice at all reasonable times. The Association agrees that any inspection, test and/or repair/replacement scheduled on a business day between 9:00 a.m., and 5:00 p.m., shall be deemed scheduled at a reasonable time. The rights reserved in this Section include the right of Declarant to repair or address, in Declarant's sole option and expense, any aspect of the Common Areas deemed defective by Declarant during its inspections of the Common Areas. Association's failure to give the notice and/or otherwise comply with the provisions of this Section will damage Declarant. At this time, it is impossible to determine the actual damages the provisions of this Section will damage Declarant. At this time, it is impossible to determine the actual damages Declarant may suffer. Accordingly, if Association fails to comply with its obligations under this Section in any respect, Association shall pay to Declarant liquidated damages in the amount of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) which Association and Declarant agree is a fair and reasonable remedy.

15.4 AMENDMENT. Subject to Declarant's rights as set forth in this Declaration, this Declaration may be amended at any regular or special meeting of the members by the affirmative vote of not less than seventy five (75%) percent of the Voting Members, provided, however, the Declarant during such time as it has the right to elect and/or appoint the Board of Directors shall have the right to amend this Declaration and Exhibits hereto without the approval or joinder of the members of the Homeowners' Association, the Board of the Homeowners' Association, any mortgagee, institutional or otherwise; however, no amendment shall change a Unit's proportionate share of Homeowners' Association expenses or the provisions of this Declaration unless the record owners of the applicable unit or Lot join in the execution of the amendment. No amendment shall be passed which shall impair or the rights prejudice and priorities of any mortgagee or change, provisions of this Declaration with respect to Institutional Mortgagees without the written approval of all Institutional Mortgagees of record. In addition, notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Declarant, unless such amendment receives the prior written consent of Declarant, as applicable, which consent may be withheld for any reason whatsoever. Any amendment must be recorded in the Public Records of Lee County, Florida. Notwithstanding the foregoing provisions of this paragraph, this Declaration may only be amended with the written consent of the Declarant for a period of three (3) years commencing on the date of this Declaration, or Declarant's conveyance of ninety (90%) percent of all Lots contained within the Plat of the Real Property described in Exhibit "A", whichever occurs last, or unless said requirement is terminated in writing by the Declarant prior thereto. Notwithstanding the foregoing, any amendment which would affect the surface water management system, including the water management portions of the Common Properties, must have prior approval of the South Florida Water Management and other governmental authorities.

15.5 ANNEXATION. Additional real property and Common Properties may be annexed to the Real Property by the Declarant, without the consent or joinder by the Homeowners' Association or members of the Homeowners' Association. Should the Declarant determine in its sole discretion to annex property or Common Properties, the annexation shall be

evidenced by an amendment to this Declaration of Covenants and Restrictions, and such amendment shall be recorded in the Public Records of Lee County, Florida.

15.5.1 Annexation of Declarant. Such annexed lands shall be bought within the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records. The amendment shall subject the annexed lands to the covenants, conditions, and restrictions contained in this Declaration as fully as though the annexed lands were described herein as a portion to the Community. Such amendment may contain additions to, or modifications of, omissions to, the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by Declarant and as may be necessary to reflect the different character, if any, of the annexed lands.

15.5.2 Annexation by Association. After the Turnover Date, and subject to applicable governmental approvals (if any), additional lands may be annexed with the approval of (i) two thirds (2/3) of the Board; and (ii) seventy five (75%) percent of the votes present (in person or by proxy) at a duly called meeting of the members in which there is a quorum.

15.5.3 Withdrawal. Prior to the Turnover Date, any portions of the Community (or any additions thereto) may be withdrawn by the Declarant from the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records. The right of the Declarant to withdraw portions of the Community shall not apply to any Home which has been conveyed to a Lot Owner(s) unless the right is specifically reserved in the instrument of conveyance or the prior written consent of the Lot Owner(s) is obtained. The withdrawal of any portion of the Community shall not require the consent or joinder of any other party (including, but not limited to, Association, Lot Owner(s), or any Lenders of any portion of the Community). The Association shall have no right to withdraw land from the Community.

15.6 ASSIGNABILITY OF DECLARANT'S RIGHTS. The rights of Declarant under this Declaration, the Articles, and the Bylaws may be assigned any number of times, in whole or in any part, on an exclusive or non-exclusive basis by written instrument recorded in the public records of the County. Any partial assignee shall not be deemed the Declarant, except as expressly and specifically assigned and assumed. No assignee shall have any liability for any acts of Declarant or any prior Declarant, prior to the date of assignment or transfer, unless such assignee is assignee and agrees to assume such liability.

15.7 ASSIGNMENT OF POWERS. All or any part of the rights, exemptions and powers and reservations of Declarant herein contained may be conveyed or assigned in whole or part to other persons or entities by an instrument in writing duly executed, acknowledged, and recorded in the Public Records.

15.8 AUTHORITY OF BOARD. Except when a vote of the membership of the Association is specifically required, all decisions, duties, and obligations of Association hereunder may be made by the Board. The Association and Lot Owner(s) shall be bound thereby.

15.9 CAPITAL IMPROVEMENTS. Notwithstanding anything contained in this Declaration to the contrary, the Homeowners' Association shall not make any capital improvements to the Common Properties for a period of three (3) years from the date of this Declaration without the prior written consent of the Declarant.

15.10 CONSTRUCTION ACTIVITIES. **ALL LOT OWNER(S), OCCUPANTS, AND USERS OF THE COMMUNITY ARE HEREBY PLACED ON NOTICE THAT (1) DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES AND/OR (2) ANY OTHER PARTIES MAY BE, FROM TIME TO TIME, CONDUCTING BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE COMMUNITY. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OF MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF THE COMMUNITY, EACH SUCH LOT OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE COMMUNITY WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DECLARANT AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DECLARANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF THE COMMUNITY HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.**

#### 15.11 DISSOLUTION.

A. Generally: In the event of the dissolution of Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the Circuit Court of the appropriate Judicial Circuit of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of Association, and to make of such provisions as may be necessary for the continued management of the affairs of the dissolved Association. In the event Association is dissolved, and any portion of the Surface Water Management System is part of the Common Areas, the Surface Water Management System shall be conveyed to an appropriate agency of local government, and that if not accepted, then the Surface Water Management System shall be dedicated to a similar non-profit corporation.

B. Applicability of Declaration after Dissolution: In the event of dissolution of Association, Copper Oaks and each Home therein shall continue to be subject to the provisions

of this Declaration, including, without limitation, the provisions respecting Assessments in this Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of Association, as the case may be, for Assessments to the extent that Assessments are required to enable the successors or assigns of the Association to properly maintain, operate and preserve the Common Areas. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Copper Oaks which had been Common Areas and continue to be so used for the common use and enjoyment of the Owners.

15.12 DURATION. The covenants and restrictions of this Declaration shall run with and bind the Real Property described in Exhibit "A" and shall inure to the benefit of and be enforceable by the Declarant, Homeowners' Association or the Unit Owner or Lot Owner of any unit or Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty five (25) years from the date this Declaration is recorded in the Public Records of Lee County, Florida, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless this Declaration is terminated at the end of such initial twenty five (25) year period or prior to a successive ten (10) year period, at a Special Meeting of the membership of the Homeowners' Association held not less than five (5) years prior to expiration of the initial term of twenty five (25) years or not less than five (5) years prior to the commencement of any successive ten (10) year term by the affirmative vote of not less than seventy five (75%) percent of the Voting Members and an instrument to this effect shall be recorded in the Public Records of Lee County, Florida.

15.13 ENCROACHMENTS. In the event that any portion of any roadway, walkway, parking area, driveway, water lines, sewer lines, utility lines, sprinkler system, building or any other structure as originally constructed encroaches on any Lot, Tract or the Common Properties, it shall be deemed that the Lot Owner of such Lot or Tract or the Homeowners' Association as the case may be for continuing maintenance and use of such encroaching roadway, walkway, driveway, parking area, water line, sewer line, utility line, sprinkler system, building or structure if same are constructed in substantial conformance to the original. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and restrictions.

15.14 ENFORCEMENT. The Declarant, South Florida Water Management, the Homeowners' Association or any Lot Owner shall have the right to enforce these covenants and restrictions by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation of the covenant(s) or restriction(s) or to recover damages, and against the applicable Unit or Lot to enforce any lien created by these covenants; and failure by the Declarant, Homeowners' Association or any Lot Owner(s) to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Where litigation occurs to enforce these covenants and restrictions or recover damages or to enforce any lien created by these covenants and restrictions the prevailing party in said litigation shall be entitled to recover court costs and reasonable attorneys' fees, including court costs and reasonable attorneys' fees in any appellate proceeding. In the event of litigation involving the South Florida Water Management, the South Florida Water Management's obligations, if any, pursuant to this paragraph, are subject to and limited by the Sovereign Immunity Limitations stated in Section 768.28 of the Florida Statutes.

15.15 EXECUTION OF DOCUMENTS. Declarant's plan of development for the Community (including, without limitation, the creation of one (1) or more special taxing districts) may necessitate from time to time the execution of certain documents as required by governmental agencies. To the extent that said documents require the joinder of Lot Owner(s) other than Declarant, Declarant, by its duly authorized officers, may, as the agent or the attorney-in-fact for the Lot Owner(s), execute, acknowledge, and deliver such documents (including, without limitation, any consents or other documents required by any governmental agencies in connection with the creation of any special taxing district); and the Lot Owner(s), by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through its duly authorized officers, as their proper and legal attorney-in-fact, for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Lot Owner(s) agrees, by its acceptance of a deed to a Home or any other portion of the Community, to execute or otherwise join in any petition and/or other documents required in connection with the creation of a special taxing district relating to the Community or any portion(s) thereof.

15.16 FLORIDA STATUTES. Whenever this Declaration refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date this Declaration is recorded except to the extent provided otherwise as to any particular provision of the Florida statutes.

15.17 GENDER AND PLURAL. The use in this Declaration of the male gender shall include the female gender, and the use of the singular shall include the plural and vice versa.

15.18 HOMEOWNERS' DOCUMENTS. This Declaration of Covenants and Restrictions contains certain Exhibits pertaining to Copper Oaks Homeowner's Association, Inc., enumerated herein as: Legal Description of Real Property-Exhibit A; Articles of Incorporation-Exhibit B; By-Laws-Exhibit C; Site Map. The aforesaid Exhibits are incorporated herein by reference and made a part of the Declaration. This Declaration together with the Exhibits enumerated herein are referenced to as the Homeowners' Document.

15.19 INFORMATION. The Association shall make available for inspection to Lot Owner(s) and Institutional Mortgages, upon request, during normal business hours, current copies of this Declaration, the Articles, Bylaws, or any Rules concerning the Property, together with the books, records, and financial statements of the Association.

15.20 MODIFICATION OF PROPERTY PLAN. Declarant reserves the absolute right at any time and from time to time to modify the Property Plan for all or any portion of the Property, and in connection therewith to develop residences upon the Property which are substantially different from the planned residences for the Property from time to time, and in the event Declarant changes the type, size or nature of the residences or other improvements to be construed upon the property, Declarant shall have no liability thereafter to any Lot Owner(s). In addition, Declarant makes no representations or warranties as to the manner in which any other property outside of the property will be developed, and shall have no liability to any Lot Owner(s) with regards to the development of any other property in or around the Property.



15.21 MONITORING SYSTEM. The following provisions shall govern any Monitoring System that exclusively serves the Community.

15.21.1 Right to Install. Association shall have the right, but not the obligation, to contract for the installation of a Monitoring System for the Community and/or each Home within the Community. Prior to the Community Completion Date, all contracts for Monitoring Systems shall be subject to the prior written approval of Declarant. In the event that Monitoring System is installed by a party other than Declarant, each Owner acknowledges that Declarant may receive lump sum or monthly compensation from such party in connection with the costs of operating and maintaining the Monitoring System. Such compensation may be paid on a per Home or other basis. All such compensation shall be the sole property of Declarant, who shall have no duty to account for or disclose the amount of such compensation. Declarant or its nominees, successors, assigns, affiliates, and licensees may install such a Monitoring System. Declarant reserves the right, at any time and its sole discretion, to discontinue or terminate any Monitoring System prior to the Community Completion Date. In addition, all Owners specifically acknowledge that the Community may have a perimeter access control system, such as fences, walls, hedges, or the like on certain perimeter areas. **ASSOCIATION AND DECLARANT SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE ACCESS CONTROL OR INEFFECTIVENESS OF ACCESS CONTROL MEASURES UNDERTAKEN.**

15.21.2 Components. The Monitoring System, if installed, may include one or more manned gatehouse, one or more electronic gates, or roving attendants using vehicles. It is anticipated that the gatehouse, if applicable, will not be manned until after the Community Completion Date, at which time Association may elect to man the gatehouse. Association and Declarant do not warrant or guaranty in any manner that the system will include these items, but reserve the right to install or provide the foregoing items, or any other items they deem appropriate in their sole and absolute discretion. After the Community Completion Date, Association may expand the Monitoring System by a vote of the majority of the Board of Directors, without the joinder or consent of the Lot Owner(s) or any third parties. Without limiting the foregoing, Declarant and Association reserve the right to, at any time, increase, decrease, eliminate, or add manned or unmanned gates houses, information booths, sensors, gates and other access monitoring measures as they deem appropriate in their sole and absolute discretion; provided, however, no changes shall be made prior to the Community Completion Date without the prior written consent of Declarant.

15.21.3 Part of Operating Costs. If furnished and installed within any Home, the cost of operating and monitoring any Monitoring System may be included in Operating costs of Association and shall be payable as a portion of the Assessments against Lot Owner(s). The purpose of the Monitoring System will be to control access to the Community. Each Lot Owner(s) understands that the expense of the Monitoring System may not be charged on a bulk basis, but may be charged at the rate equal to any rate paid by individual home owners and are not subject to a homeowners association.

15.21.4 Lot Owners' Responsibility. All Lot Owner(s) and occupants of any Home, and the tenants, guests and invitees of any Lot Owner(s), as applicable, acknowledge that the Association, their Boards and officers, Declarant, their nominees or

assigns, or any successor Declarant, and the ACC and its members, do not represent or warrant that (a) any Monitoring System, designated by or installed according to guidelines established, will not be compromised or circumvented, (b) any Monitoring System will prevent loss by fire, smoke, burglary, theft, hold-up or otherwise, and/or (c) the Monitoring System will in all cases provide the detection for which the system is designated or intended. In the event that Declarant elects to provide a Monitoring System, Declarant shall not be liable to the Lot Owner(s) of Association with respect to such Monitoring System, and the Lot Owner(s) and Association shall not make any claim against Declarant for any loss that a Lot Owner(s) or Association may incur by reason of break-ins, burglaries, acts of vandalism, personal injury or death, which are not detected or prevented by the Monitoring System. Each Lot Owner(s) and Association are responsible for protecting and insuring themselves in connection with such acts or incidents. The provision of a Monitoring System (including any type of gatehouse) shall in no manner constitute a warranty or representation as to the provision of or level of security within the Community. Declarant and the Association do not guarantee or warrant, expressly or by implication, the merchantability of fitness for use of any Community Monitoring System, or that any such system (or any of its components or related services) will prevent intrusions, fires, or other occurrences, regardless of whether or not the Monitoring System is designated to monitor the same. Each and every Lot Owner(s) and the occupant of each Home acknowledges that Declarant, the Association, their employees, agents, managers, directors, and officers, are not insurers of Lot Owner(s) or Homes, or the personal property located within Homes. Declarant and the Association will not be responsible or liable for losses, injuries, or deaths resulting from any such events.

15.22 NOTICES. Any notice required to be sent to any Unit Owner(s) or Lot Owner(s) under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as unit owner or Lot Owner(s) on the records of the Association at the time of such mailing. The term Unit Owner or Lot Owner(s) as used herein shall also mean Declarant.

15.23 NO PARTITION. Except as is permitted in the Declaration or amendments thereto, there shall be not physical partition of the Common Properties or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Section shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**15.24 NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN WRITTEN DOCUMENTS**

**DELIVERED BY DECLARANT TO ANY OWNER, AND (B) AS OTHERWISE REQUIRED BY LAW.**

15.25 NON-LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ASSOCIATION DOCUMENTS, ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE COMMUNITY INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LESSEES, LICENSEES, INVITEES, AGENTS, SERVANTS, CONTRACTORS, AND/OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING.

15.25.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE COMMUNITY HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING.

15.25.2 ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED TO ACT AS AN AGENCY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE STATE OF FLORIDA, THE CITY OF ESTERO, AND/OR LEE COUNTY OR PREVENTS TORTUOUS ACTIVITIES; AND

15.25.3 THE PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY, AND WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH LOT OWNER(S) (BY VIRTUE OF HIS/HER ACCEPTANCE OF TITLE TO A HOME) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF THE COMMUNITY (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION OR OTHERWISE. AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, ACC AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS).

15.26 PRIORITY OF DOCUMENTS. This Declaration shall be paramount in those instances of irreconcilable conflict among or between it and the Articles, Bylaws, or Rules, in the absence of any express language indicating which document controls the particular subject matter; the Articles are next paramount, the Bylaws next paramount, and the Rules most subordinate.

15.27 PROMOTIONAL EVENTS. Declarant and its assigns shall have the right, at any time, to hold marketing and promotional events within the Community and/or on the Common Areas, without any charge for use. Declarant, its agents, affiliates, or assignees shall have the right to market the Community and Homes in advertisements and other media by making reference to the Community, including, but not limited to, pictures or drawings of the Community, Common Areas, and Homes constructed in the Community. All logos, trademarks, and designs used in connection with the Community are the property of Declarant, and the Association, shall have no right to use the use after the Community Completion Date except with the express written permission of Declarant.

15.28 REFUND OF TAXES AND OTHER CHARGES. Unless otherwise provided herein, Association agrees that any taxes, fees or other charges paid by Declarant to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to Declarant in the event such refund is received by Association.

15.29 RELIANCE. BEFORE ACCEPTING A DEED TO A HOME, LOT OWNER(S) HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS DECLARATION. BY ACCEPTANCE OF A DEED TO A HOME, EACH LOT OWNER(S) ACKNOWLEDGES THAT HE/SHE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DECLARANT IS RELYING ON EACH LOT OWNER(S) CONFIRMING IN ADVANCE OF ACQUIRING A HOME THAT THIS DECLARATION IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DECLARANT. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DECLARANT TO SUBJECT THE COMMUNITY TO THIS DECLARATION, EACH LOT OWNER(S) DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH A LOT OWNER(S) MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST DECLARANT, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS DECLARATION, OR THE EXHIBITS HERETO. THIS

RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

15.30 RESOLUTION OF DISPUTES. BY ACCEPTANCE OF A DEED, EACH LOT OWNER(S) AGREES THAT THE ASSOCIATION DOCUMENTS ARE VERY COMPLEX: THEREFORE, ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE AND NOT A JURY IN ORDER TO BEST SERVE JUSTICE. DECLARANT HEREBY SUGGESTS THAT EACH LOT OWNER(S) UNDERSTANDS THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A HOME.

15.31 RIGHT OF ENTRY. Declarant and Association are granted a perpetual and irrevocable easement over, under and across Copper Oaks for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, Declarant specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Declarant may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of Copper Oaks if Declarant is required to do so in order to obtain the release of any bond posted with any governmental agency.

15.32 SEVERABILITY. Invalidation of any of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, and the remainder of this Declaration shall remain in full force and effect.

### 15.33 TELECOMMUNICATION SERVICES.

15.33.1 Right to Contract for Telecommunication Services. The Association shall have the right, but not the obligation to enter into one or more contracts for the provision of one or more Telecommunication Services for all or any part of the Community. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and Association shall be subject to the prior written approval of Declarant.

15.33.2 Easements. Declarant (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunication Provider providing Telecommunication Services to all or a part of the Community pursuant to an agreement between Association and such Telecommunications Provider, a perpetual right, privilege, easement and right-of-way across, over, under and upon the Community for the installation, construction and maintenance of Telecommunications Systems together with a perpetual right, privilege and easement of ingress and egress, access, over and

upon the Community for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such systems. If, and to the extent, Telecommunications Services provided by such Telecommunications Systems are to serve all of the Community, then the cost of the Telecommunications Services may be Operating Costs of Association and shall be assessed as part of the Assessments.

15.33.3 Restoration. Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Areas and/or any Home to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to complete such restoration within ten (10) days after receiving written notice from Association of such failure shall vest in Association the right (but not the obligation) to restore or cause to be restored such portion of the Common Areas and/or Home disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Association may restore or cause to be restored such disturbed portion of the Common Areas and/or Home immediately. In the event that Association exercises the right of self-help, each Telecommunications Provider agrees in advance that Association shall have the sole role to (i) select the contractors to perform such work and (ii) determine the extent of required restoration. This remedy of self-help is in addition to all other remedies of Association hereunder. All reasonable expenses incurred by Association in connection with such restoration shall be paid by Telecommunications Provider within ten (10) days of delivery to Telecommunications Provider of Association's invoice therefor. Any expenses not so paid when due shall bear interest from the due date at the lesser of (i) the publicly announced prime rate (or similar successor reference rate) s set forth in the Wall Street Journal on the date of such invoice, or (ii) the maximum rate of interest allowed by the law of the State of Florida for such obligations, or as may be provided in a contract between Association and a Telecommunications Provider.

15.33.4 Operating Costs. Each Lot Owner(s) understands that the expense of any Telecommunications Service may not be charged on a bulk basis, but may be charged at the rate equal to any rate paid by individual home owners that are not subject to a homeowners association. Each Lot Owner(s) acknowledges that Declarant may receive lump sum or monthly compensation from any Telecommunications Provider in connection with the supply of Telecommunications Services. Such compensation may be paid on a per Home or other basis. All such compensation shall be the sole property of Declarant, who shall have no duty to account for or disclose the amount of such compensation.

15.34 TITLE DOCUMENTS. Each Owner by acceptance of a deed to a Home acknowledges that such home is subject to certain land use and title documents and all amendments thereto, which include among other items, the Title Documents identified in this Declaration (collectively, the "Title Documents". Declarant's plan of development for the Community may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. DECLARANT RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or

more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of Lot Owner(s) other than Declarant, Declarant by any of its duly authorized officers, may, as the agent and/or the attorney-in-fact for the Lot Owner(s), execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Lot Owner(s), by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Declarant, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing each Lot Owner(s) agrees, by its acceptance of a deed to a Home:

- (a) to execute or otherwise join in any documents required in connection with the amendment, modification, or termination of the Title Documents; and
- (b) that such Lot Owner(s) has waived its right to or comment the form or substance of any amendment, modification, or termination of the Title Documents.

Without limiting the foregoing, upon the Community Completion Date the Association shall assume all of the obligations of Declarant under the Title Documents unless otherwise provided by Declarant by amendment to this Declaration recorded by Declarant in the Public Records, from time to time, and in the sole and absolute discretion of Declarant.

15.35 UNIT DESTRUCTION. No Unit(s) shall be permitted on any Lot which replaces the original Unit(s) and improvements constructed thereon unless such Unit(s) and improvements are at least of similar size and type as the Unit(s) and improvements destroyed or removed, subject, to the terms of this Declaration.

**15.36 VENUE. EACH LOT OWNER(S) ACKNOWLEDGES REGARDLESS OF WHERE SUCH LOT OWNER(S) (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS A FINANCING OR (iv) CLOSED ON A HOME, THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN LEE COUNTY, FLORIDA. DECLARANT HAS AN OFFICE IN LEE COUNTY, FLORIDA AND EACH HOME IS LOCATED IN LEE COUNTY, FLORIDA. ACCORDINGLY, AN IRREFUTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN LEE COUNTY, FLORIDA. IN ADDITION TO THE FOREGOING, EACH LOT OWNER(S) AND DECLARANT AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN LEE COUNTY, FLORIDA.**

15.37 VOIDABILITY OF CONTRACTS. The Association shall have not have the right to cancel any contract lease, or management agreement entered into by the Association prior to Declarant turning over control of the Association to Lot Owner(s) other than Declarant, unless the Association has a right of termination "without cause" in such contract, lease, or management agreement, which is exercisable without penalty at any time after transfer of control upon not more than ninety (90) days notice to the other party.

IN WITNESS WHEREOF, the undersigned entities have caused these presents to be signed by their proper officers, and their corporate seals to be affixed, this 24<sup>th</sup> day of November, 2014.

Signed, Sealed and Delivered in the Presence of:

**DECLARANT:**

**SOUTHERN HOMES OF ESTERO, L.L.C., a  
Florida Limited Liability Company**

**MANAGER:**

**SOUTHERN HOMES MANAGEMENT  
CORPORATION, a Florida Corporation**

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

**HECTOR GARCIA, CEO**

Witness Alexander Aguirre

Witness YOLANDA HERNANDEZ

STATE OF FLORIDA )

COUNTY OF Miami-Dade )

BEFORE ME, an officer duly authorized in the State of Florida and County aforesaid to take acknowledgments, personally appeared **HECTOR GARCIA, CEO of SOUTHERN HOMES MANAGEMENT CORPORATION, a Florida corporation, Manager of SOUTHERN HOMES OF ESTERO, L.L.C., a Florida Limited Liability Company**, who after being by me first duly sworn, acknowledged that he executed the foregoing Declaration, for the purposes therein expressed.

WITNESS my hand and official seal at the state and county aforesaid, this 24<sup>th</sup> day of November, 2014.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE



**DECLARANT:**

**COPPER OAKS TV, LLC. a Florida limited liability company**

*[Signature]*  
 Witness

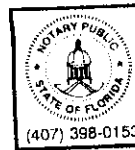
*[Signature]*  
 Witness

By: *[Signature]*

**CLARA GARCIA, MANAGER**

STATE OF FLORIDA                     )  
 COUNTY OF MIAMI-DADE         )

BEFORE ME, an officer duly authorized in the State of Florida and County aforesaid to take acknowledgments, personally appeared **CLARA GARCIA, Manager of COPPER OAKS TV, LLC, a Florida Limited Liability Company**, who after being by me first duly sworn, acknowledged that she executed the foregoing Declaration, for the purposes therein expressed.



**MARIA SAIZ**  
 MY COMMISSION #EE 121885  
 EXPIRES August 15, 2015  
 FloridaNotaryService.com

WITNESS my hand and official seal at the state and county aforesaid, this 24<sup>th</sup> day of November, 2014.

*[Signature]*  
 NOTARY PUBLIC  
 STATE OF FLORIDA AT LARGE

**CONSENT AND ACKNOWLEDGMENT:**

**COPPER OAKS HOMEOWNERS' ASSOCIATION, INC., a Florida corporation not-for-profit**

*[Signature]*  
 Witness

*[Signature]*  
 Witness

By: *[Signature]*

**ALEX AGUIRRE, PRESIDENT**

STATE OF FLORIDA                    )  
COUNTY OF MIAMI-DADE         )

BEFORE ME, an officer duly authorized in the State of Florida and County aforesaid to take acknowledgments, personally appeared **ALEX AGUIRRE, personally known to me to be the President of COPPER OAKS HOMEOWNERS ASSOCIATION, INC.**, who after being by me first duly sworn, acknowledged that he executed the foregoing Declaration, for the purposes therein expressed.

WITNESS my hand and official seal at the state and county aforesaid, this 24<sup>th</sup> day of November, 2014.



NOTARY PUBLIC  
STATE OF FLORIDA AT LARGE



**LEGAL DESCRIPTION  
TO  
REAL PROPERTY  
EXHIBIT "A" and EXHIBIT "A1" TO  
DECLARATION OF COVENANTS AND RESTRICTIONS**

See Attached

## EXHIBIT "A"

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PORTION OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST BEING FURTHER BOUND AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 26; THENCE N.89°40'25"E. ALONG THE SOUTH LINE OF SAID SECTION FOR 80.01 FEET TO AN INTERSECTION WITH THE EASTERLY RIGHT-OF-WAY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1739 AT PAGES 777 AND 778 OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N.01°18'46"W. ALONG SAID EASTERLY RIGHT-OF-WAY LINE FOR 1182.03 FEET TO THE SOUTHWEST CORNER OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1940 AT PAGE 632, OF THE PUBLIC RECORDS OF SAID LEE COUNTY THE SAME BEING THE SOUTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1892 AT PAGE 731, OF THE PUBLIC RECORDS OF SAID LEE COUNTY; THENCE N.90°00'00"E. ALONG THE SOUTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1940 AT PAGE 632, FOR 70.03 FEET AND PASSING THROUGH THE SOUTHEAST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1892 AT PAGE 731 AT 20.02 FEET THE SAME BEING THE SOUTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4187 AT PAGES 406 THROUGH 408, OF THE PUBLIC RECORDS OF SAID LEE COUNTY TO THE SOUTHEAST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4187 AT PAGES 406 THROUGH 408 AND THE POINT OF BEGINNING; THENCE N.01°18'46"W. ALONG THE EAST LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4187 AT PAGES 406 THROUGH 408 FOR 621.66 FEET TO THE NORTHEAST CORNER OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 4187 AT PAGES 406 THROUGH 408 THE SAME BEING ON THE NORTH LINE OF SAID LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 1940 AT PAGE 632; THENCE N.90°00'00"E. ALONG SAID NORTH LINE FOR 1902.03 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE S.00°00'00"E. ALONG THE EAST LINE OF SAID LANDS, FOR 621.50 FEET TO THE SOUTHEAST CORNER OF SAID LANDS; THENCE S.90°00'00"W. ALONG THE SOUTH LINE OF SAID LANDS FOR 1887.78 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS 27.04 ACRES MORE OR LESS

BEARINGS BASED ON THE SOUTH LINE OF SECTION 26 TOWNSHIP 46 SOUTH, RANGE 25 EAST AS BEARING N.89°40'25"E.

## "Exhibit " A-1

## LEGAL DESCRIPTION

A TRACT OR PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE, BEING A PART OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST BEING FURTHER DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 26; THENCE N. 89° 40' 25" E. ALONG THE SOUTH LINE OF SAID SECTION 26 FOR 80.01 FEET TO AN INTERSECTION WITH THE LASTERLY RIGHT-OF-WAY OF THREE OAKS PARKWAY (80.00 FEET WIDE) AS DESCRIBED IN OFFICIAL RECORDS BOOK 1739, AT PAGES 777 AND 778 OF THE PUBLIC RECORDS OF SAID LEE COUNTY, THENCE N. 01° 18' 46" ALONG SAID EASTERLY LINE FOR 1803.69 FEET; THENCE N. 90° 00' 00" E. FOR 20.02 FEET TO THE POINT OF BEGINNING; THENCE N. 01° 18' 46" W. FOR 299.92 FEET; THENCE N. 90° 00' 00" E. FOR 675.00 FEET; THENCE N. 01° 18' 46" W. FOR 321.75 FEET; THENCE N. 90° 00' 00" E. FOR 1021.24 FEET; THENCE S. 23° 29' 06" E. FOR 677.63 FEET; THENCE S. 90° 00' 00" W. FOR 1952.04 FEET TO THE POINT OF BEGINNING.

CONTAINING 21.04 ACRES MORE OR LESS

ASSUMED NORTH BASED ON THE SOUTH LINE OF SECTION 26, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY FLORIDA AS BEARING N. 89° 40' 25" E.

LESS AND EXCEPT THE ATTACHED

## PARCEL 105A

A portion of the lands described in Official Record Book 4235, Page 355, lying in Section 26, Township 46 South, Range 25 East, Lee County Florida, being more particularly described as follows:

COMMENCE at the southwest corner of said Section 26, Township 46 South, Range 25 East, said point being a 3" x 3" concrete monument; thence N 89°43'10" E along the south line of said Section 26, 70.65 feet to survey base line station 133-08.25 of Three Oaks Parkway per Lee County Project No. CN-02-06 (Three Oaks Parkway Project Right of Way Map); thence continue N 89°43'10" E along the south line of said Section 26, 50.01 feet to the east right of way line of Three Oaks Parkway per Lee County Department of Transportation Carleto Parkway project 84-028; thence departing the south line of said Section 26, N 0°18'25" W along said east right of way line 30.45 feet; thence N 03°10'25" W along said east right of way line 583.03 feet; thence N 0°18'46" W along said east right of way line 880.76 feet to the south line of the lands described in Official Record Book 4235, Page 355, Public Records of Lee County, Florida said point being N 89°56'46" E, 50.01 feet right of survey base line station 134-12.75 said point also being the POINT OF BEGINNING; thence continue N 0°18'46" W along said east right of way line 300.00 feet to a point on the south line of those lands described in Official Record Book 4127, Page 2468, Public Records of Lee County, Florida said point being S 90°00'00" E, 50.01 feet right of station 134-12.80; thence S 90°00'00" E along said south line 50.01 feet; thence departing said south line S 0°18'46" E 299.98 feet to the south line of the lands described in Official Record Book 4235, Page 355, Public Records of Lee County, Florida; thence S 89°58'46" W, along said south line 50.01 feet to the east right of way line of Three Oaks Parkway and the POINT OF BEGINNING.

Said lands contain 14,998 square feet, more or less.

## NOTE:

BEARINGS SHOWN HEREON ARE BASED UPON THE SURVEY BASE LINE OF THREE OAKS PARKWAY HAVING A BEARING OF N 0°18'46" W FROM P.I. STATION 139+30.02 BEING A SET PARKER-KALON NAIL AND DISK "L8 384" TO P.I. STATION 139+68.34 BEING A SET 5/8" IRON ROD WITH CAP "AM EN8 LB 384".

NOT VALID WITHOUT THE SIGNATURE AND THE OFFICIAL  
RACED SEAL OF A FLORIDA LICENSED SURVEYOR AND  
MAPPER

AIM Engineering & Surveying, Inc.



3300 LEE BLVD.  
P.O. BOX 1234  
LEECHM ACRE  
FLORIDA 33970  
239/232-4860  
FK239/352-8734

Licensee Business Number 3114

PREPARED BY:  
AIM ENGINEERING & SURVEYING, INC.

DOE POTTER, P.E.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. 0899

THIS IS NOT A SURVEY

SHEET 1 OF 2

PARCEL NUMBER	DESCRIPTION	LEGAL AND SKETCH PARCEL 105A
02-0248	THREE OAKS PARKWAY LEE COUNTY PROJECT NUMBER CN-02-06	
DRAWN BY: LWC	DATE: 8/20/2000	FILE: 0240-100A
		SHEET: LEE COUNTY



**EXHIBIT "B"**  
**ARTICLES OF INCORPORATION FOR**  
**COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**

See Attached



**ARTICLES OF INCORPORATION**  
**OF**  
**COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**  
**A FLORIDA NOT-FOR-PROFIT CORPORATION**

The undersigned, desiring to act as the subscribers of **COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**, a Florida not for profit corporation, do hereby subscribe to, establish, and incorporate this corporation by adopting the following as the Articles of Incorporation of this corporation.

**ARTICLE I**

**NAME**

The name of the corporation is **COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.** As used in these Articles and in the By-Laws the term "Homeowners' Association" shall mean this corporation.

**ARTICLE II**

**PURPOSE**

The purpose of the Homeowners' Association is to promote and develop the common good and social welfare of the residents of COPPER OAKS, a planned unit development of the real property more particularly described in the attached Exhibit "A", situate within the City of Estero, Lee County, Florida, by effecting the following:

A. Operation and administrating the functions of the Homeowners' Association and to carry out the duties thereof set forth in the Declaration of Covenants, Conditions, and Restrictions of COPPER OAKS ("Declaration"), and any supplemental Declaration and Sub-Declaration

promulgated thereunder.

Unless otherwise provided herein, the terms used in these Articles, the By-Laws, and the Rules and Regulations of the Homeowners' Association shall have the same meanings as defined in the Declaration.

B. Providing for the acquisition, construction, improvement, management, leasing, maintenance, and care of Homeowners' Association property, including the Common Property and Recreational Facilities, if any.

C. Enforcing the provisions of the Declaration, Supplemental Declarations and Sub-Declarations as provided therein or as permitted by law.

D. Presenting a united effort of its members to protect the value of property within COPPER OAKS.

E. Accomplishing such other purposes appropriate for a master community association of a planned unit development.

### **ARTICLE III**

#### **POWERS**

The Homeowners' Association shall have all of the following powers:

A. All of the common law powers of a corporation and all of the powers set forth and prescribed in Part I of Chapter 617, Florida Statutes (1989), "Florida Not For Profit Corporation Act", as amended from time to time.

B. All of the powers of the Homeowners' Association as set forth in the Declaration.

C. To accept subventions from other parties or any unit of government and to make capital contributions or subventions to other not-for-profit corporations.

J. Acquire, (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, lease, trade, sell and maintain both real and personal property in connection with the affairs of the Homeowners' Association, which property shall include, but not limited to, Residential Lots, Family Dwelling Units, Multi-Family Tracts, Commercial Units, and Commercial Sites, as well as Common Property and Recreational Facilities, if any.

K. Dedicate, sell or transfer all or any part of the Homeowners' Association's property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective except upon an affirmative vote of the Members, as provided herein, whose annual and special assessments are used for maintenance and acquisition of such properties.

L. Subject to all applicable federal, state and local laws, ordinances and regulations governing cable communications and cable operators, to grant to a cable operator the exclusive right to install, operate and maintain cable television and/or telecommunications systems and receiving and distribution systems within COPPER OAKS and require the Owners and occupants of dwelling units and/or residences within COPPER OAKS to purchase Basic Programming Television furnished by such Basic cable operator; and to assess each Owner and occupant the monthly charge for such Basic Programming Television, and include the amount therefor in the assessments provided for in the Declaration.

M. To participate in mergers and consolidations with other non-profit corporation provided that any such merger or consolidation shall have been approved by the Members as provided herein.

#### **ARTICLE IV**

##### **MEMBERS**

A. All Owners shall automatically be Members of the Homeowners' Association.

Membership certificates are not required and shall not be issued.

B. Membership in the Homeowners' Association shall consist of all those owners of any Lot, Unit, Tract, or Site or Undivided Land.

C. The number of votes which may be cast on all matters on which the membership is entitled to vote shall be determined as follows:

1. Each Unit Owner shall have one vote for each Family or Commercial Unit projected by the Development Plan as it exists from time to time, or as modified as provided in Article V, of the Declaration, for any Tract or Site owned by said Members.

2. Any other provision of these Articles to the contrary notwithstanding, any action proposed to be taken by the Homeowners' Association which has a material adverse impact upon the Development Plan or commercial activities within the Properties shall require approval by the Company while the Companies own any portion of the Properties or by the ARC thereafter. The Company, in their reasonable discretion, shall determine whether any proposed action by the Homeowners' Association will have a material adverse impact.

3. All notices of meetings and other notices required to be given by the Homeowners' Association to either the Sub-Associations or to Members shall be sent to both the Voting Representative and the Alternative Voting Representatives, unless said notices relate to individual assessments applicable only against a specific Unit or proposed sanctions against the Owners of a particular Unit.

4. At all meetings of the Homeowners' Association in which the membership is entitled to vote, each Voting Representative shall vote the number of Class "A" Membership votes held by Members of his/her Sub-Association's members.

D. The Homeowners' Association may give, dedicate or sell all or any part of the Homeowners' Association's property (including leasehold interest therein) to an public agency, authority, utility, or private concern for such purposes and subject to such conditions as may be determined by the Homeowners' Association, provided that no such gift or sale or determination of such purposes or conditions shall be effective unless the same shall be authorized by the affirmative vote of three-fourths (3/4) of the votes cast at a duly called meeting of the Members of the Homeowners' Association, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent at least thirty (30) days prior to such meeting to every Member or Voting Representative entitled hereunder to vote. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or another officer of the Homeowners' Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property or Recreational Facilities, if any, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Members.

#### **ARTICLE V**

#### **SUBSCRIBERS**

The names and street addresses of the subscribers to these Articles of Incorporation are as follows:

Name	Address
Stephen Boling	27299 Riverview Center Blvd, # 102 Bonita Springs, Florida 34134

Sender Rosen

27299 Riverview Center Road, # 102  
Bonita Springs, Florida 34134

Michael Tarhini

12900 SW 128<sup>th</sup> Street, Suite 100  
Miami, Florida 33186

## **ARTICLE VI**

### **DIRECTORS**

A. The affairs and property of the Homeowners' Association shall be managed and governed by a Board of Directors ("Board of Directors") composed of not less than three (3) persons ("Directors"). The first Board of Directors shall have three (3) members, and in the future, the number shall be determined from time to time by the Board of Directors by resolution, but may never be less than three.

B. Directors shall be elected by the Members (voting is always through their Voting Representatives) in accordance with the By-Laws at the regular annual meetings of the membership of the Homeowners' Association. Directors shall be elected to serve for staggered terms of three (3) years each. Each initial director named below shall serve for the term specified opposite his/her name, and then his/her successor shall be elected for a three (3) year term. Notwithstanding the foregoing, the term of each director shall not expire until the annual meeting held upon or next following the expiration of such Director's term of office. In the event of a vacancy created otherwise than by expiration of a Director's term of office, the remaining Directors may appoint a director to serve the balance of said unexpired term.

## **ARTICLE VII**

### **BOARD OF DIRECTORS**

The following persons shall constitute the first Board of Directors and shall serve until the expiration of their respective, staggered terms specified below:

Stephen Boling	27299 Riverview Center Road, # 102 Bonita Springs, Florida 34134	3 years
Sender Rosen	2799 Riverview Center Road, # 102 Bonita Springs, Florida 34134	3 years
Michael Tarhini	12900 SW 128 <sup>th</sup> Street, Suite 100 Miami, Florida 33186	3 years

### **ARTICLE VIII**

#### **REGISTERED AGENTS**

The registered office of the Homeowners' Association and the registered agents at such office shall be William Garcia, Esq., William Garcia, P.A., 201 Alhambra Circle, Suite 500, Coral Gables, Florida 33134. The registered office and the registered agents may be changed by resolution of the Board of Directors.

### **ARTICLE IX**

#### **OFFICERS**

A. Subject to the direction of the Board of Directors, the affairs of the Homeowners' Association shall be administered by officers who shall be elected by and serve at the pleasure of said Board of Directors. The following persons constitute the original officers of the Homeowners' Association and they shall continue to serve as much officers until removed by the Board of Directors:

Name	Office
Stephen Boling	President
Sender Rosen	Secretary
Michael Tarhini	Vice President

B. All officers shall be elected by the Board of Directors in accordance with the By-Laws at the regular annual meeting of the Board of Directors as established by the By-Laws. The Board of Directors shall elect a President, Vice President, Secretary, and Treasurer, and such other officers as it shall deem desirable. The President shall be elected from among the membership of the Board of Directors but no other officer need to be a director.

## **ARTICLE X**

### **BY-LAWS**

A. The original By-Laws are to be made by the Company and the Board of Directors as provided in these Articles. By-Laws may thereafter be altered, amended, adopted or rescinded only by a resolution approved by not less than a majority of the Board of Directors and either the Company (for as long as the Company maintains control of the Homeowners' Association) or a majority of the membership of the Homeowners' Association (Members voting only through their Voting Representatives).

B. No amendment to the By-Laws shall be passed which would change the rights and privileges of the Company referred to in the Declaration without the Company's written approval.

C. No amendment to the By-Laws shall be passed which would operate to impair or prejudice the rights or security of any mortgage.

D. No By-Laws or amendments thereto may conflict with any provision of the Declaration of these Articles.

E. Any Member or Voting Representative may waive any or all of the requirements of this Article and consent in writing to the adoption of a specific By-Laws or amendment, either before, at or after a meeting of the membership at which a vote is taken to amend the By-Laws.



## **ARTICLE XI**

### **INDEMNIFICATION**

The Homeowners' Association shall, to the fullest extent permitted by the provisions of the Florida General Corporation Act, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said provisions from and against any and all of the expenses, liabilities or other matters referred to in or covered by said provisions including reasonable attorney's fees incurred by or imposed upon those indemnified and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any By-Laws, agreement, vote of Members or disinterested Director, or otherwise, both as to action in another capacity while holding such office, and in the capacity as office-holder, and shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **ARTICLE XII**

### **CONSTRUCTION**

In the event of any conflict or ambiguity between the terms and conditions of the Declaration and these Articles or the By-Laws, the Declaration shall have priority over these Articles and the By-Laws, and the terms and conditions of the Declaration shall take precedent over and supersede the terms and conditions of the Articles and the By-Laws. In the event of a conflict between these Articles and the By-Laws, the terms of the Articles shall take precedent over the terms of the By-Laws. Any conflict or ambiguity with regard to the affairs of the Homeowners' Association shall be resolved by reference to this provision.

### **ARTICLE XIII**

#### **DISTRIBUTIONS**

There shall be no dividends paid to any of the Members nor shall any part of the income of the Homeowners' Association be distributed to any member of the Board of Directors or Officers except, however, for any reasonable compensation to directors or officers which may be authorized by the By-Laws. To the extent that there are any excess receipts or disbursements, such excess shall be applied towards reserves or future expenses. Upon dissolution or final liquidation of the Homeowners' Association, which shall not take place unless the Declaration is terminated, the Homeowners' Association may make distribution to its members as permitted by Chapter 617, Florida Statutes (1989), as amended from time to time, but only as provided in the Declaration.

### **ARTICLE XIV**

#### **MANAGEMENT AGENT**

The Homeowners' Association may contract for management and maintenance and authorize a management agent to assist the Homeowners' Association in carrying out its powers and duties by performing such functions as the collection of assessments, preparation of records, enforcement of rules and maintenance of the Homeowners' Association's property. The Homeowners' Association shall, however, retain at all times the powers and duties granted to it by these Articles, the By-Laws and the Declaration, including but not limited the making of assessments, promulgation of rules, and execution of contracts on behalf of the Homeowners' Association.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals this 5<sup>th</sup>  
day of October, 2004.

Stephen W. Boling (Seal)  
STEPHEN BOLING

Sender Rosen (Seal)  
SENDER ROSEN

Michael Tarhini (Seal)  
MICHAEL TARHINI

STATE OF FLORIDA                     )  
   )  
COUNTY OF MIAMI-DADE         )

I HEREBY CERTIFY that on this 5<sup>th</sup> day of October, 2004, before me personally appeared **STEPHEN BOLING, PRESIDENT OF COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**, who subscribed to same and acknowledged before me that he executed the same for the purpose expressed therein.



Kelly Wolfson  
Sign and Print Name: Kelly Wolfson  
Notary Public, State of Florida  
Serial No.: DD 226578  
My Commission Expires: 7-7-2007

The undersigned agrees to act as the registered agent of **COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**, a Florida not-for-profit corporation.

William Garcia (Seal)  
WILLIAM GARCIA

**EXHIBIT "C"**  
**BYLAWS FOR COPPER OAKS HOMEOWNERS'**  
**ASSOCIATION, INC.**

See Attached

**BYLAWS OF  
COPPER OAKS  
HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I - IDENTITY**

Section 1. **Name.** The following Bylaws shall govern the operation of Copper Oaks Homeowners' Association, Inc., a not for profit corporation formed pursuant to Chapter 617 of the Florida Statutes. The Association was formed for the purposes stated in the Articles of Incorporation and shall have all the powers provided therein and in these Bylaws.

Section 2. **Principal Office.** The principal office of the corporation shall be located at 12900 SW 128<sup>th</sup> Street, Suite 100, Miami, Florida 33186, but the Association may maintain offices, transact business and hold meetings of members and directors at such places within the State of Florida as may be designated by the Board of Directors.

Section 3. **Seal.** The seal of the corporation shall be in circular form bearing within its circumference the name of the corporation, the words "a Florida corporation not for profit", and the year of incorporation.

Section 4. **Definitions.** As used herein, the word "Corporation" shall be the equivalent of "Association", as defined in the Declaration of Covenants and Restrictions for Copper Oaks recorded or to be recorded in the Public Records of Lee County, Florida, against the Property. All references to "Declaration of Covenants and Restrictions" or "Declaration", as used herein, shall mean the above-described Declaration of Covenants and Restrictions. All other words and phrases, as used herein, shall have the same definitions as attributed to them in the aforesaid Declaration of Covenants and Restrictions.

**ARTICLE II - MEMBERSHIP AND VOTING PROVISIONS**

Section 1. **Membership.** Membership in the Association shall be limited to Unit Owner(s) as defined in the Declaration. Transfer of a Unit Owner(s) ownership, either voluntarily or by operation of law, shall terminate membership in the Association, and said membership is to become automatically vested in the transferee upon the recordation in the Public Records of Lee County, Florida, of the deed or other instrument establishing the acquisition of title to and designating the Unit Owners affected thereby. If a Unit Owner(s) ownership is vested in more than one (1) person, then only one person so owning said Unit shall be a member eligible to hold office, attend meetings, etc, but, as hereinafter indicated, the vote of Unit Owner shall be cast by the "voting member". If a Unit Owner(s) ownership is vested in a corporation, or other legal entity said corporation or other legal entity may designate an individual officer, employee or other representative of the corporation or other legal entity as its "voting member".

Section 2. **Voting.** The membership of the Association shall have voting rights, in relation to the class of membership as follows:

- (i) All Unit Owner(s) shall be entitled to one (1) vote for each lot owned.

The Declarant shall relinquish control of the Association upon the conveyance of 90% of the unit/lots contained on the plat.

A majority of the voting members' total votes shall decide any question, unless the Declaration, Articles of Incorporation of these Bylaws of the Association provide otherwise, in which event the voting percentage required in the said Declaration, Bylaws or Articles of Incorporation shall control.

Section 3. **Quorum.** Unless otherwise provided by these Bylaws, the Declaration of the Articles of Incorporation, the presence in person or by proxy of a majority of the voting members' total votes shall constitute a quorum. The joinder of a voting member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum. If voting rights of a Unit Owner is suspended, pursuant to the Declaration or these Bylaws, the vote(s) of such Unit Owner shall not be counted for the purpose of determining of quorum and the total number of authorized votes shall be reduced accordingly.

Section 4. **Proxies.** Votes may be cast in person or by proxy. The person holding the proxy does not have to be a member of the Association. All proxies shall be in writing and signed by the person entitled to vote (as set forth below in Section 5), and shall be filed with the Secretary of the Association at or prior to the time designated in the order of business for delivering proxies. Any proxy shall be valid for the particular meeting designated therein, and any lawfully adjourned meetings thereof. Where a Unit is owned jointly by a husband and wife, and if they have not designated one(1) of them as a voting member, a proxy must be signed by both husband and wife wherein a third person is designated. Holders of proxies need not to be Unit Owner(s), but no person other than a designee of the Declarant may hold more than five (5) proxies.

Section 5. **Designation of Voting Member.** If a Unit is owned by one (1) person, his/her right to vote shall be established by the recorded deed or other instrument establishing title to the Unit Owner. If a Unit is owned by more than one (1) person the person entitled to cast the vote for the Unit Owner shall be designated in a certificate signed by all of the record Unit Owner(s) and filed with the Secretary of the Association. If a Unit is owned by a corporation or other legal entity, the officer, employee or other representative thereof entitled to cast the vote of the Unit Owner for the corporation or other legal entity shall be designated in a certificate for this purpose signed by the President, Vice-President, or other authorized signatory and filed with the Secretary of the Association. The person designated in such certificate who is entitled to cast the vote for a Unit Owner shall be known as the "voting member". If such a certificate is not on file with Secretary of the Association for a Unit owned by more than one (1) person, by a corporation or other legal entity, the vote of the Unit Owner concerned shall not be considered in determining the requirement for a quorum, or for any purpose requiring the approval of a person entitled to cast the vote for the Unit Owner, except if said Unit Owner is owned by a husband and wife. Such certificates shall be valid until revoked, superseded by subsequent certificate, or a change in the ownership of the Unit Owner concerned takes place. If a Unit Owner is owned jointly by a husband and wife, the following three (3) provisions are applicable thereto:

(a) They may, but they shall not be required to, designate a voting member.

(b) If they do not designate a voting member, and if both are present at a meeting and are unable to concur in their decision upon any subject requiring a vote, they shall lose their right to vote on that subject at that meeting. (As previously provided, the vote of a Unit Owner is not divisible).

(c) Where they do not designate a voting member and only one (1) is present at a meeting, the person present may cast the Lot vote just as though he or she owned the Unit Owner individually and without establishing the concurrence of the absent person.

### **ARTICLE III – MEETING OF THE MEMBERSHIP**

Section 1. **Who May Attend.** In the event any Lot is owned by more than one person, all co-owners of the Unit Owner may attend any meeting of the members. In the event any Unit Owner is owned by a corporation, any director or officer of the corporation may attend any meeting of the members. In the event any Unit Owner is owned by a partnership, any partner of the partnership may attend any meeting of the members. In the event any Unit Owner is owned by a trustee or trust, any trustee may attend any meeting of the members. However, the vote of any Unit Owner shall be cast in accordance with the provisions of Article II, Section 5, above, The person designated to cast the vote for a Unit Owner either in a valid certificate or proxy is entitle to attend meetings of the members. All members may attend meeting notwithstanding that a proxy for said member's vote has been given to a third party.

Section 2. **Notices.** It shall be the duty of the Secretary to mail or deliver a notice of each annual or special meeting, stating the time and place thereof to each Unit Owner of record. All notices shall be mailed to or served at the address of the Unit Owner as it appears on the books of the Association as hereinafter set forth. Notices of annual meeting shall be furnished to each voting member, and, except in the event of an emergency, notices of special meetings shall be furnished to each voting member at least ten (10) days prior to the date of such meeting. The attendance of any meeting (or person authorized to vote for a member) shall constitute such member's waiver of notice of such meeting, except when the members attendance (or the representative) is for the express purpose of objecting at the beginning of the meeting to the transaction of business because the meeting is not lawfully called. A copy of the notice shall be posted at a conspicuous place within the project. Notice of a special meeting may be waived either before or after the meeting, in writing.

Section 3. **Annual Meeting.** The annual meeting for the purposes of electing director and transacting any other business authorized to be transacted by the members shall be held once in each calendar year at such time and on such date in each calendar year as the Board of Directors shall determine, and no later than twelve (12) months after the last preceding annual meeting. At the annual meeting, the members shall elect by majority vote (cumulative voting prohibited), a Board of Directors and shall transact such other business as may properly be brought before the meeting.

Section 4. **Special Meeting.** Special meetings of the members for any purpose or purposes, unless otherwise prescribed by statue, may be called by the President, and shall be called

by the President or Secretary at the request in writing of a majority of the Board of Directors, or the majority of the voting members of the association, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be matters stated in the notice thereof.

Section 5. **Action Without Meeting.** Whenever the vote of members at a meeting is required or permitted by any provision of these Bylaws or the Articles to be taken in connection with any action of the Association, the meeting and vote of members may be dispensed with if 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, shall consent in writing to such action being taken within ten (10) days after obtaining such authorization by written consent, notice of such action shall be given to all members who have not consented in writing.

Section 6. **Waiver of Notice.** Whenever any notice is required to be given to any member under the provision of the Articles of 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.

Section 7. **Adjourned Meetings.** If any proposed meeting of members cannot be organized because a quorum has not been attained, either in person or by proxy, the meeting may be adjourned from time to time until a quorum is present, provided notice of the newly scheduled meeting is given in the manner required for the giving of notice of a meeting.

#### **ARTICLE IV - DIRECTORS**

Section 1. **Number.** The affairs of the Association shall be managed and governed by a Board of Directors composed of not less than three (3) nor more than nine (9) persons who shall be members of the Association, except that directors elected or appointed by the Declarant need not be members of the Association. There shall always be an odd number of directors on the Board. 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.

Section 2. **Term of Office.** At the first annual meeting following the cessation of the Declarant, and at annual meetings thereafter, the members shall elect not less than three (3) nor more than (9) directors who shall each serve for a term of one (1) year, unless he/she shall earlier resign, or shall be removed, or otherwise be disqualified to serve.

Section 3. **First Board of Directors.** The first Board of Directors of the Association who shall hold office and serve for a period of three (3) years and shall consist of the following:



Stephen Boling	27299 Riverview Center Road, # 102 Bonita Springs, Florida 34134
Sender Rosen	27299 Riverview Center Road, # 102 Bonita Springs, Florida 34134
Mike Tarhini	12900 SW 128 <sup>th</sup> Street, Suite 100, Miami, Florida 33186

Section 4. **Appointment of Directors by Declarant.**

A. As provided in the Articles, until the Declarant ceases to maintain control of the Association, the Declarant shall have the right to appoint all the directors of the Association. Thereafter, the Declarant shall have the right to appoint five (5) directors for so long as the Declarant owns any Lots and/or Units in the Copper Oaks project. The Declarant may waive its rights to appoint one or more directors by written notice to the Association, and thereafter directors shall be elected by the members.

B. While the Declarant is entitled to representation on the Board, whether the Declarant exercises that right or not, the Board or the Association shall have no authority to, and shall not, without the consent of the Declarant, (which may be withheld for any reasons in Declarant's sole discretion), undertake any action which shall:

(i) except for the signage restrictions provided in the Declaration, prohibit or restrict in any manner the sales and marketing program of the Declarant.

(ii) decrease the level of maintenance services of the Association performed by the initial Board;

(iii) make any special or individual assessment against or impose any fine upon the Declarant's Lots or upon the Declarant;

(iv) authorize or undertake any litigation against the Declarant;

(v) alter or amend the Declaration, any subsequent amendment thereto, the Articles or these Bylaws of the Association;

(vi) terminate or cancel any contracts of the Association entered into while the initial Board was in office;

(vii) terminate or waive any rights of the Declarant under the Declaration;

(viii) convey, lease, mortgage, alienate or pledge any easements or Common Area of the Association;

(ix) accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;

(x) terminate or impair in any fashion any easements, powers or rights of the Declarant set forth in the Declaration;

(xi) restrict the Declarant's right to refuse, access and enjoyment of any of the property comprising the Copper Oaks project, or

(xii) cause the Association to default on any obligation of it under any contract or the Declaration, unless the Declarant consents in writing to the prohibited action. The Declarant's consent shall be exercised by its appointee on the Board or other person designated to so act by the Declarant.

Section 5. **Election of Directors by Members.** Election of directors to be elected by the members of the Association shall be conducted in the following manner:

A. Within sixty (60) days after the members other than the Declarant are entitled to elect any directors as provided in the Articles and in these Bylaws, or within sixty (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 fourteen (14) days nor more than sixty (60) days' notice of, a special meeting of the members to elect any 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. If such Special Meeting is within four (4) months of the next Annual Meeting, such Special Meeting may at the option of the Board be deemed to be the next Annual Meeting if the notice of the Special Meeting states it will be considered to be the Annual Meeting and if all of the provisions of these Bylaws relating to Annual Meetings are complied with.

B. Except as provided above, the members shall elect directors at the Annual Meetings of the members.

Section 6. **Organizational Meeting.** The organizational meeting of a newly elected Board of Directors of the Association shall be held within ten (10) days of their election 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, provided a quorum shall be present.

Section 7. **Nomination.** Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made for the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors and two (2) or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to any annual or special meeting of the members at which

directors are to be elected to serve from the close of such annual or special meeting until the close of the next annual meeting and such appointment shall be announced at any such annual or special meeting. *The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.*

Section 8. **Election.** Election of the Board of Directors shall be by secret written ballot. At such election the members or their proxies may be cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 9. **Removal.** Any director may be removed from the Board, with or without cause, by a vote of a majority of the members entitled to vote.

Section 10. **Vacancies.** If the office of any director becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining directors, though less than a quorum, shall choose a successor or successors who shall hold office for the balance of the unexpired term in respect to which such vacancy occurred. The election held for the purpose of filling said vacancy may be held at any regular or special meeting of the Board of Directors.

Section 11. **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 of Incorporation of the Association. 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 a director and the designation of his successor by the Declarant shall become effective immediately upon delivery of such written instrument by the Declarant.

Section 12. **Disqualification and Resignation.** Any director may resign at any time by sending a written notice of such resignation to the office of the Corporation, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the organizational meeting of a newly elected Board of Directors following the first annual meeting of the members of the Association, more than three (3) consecutive absences from regular meetings of the Board of Directors, unless excused by resolution of the Board of Directors, shall automatically constitute a resignation effective when such resignation is accepted by the Board of Directors. Commencing with the directors elected at such first annual meeting of the membership, the transfer of title of all Lots and/or Unit Owners owned by a director shall automatically constitute a resignation, effective upon the recordation in the Public Records of Lee County, Florida, of the deed or other instrument establishing the transfer. No member shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment

of any assessment, and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 13. **Compensation.** No director shall receive compensation for any service he or she may render to the Association. However, any director may be reimburse for his actual expenses incurred in the performance of his duties.

Section 14. **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. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegraph, and shall be transmitted at least three (3) days prior to the meeting. Regular meetings of the Board shall be open to all Unit Owners and notice of such meetings shall be posted conspicuously in the Project at least forty eight (48) hours in advance for the attention of the members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized at any such meeting.

Section 15. **Special Meetings.** Special meetings of the Directors may be called by the President, and must be called by the President or Secretary at the written request of two thirds (2/3) of the Directors. Notice of the meeting shall be given personally by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting, and shall be transmitted not less than three (3) days prior to the meeting. Special meetings of the Board shall be open to all Unit Owners and notice of a special meeting shall be posted conspicuously in the Project at least forty eight (48) hours in advance for the attention of the Members of the Association, except in the event of an emergency, provided that Unit Owners shall not be permitted to participate, and need not be recognized.

Section 16. **Action Taken Without a Meeting** The directors shall have the right to take any action in the absence of a meeting they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 17. **Directors' Waiver of Notice.** Before or at any meeting of the Board of Directors, any director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a director at any meeting of the Board shall be waiver of notice by him of the time and place thereof. If al the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 18. **Quorum.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at such meetings at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring in the Minutes thereof shall constitute the presence of such director for the purpose of

determining a quorum.

Section 19. **Minutes of Meeting.** The minutes of all meetings of the Board shall be kept in a book available for inspection by Unit Owners, or their authorized representatives, and Board members at any reasonable time. The Association shall retain these minutes for a period of not less than seven years.

Section 20. **Powers.** The Board of Directors of the Corporation shall have the powers necessary for the administration of the affairs of the Association. The powers shall specifically include, but shall not be limited to, the following:

(a) To adopt and amend rules and regulations governing the use of the Common Area and Facilities, and the personal conduct of the members or their guests thereon, and to establish penalties for the infraction thereof.

(b) To suspend the voting rights and right to sue of the recreational facilities of a member during any period in which such member shall be in default for more than thirty (30) days after notice in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations.

(c) To exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) To declare the office of member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) To employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties;

(f) To further improve the Common Area and, where applicable, the Unit Owners or Lots, both real and personal, subject to the provisions of these Bylaws, the Articles of Incorporation, and the Declaration; and

(g) To further designate one (1) or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management, affairs and business of the Association. The committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular. Minutes of their proceedings and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by members when such is specifically required.

Section 21. **Duties.** It shall be the duty of the Board of Directors as follows.

- (a) Operating and maintaining the Common Properties and other property owned by the Association.
- (b) Determining the expenses required for the operation of the Association.
- (c) Collecting the Assessments for Common Expenses of the Association from Lot Owner.
- (d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Properties and other property owned by the Association.
- (e) Adopting and amending rules and regulations concerning the details of the operation and use of the Project and any property owned by the Association.
- (f) Maintaining bank accounts on behalf of the Association and designating the signatories required thereof.
- (g) Purchasing, leasing or otherwise acquiring Lots or other property in the name of the Association, or its designee.
- (h) Purchasing Lots at foreclosure or other judicial sales, in the name of the Association, or its designee.
- (i) Selling, leasing, mortgaging or otherwise dealing with Lots acquired by the Association.
- (j) Settling or compromising claims of or against the Association in which all Unit Owners have a common interest.
- (k) Obtaining and reviewing insurance for the Common Properties and other property owned by the Association.
- (l) Making repairs, additions and improvements to, or alterations of, the Common Properties, in accordance with the provisions of the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings or otherwise.
- (m) Enforcing obligations of the Unit Owners, allocating proof of its expenses and taking such other actions as shall be deemed necessary and proper for the sound management of the Project.
- (n) Levying fines against appropriate Unit Owner(s) for violations of the Declaration or rules and regulations established by the Association to govern the conduct of such

## Unit Owners.

- (o) Borrowing money on behalf of the Association when required in connection with the operation, care, upkeep and maintenance of the common areas or the acquisition of property, and granting mortgages on and/or security interests in Association owned property; provided, however, that the consent of the holders of at least 75% of the votes of the Memberships represented at a meeting of Members at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required for the borrowing of any sum in excess of \$100,000.00. If any sum borrowed by the Board on behalf of the Association pursuant to the authority contained in this subparagraph (o) is not repaid by the Association, Unit Owner who pays to the creditor such portion thereof as his interest in the property owned by the Association bears to the interest of all the Unit Owners in the property owned by the Association shall be entitled to obtain from the creditor a release of any judgment or other lien with said creditor shall have filed or shall have the right to file against, or which will affect, such Unit Owner(s) Lot. The Association shall take no action authorized in this paragraph without the prior written consent of the Declarant as long as the Declarant owns any Lot.
- (p) Contracting for the management and maintenance of the common areas or other property owned by the Association and authorizing a management agent (who may be an affiliate of the Declarant) to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of Assessments, preparation of records, enforcement of rules and maintenance, repair and replacement of the Common Properties or other Association property with funds as shall be made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties granted by the Declaration, including, but not limited to, the making of Assessments, promulgation of rules and execution of contracts on behalf of the Association.
- (q) At its discretion, authorizing a Unit Owner or other persons to use portions of the Common Properties or other property owned by the Association for private parties and gatherings and imposing reasonable charges for such private use.
- (r) Exercising (i) all powers specifically set forth in the Declaration, the Articles, and these Bylaws, and (ii) all powers incidental thereto, and all other powers of a Florida corporation not for profit.
- (s) Imposing a lawful fee in connection with the approval of the transfer, lease or sale of Lots, not to exceed the maximum amount permitted by law in any one case.
- (t) Contracting with any creating special taxing districts. Anything herein, in the Declaration, or elsewhere to the contrary notwithstanding, no general funds of the Association shall be utilized for bringing, supporting, investigating, or otherwise abetting any legal action, claim, or extra judicial action against the Declarant, and such purposes shall not be generally deemed Common Expenses. Funds of the

Association may only be spent for such purposes to the extent they are specifically approved for such purposes by 75% of the votes of the Members of the Association. This provision may not be amended.

## **ARTICLE V - OFFICERS**

Section 1. **Enumeration of Officers.** The officers of the Association shall be a President, Vice-President, who shall at all times be members of the Board of Directors, and a Secretary and a Treasurer, and such other officers as the Board may, from time to time, by resolution create, who shall be from among the members, except that officers selected or appointed by the Declarant need not be members of the Association.

Section 2. **Election.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. **Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall earlier resign, or shall be removed, or otherwise be disqualified to serve.

Section 4. **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. The acceptance of such resignation shall not be necessary to make it effective.

Section 6. **Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. **Multiple Offices.** Any officer may hold two or more offices except that the President shall not also be the Secretary.

Section 8. **Duties.** The duties of the officers are as follows:

(a) **President.** The President shall be the chief executive officer of the Association; shall preside at all meetings of the members and of the Board of Directors; shall have executive powers and general supervision over the affairs of the Association and other officers; shall sign all written contracts to perform all of the duties incident to his office and which may be delegated to him from time to time by the Board of Directors.

(b) **Vice-President.** The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such



other duties as may be required of him by the Board.

(c) **Secretary**. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses; shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer, and shall perform such other duties as required by the Board. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent.

(d) **Treasurer**. The Treasurer shall receive and deposit in appropriate bank accounts all moneys of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account in accordance with generally accepted accounting principles, which, together with substantiating papers, shall be made available to the Board for examination at reasonable times, shall prepare an annual budget and a statement of income and expenditures to be presented to the members at the regular annual meeting, and deliver a copy of each to the members and shall collect the assessments and promptly report to the Board of Directors the status of collections and of all delinquencies.

#### **ARTICLE VI - BOOKS AND RECORDS**

Section 1. **Unit Owner Register**. The Association shall maintain a register of the name and mailing address of all Unit Owners. In the event the Association has not been provided with the address of an Unit Owner, the Unit Owner(s) address shall be deemed to be same, and any notice sent to the said Unit Owner address shall comply with the requirements of these Bylaws, the Declaration, and the Articles of Incorporation. If a Unit Owner is owned by more than one (1) person, they shall provide the Association with one (1) mailing address for said Unit Owner, and, in the event same is not provided to the Association, it shall be deemed to be the Unit Owner address. Any change of address shall be effective only as to future notices, and shall not affect any notices previously provided to the members, even in the event that the meeting or other occurrence in the said notice has not occurred as of the time of giving of said address change.

Section 2. **Inspection by Members**. The books, records and papers of the Association shall, during reasonable business hours, be subject to inspection, upon written request, by any member or his agent or attorney. Such records shall include the Declaration, the Articles of Incorporation, and the Bylaws of the Association and shall be available at the principal office of the Association, where copies may be purchased at a reasonable cost.

Section 3. **Minutes of Meeting**. The minutes of all meetings of Unit Owners shall be kept in a book available for inspection by Unit Owners or their authorized representatives or Board Members at any reasonable time. The Association shall retain these minutes for a period of not less than five (5) years.

Section 4. **Delinquent Unit Owners**. If any assessment or portion thereof imposed against an Unit Owner remains unpaid for thirty (30) days following its due date, such Unit Owners's voting rights in the Association shall be automatically suspended until all past due assessments and

other fees then due are paid,

## **ARTICLE VII - FINANCES AND ASSESSMENTS**

Section 1. **Depositories.** The funds of the Association shall be deposited in such bands and depositories as may be determined by the Board of Directors from time to time upon resolutions approved by the Board, and shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Association as may be designated by the Board of Directors. Obligations of the Association shall be signed by at least two (2) officers of the Association, one of which must be the Treasurer.

Section 2. **Taxable Year.** The taxable year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first taxable year shall begin on the date of Incorporation.

Section 3. **Budget.**

(a) **Adoption by Board; Items.** The Board shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of Assessments payable by the Unit Owners to meet the expenses for the Association, and allocate and assess such expenses among the Unit Owners in accordance with the provisions of the Declaration.

The adoption of a budget for the Association by the Board shall comply with the requirements hereinafter set forth:

(i) **Notice of Meeting.** A copy of the proposed budget shall be mailed to each Unit Owner not less than fourteen (14) days prior to the meeting of the Board at which the budget will be considered, together with a notice of that meeting indicating the time and place of such meeting. The meeting shall be open to the Unit Owners, provided that Unit Owners shall not have the right to participate, and need not be recognized, at such meeting.

(ii) **Special Membership Meeting.** If a budget is adopted by the Board which requires Assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of such Assessments for the preceding year, as hereinafter defined, upon written application of ten percent (10%) of the Unit Owners, a special meeting of the Unit Owners shall be held within thirty (30) days of delivery of such application to the Board. Each Unit Owner shall be given at least ten (10) days notice of said meeting. At the special meeting, Unit Owners shall consider and adopt a budget. The adoption of such budget shall require a vote of Unit Owners of not less than a majority of all the Lots (including Lots owned by the Declarant), which are present at such meeting (in person or by proxy) at which a quorum is attained.

(iii) **Determination of Budget Amount.** In determining whether a budget requires assessments against Unit Owners in any year exceeding one hundred fifteen percent (115%) of assessments for the proceeding year, there shall be excluded in the computations any authorized provisions for reasonable reserves made by the Board in respect of repair or replacement of the Common Properties or in respect of anticipated expenses of the Association which are not

anticipated to be incurred on a regular or annual basis, and there shall be excluded from such computation assessments for improvements to the Common Properties and all special assessments, including surcharges against specific Unit Owner(s).

(iv) **Proviso.** Anything herein to the contrary notwithstanding, prior to the date on which the Declarant turns over control of the Association, the budget may be set by the Board without holding any meeting, giving notice thereof, or being subject to the 115% limitation set forth in (ii) above.

(b) **Adoption by Membership.** In the event that the Board shall be unable to adopt a budget in accordance with the requirements above, the Board may call a special meeting of Unit Owner(s) for the purpose of considering and adopting such budget, which meeting shall be called and held in the manner provided for such meetings in said subsection. Alternatively, the Board may propose a budget in writing to all Members of the Association. If either such budget is adopted by a majority of the votes of Members present at such meeting, or receiving such written budget, upon ratification by a majority of the Board, it shall become the budget for such year.

Section 2. **Common Assessments.** Assessments against the Unit Owners for their share of the items of the budget shall be made for the applicable fiscal year annually, if possible at least ten (10) days proceeding the year for which the Assessments are made. Such assessments shall be due in equal installments, payable in advance on the first day of each quarter (or other period at the election of the Board) of the year for which the Assessment shall be presumed to have been made in the amount of the last prior Assessment, and quarterly installments on such Assessment shall be due upon each installment payment date until changed by an amended Assessment.

Section 3. **Individual Assessments.** Charges by the Association against less than all Members for other than routine Common Expenses, shall be payable in advance. These charges may be collected by Individual Assessment. Individual Assessments may be made only when expressly provided for in the Declaration or the exhibits annexed thereto, as the same may be amended from time to time, which charges may include, without limitations, charges for the use of portions of the Common Properties or other Association property, maintenance services furnished at the expense of Unit Owners, other services furnished for the benefit of Unit Owners and fines and damages and other sums due from such Unit Owner.

Section 4. **Special Assessments.** In the event the annual Common Assessment proves to be insufficient, the Board may adopt a Special Assessment to cover any shortfall in the manner otherwise set forth for the adoption of regular annual Common Assessments and as further provided in the Declaration. Special Assessments shall be made in the manner and for the purposes otherwise provided in the Declaration.

Section 5. **Depository.** The depository of the Association shall be such bank(s) or savings and loan associations in the State as shall be designated from time to time by the Directors and in which the monies of the Association shall be deposited. Withdrawal of monies from those accounts shall be made only by checks signed by such person or persons as are authorized by the Directors. All sums collected by the Association from Assessments or contributions to working capital or otherwise may be commingled in a single fund or divided into more than one fund, as

determined by the Board.

Section 6. **Acceleration of Assessment Installments upon Default.** Unit Owners shall be in default in the payment of an installment upon an Assessment for more than thirty (30) days, the Board or its agent may accelerate the remaining installments of the annual Assessment upon written notice to such Unit Owner, and the then unpaid balance of the Assessment shall be due upon the date stated in the notice, but not less than five (5) days after delivery of the notice or ten (10) days after mailing of the notice, whichever shall first occur.

Section 7. **Delinquent Assessments.** As more fully provided in the Declaration, each member, regardless of how title is acquired, including a purchaser at a judicial sale (other than by foreclosure a deed in lieu thereof of a first mortgage encumbering the Unit Owner), is obligated to pay to the Association annual, special and individual assessments which are secured by a continuing lien upon the property against which the assessment is made. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor for his share of the common expenses up to the time of conveyance. Any assessment which is not paid within ten (10) days of its due date shall be delinquent, and the Unit Owners owing said assessment shall pay to the Association a late fee of ten percent (10%) of the amount of the assessment, or Fifty Dollar (\$50.00), whichever is greater, plus interest at the then highest rate of interest allowable by law from the due date until paid. Following delinquency of any assessment, the Association may bring an action at law against the Unit Owners personally obligated to pay the same, may foreclose the lien against the Unit Owners or may bring any other action at law or equity, and interest, costs and reasonable attorneys' fees, including all appellate levels, of any such action shall be added to the amount of such assessment. No Unit Owners may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his/her Unit Owner or Lot.

Section 8. **Fidelity Bonds.** Fidelity Bonds may be required by the Board for all persons handling or responsible for Association funds in such amount as shall be determined by a majority of the Board, but not less than \$10,000.00 for each such person so bonded, if any. The premiums on such bonds shall be paid by the Association as a Common Expense.

Section 9. **Accounting Records and Reports.** The Association shall maintain accounting records in the State of Florida, according to accounting practices normally used by similar associations or the manager under any applicable management contract. The records shall be open to inspection by Unit Owners of their authorized representatives at reasonable times and written summaries of them shall be applied at least annually. The records shall include, but not be limited to, (a) a record of all receipts and expenditures, and (b) an account for each Lot designating the name and current mailing address for the Unit Owner, the amount of each Assessment, the dates and amounts in which the Assessment come due, the amount paid upon the account and the dates so paid, and the balance due. Within sixty (60) days following the end of the fiscal year, the Board may mail, or furnish by personal delivery, to each Unit Owner a complete financial report of actual receipts and expenditures for the previous twelve (12) months. The report, if sent, may show the amounts of receipts by accounts and receipt classifications and may show the amounts of expenses by accounts and expense classifications, including, if applicable, but not limited to, the following.

- (a) Cost for security;
- (b) Professional and management fees and expenses;
- (c) Taxes;
- (d) Cost for recreation facilities;
- (e) Expenses for refuse collection and utility services;
- (f) Expenses for lawn care;
- (g) Cost for building maintenance and repair;
- (h) Insurance costs;
- (i) Administrative and salary expenses; and
- (j) General reserves, maintenance reserves and depreciation reserves.

Section 10. **Application of Payment.** All payments made by Unit Owners shall be applied as provided in these Bylaws and in the Declaration or as determined by the Board.

Section 11. **Notice of Meetings.** Notice of any meeting where Assessments against Unit Owners are to be considered for any reason shall specifically contain a statement that Assessments will be considered and the nature of any such assessments.

Section 12. **Declarant Exemption from Assessments for Lawsuits.** The Declarant shall not be liable for the payment of any Assessments applicable to Lots it owns which relate in any way to the payment of legal or other fees to persons or entities engaged for the purpose of suing, or making, preparing or investigating possible claims against the Declarant.

## **ARTICLE VIII - AMENDMENTS**

Section 1. **Amendments.** These Bylaws may be amended, at a regular or special meeting of the members, by the affirmative vote of seventy-five percent (75%) of the members of the Association entitled to vote. Notwithstanding anything contained herein to the contrary, any amendment to these Bylaws made by the Declarant, or made by the members prior to Declarant relinquishing control, must be approved by the Federal Housing Administration or by the Veterans Administration, FNMA or FHLMC if any mortgage encumbering any Unit Owner is guaranteed or insured by either such agency, and if such amendment materially and adversely affects the Unit Owner or 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 requirements of any lender holding a mortgage encumbering any Lot so that such lender will make, insure or guaranty mortgage loans for the Unit Owners, 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 twenty (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.

Notwithstanding anything herein to the contrary, approval of the FHA/VA/FNMA or FHLMC shall only be required if any mortgage encumbering a Lot within the Property is guaranteed or insured by either of such agencies.

Section 2. **Recordation.** Any amendment to these Bylaws shall be certified and recorded in Public Records of Lee County, Florida.

Section 3. **Conflicts.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall prevail.

If any conflict should exist or hereafter arise with respect to the interpretation of these Bylaws as between these Bylaws and the Declaration, the Declaration shall prevail. No amendment of these Bylaws shall change the rights and privileges of the Declarant without the Declarant's prior written approval.

#### **ARTICLE IX - ACQUISITION OF UNIT OWNERS**

Section 1. **Acquisition of Foreclosure.** At any foreclosure sale of a Unit Owner(s), the Board of Directors may, with the authorization and approval by the affirmative vote of a majority of the total voting members' votes present at any regular or special meeting of the members wherein said matter is voted upon, acquire in the name of the Association, or its designee, a Unit Owner(s) being foreclosed. The term "foreclosure", as used in this section, shall mean and include and foreclosure of any lien, excluding the Association's lien for assessments. The power of the Board of Directors to acquire a Unit Owner at any foreclosure sale shall never be interpreted as any requirement or obligation on the part of the said Board of Directors or of the Association to do so at any foreclosure sale, the provisions hereof being permissive in nature and for the purposes of setting forth the power in the Board of Directors shall not be required to obtain the approval at the foreclosure sale of a Unit Owner due to the foreclosure of the Association's lien for assessments under the provisions of the Declaration, notwithstanding the sum the Board of Directors determines to bid at such foreclosure sale.

#### **ARTICLE X - PARLIAMENTARY RULES**

Robert's Rules of Order (latest edition) shall govern the conduct of the Association's Meetings when not in conflict with the Declaration, or these Bylaws.

#### **ARTICLE XI - PARAMOUNT RIGHTS OF DECLARANT**

All of the applicable terms and provisions of all of the Articles (and the sections thereunder) of these Bylaws shall be subject to the Declaration of Covenants and Restrictions as to the rights and powers of the Declarant, which rights and powers shall be deemed paramount to the applicable provisions of the Articles (and the sections thereunder) of these Bylaws.

#### **ARTICLE XII - RULES AND REGULATIONS**

Section 1. **Adoption and Amendments of Rules.** The Board of Directors may, from time to time, adopt or amend previously adopted administrative rules and regulations governing the details of the operation, use, maintenance, management and control of the Unit Owners, Lots and Common Areas and any facilities or services made available to the Unit Owners. A copy of the rules and regulations adopted from time to time as herein provided shall, from time to time, be posted in

a conspicuous place and/or copies of same shall be furnished to each Unit Owner.

Section 2. **As to Unit Owner(s) and Lots.** The Board of Directors may, from time to time, adopt or amend previously rules and regulations governing and restricting the maintenance of the Unit Owners and Lots and the use and maintenance of the Common Area, provided, however, that copies of such rules and regulations, prior to the time the same become affective, shall be furnished to each Unit Owner.

Section 3. **Conflict.** In the event of any conflict between the rules and regulations adopted, or from time to time amended, and the Declaration, the Declaration shall prevail.

Section 4. **Construction.** Wherever the context so permits, the singular shall include the plural, shall include the singular, and the use of any gender shall be deemed to include all genders. If any portion hereof shall be found by competent judicial authority to be unenforceable, then only that portion shall be deemed and the remainder shall be given its nearest permissible meaning and effect.

Section 5. **Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define or limit the scope of these Bylaws or the intent of any provision hereof.

Section 6. **Conflict.** In the event there should be found any irreconcilable conflict among or between the Declaration, the Articles and/or these Bylaws and in the absence of any express language indicating which document controls the particular subject matter, then the provisions of the Declaration shall be paramount, the Articles next paramount and these Bylaws subordinate.

Section 7. **Indemnification of Officers and Directors.** Subject to the further provisions of this paragraph, the Association shall indemnify and hold harmless all officers and Directors, past or incumbent, from and against all costs, claims, damages, expenses and liabilities of any kind whatsoever, including attorney's fees, and costs at all tribunal levels, arising out of the performance of such person's duties hereunder. Such indemnification and hold harmless provision shall (i) exist regardless of whether the Association itself is named as a party defendant or alleged to have any liability, (ii) include the payment of any settlements upon approval by the Board, and (iii) include indemnification of the estate and heirs of the indemnified party. Such indemnification and hold harmless provision shall not be applicable (i) to the extent the claim or liability is covered by insurance, or (ii) in the event a court of competent jurisdiction finally determines, after all appeals have been exhausted or not timely pursued, that the indemnified party did not act in good faith within what he reasonably believed to be the scope of his duty and/or authority and for purposes which he reasonably believed to be in the best interests of the Association or its Members generally and such court further specifically determines that indemnification should be denied. The provision of this paragraph may not be amended to terminate the effect hereof as to any persons who became officers or Directors while this paragraph was effective.

Section 8. **Suspension of Privileges; Fines.** In the event of an alleged violation of the Declaration, the Articles, the Bylaws or the rules and regulations adopted hereunder, and after

written notice of such alleged failure is given to the Unit Owners in the manner herein provided, the Board shall have the right, after the alleged violator has been given an opportunity for an appropriate hearing and upon an affirmative vote of the Board, to suspend or condition said Unit Owner and his/her family, guests and tenant's rights to the use of the Common Properties (except for the portions thereof which are necessary as a means of ingress and egress) and to fine such Unit Owner. Any such suspension shall be for a period of not more than thirty (30) days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) the suspension may be imposed for so long as the violation continues. No fine shall exceed the sum of \$1,000.00 per violation. Repair or replacement costs shall not be deemed fines subject to the foregoing limitation. Any continuing violation shall be a separate violation for each day it continues. No fine under this section shall be assessable for delinquent assessments. The failure of the Board to enforce the rules and regulations, these Bylaws, the Articles or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Bylaws or by law shall be cumulative and none shall be exclusive. However, any individual Unit Owner must exhaust all available internal remedies of the Association prescribed by these Bylaws, or by any rules and regulations adopted by the Association, before that Unit Owner may resort to a court of law for relief from any provision of the Declaration, the Articles, these Bylaws or the rules and regulations. The rights of the association to suspend voting rights, to impose interest charges, accelerate assessment payments, or to otherwise enforce the payment of assessments, as elsewhere provided in the Declaration and these Bylaws, shall not be subject to the provisions of this paragraph or require the notice and hearing provided for herein.

Section 9. **Written Complaint.** A hearing to determine whether a right or privilege of an Unit Owner or any of his/her family or tenants ("Respondent") under the Declaration or these Bylaws should be suspended or conditioned or a fine imposed shall be initiated by the filing of a written complaint by any Unit Owner or by any officer or Director with the President or Secretary of the Association. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, to the end that the Respondent will be able to prepare his defense. The complaint shall specify the specific provisions of the Declaration, the Articles, these Bylaws or the rules and regulations which the Respondent is alleged to have violated, but shall not consist merely of charges phrased in the language of such provisions without supporting facts.

Section 10. **Discovery.** After initiation of a proceeding in which the Respondent is entitled to a hearing, the Respondent and the individual filing of the complaint, upon written request made to the other party, prior to the hearing and within fifteen (15) days after service by the Board of Directors of the complaint or within ten (10) days after service of any amended or supplemental complaint, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, and (2) inspect and make a copy of any statements, writings and investigate reports relevant to the subject matter of the hearing. Nothing in this section, however, shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise confidential or protected as work product.

Section 11. **Tribunal.** The President shall appoint Tribunal of three Unit Owners upon receipt of a written complaint. No member of the Tribunal shall be a director of the Association, nor



shall any member of the Tribunal be involved in any prior investigation of the matter on behalf of the Board nor related by blood or marriage to either the complaining party or the Respondent. In appointing the members of the Tribunal, the President should make a good faith effort to avoid appointing any Unit Owners who are witnesses to the alleged violation giving rise to the Complaint or otherwise biased. The decision of the President shall be final, except that the Respondent may challenge any member of the Tribunal for cause, where a fair and impartial hearing cannot be afforded, at any time prior to the taking of evidence of the hearing. In the event of such a challenge, the Board shall meet to determine the sufficiency of the challenge, without the President voting. If such challenge is sustained, the President shall appoint another Unit Owner to replace the challenged member of the Tribunal. All decisions of the Board in this regard shall be final. The Tribunal shall elect a Chairman. The Tribunal shall exercise all other powers relating to the conduct of the hearing.

Section 12. **Notice of Hearing.** The Tribunal shall serve a notice of hearing as provided herein, on all parties at least ten (10) days prior to the hearing.

Section 13. **Hearings.**

(a) Whenever the Tribunal has commenced to hear the matter and a member of the Tribunal is forced to withdraw prior to a final determination by the Tribunal, the remaining members shall continue to hear and decide the case. Oral evidence shall be taken only on oath or affirmation administered by an officer of the Association. The use of affidavits and written interrogatories in lieu of oral testimony shall be encouraged by the Tribunal. Each party shall have the right to be represented by counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If the Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(b) Each party shall have the right to be represented by counsel; to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If the Respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding, unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

(d) Neither the accusing Unit Owner nor the allegedly defaulting Unit Owner must be in attendance at the hearing. The hearing shall be open to attendance by all Unit Owners. In rendering a decision, official notice may be taken at any time of any generally accepted matter within the Declaration, the Articles, these Bylaws, the rules and regulations or the workings of the Association.

Section 14. **Decision.** The Tribunal will prepare written findings of fact and recommendations for consideration by the Board of Directors. The Tribunal shall make its determination only in accordance with the evidence presented to it and in accordance with these Bylaws. After all testimony and documentary evidence has been presented to the Tribunal, the Tribunal shall vote by secret written ballot upon the matter, with a majority of the entire Tribunal controlling. A copy of the findings and recommendations of the Tribunal shall be posted by the Board at a conspicuous place on the Common Properties, and a copy shall be served by the President on each party in the matter and his attorney, if any. Disciplinary action and fines under the Declaration, these Bylaws or the rules and regulations shall be imposed only by the Board, and based upon the findings and recommendations of the Tribunal. The Board may adopt the recommendations of the Tribunal in their entirety, or the Board may reduce the proposed penalty and adopt the balance of the recommendations. In no event shall the Board impose more stringent disciplinary action than recommended by the Tribunal. The decision of the Board shall become effective ten (10) days after it is served upon the Respondent, unless otherwise ordered in writing by the Board. The Board may order a reconsideration at any time within fifteen (15) days following service of its decision on the parties on its own motion or upon petition by a party.

The foregoing was adopted as the Bylaws of **COPPER OAKS HOMEOWNERS' ASSOCIATION, INC.**, a Florida corporation not for profit, under the laws of the State of Florida, at its first meeting of the Board of Directors on the 5<sup>th</sup> day of October, 2004.

**COPPER OAKS HOMEOWNERS'  
ASSOCIATION, INC.**

a Florida corporation not for profit

By: Stephen W. Boling  
**STEPHEN BOLING, PRESIDENT**

[Signature]  
Witness

[Signature]  
Witness

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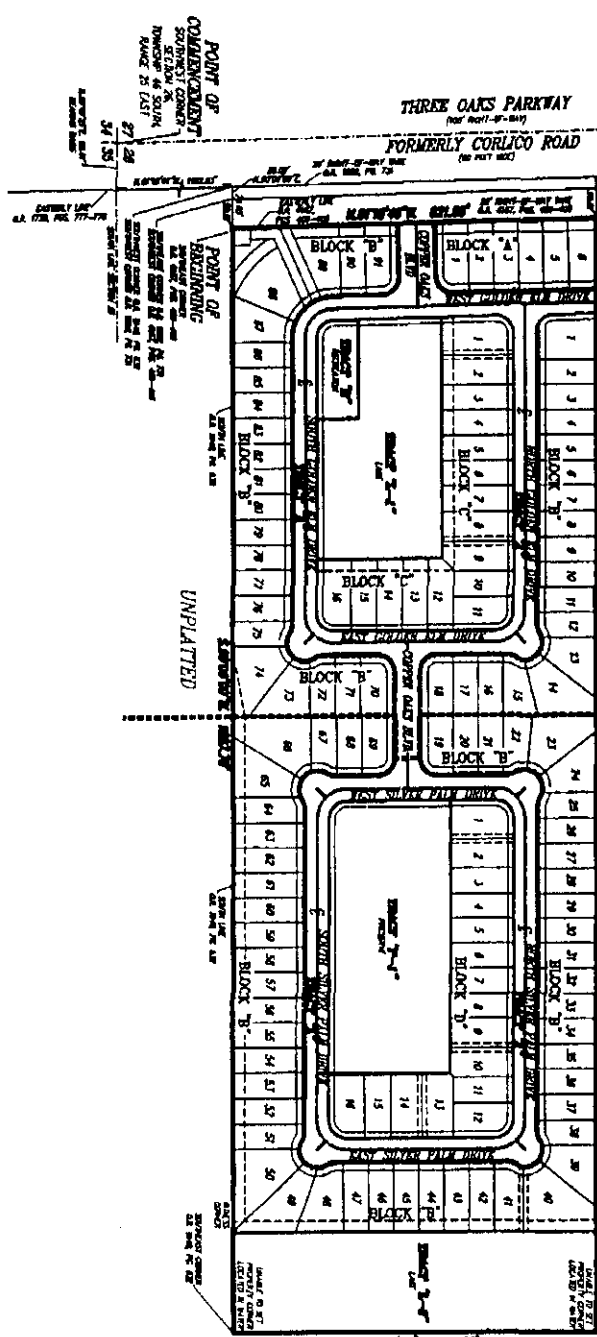
**EXHIBIT "D"**

**SITE PLAN**

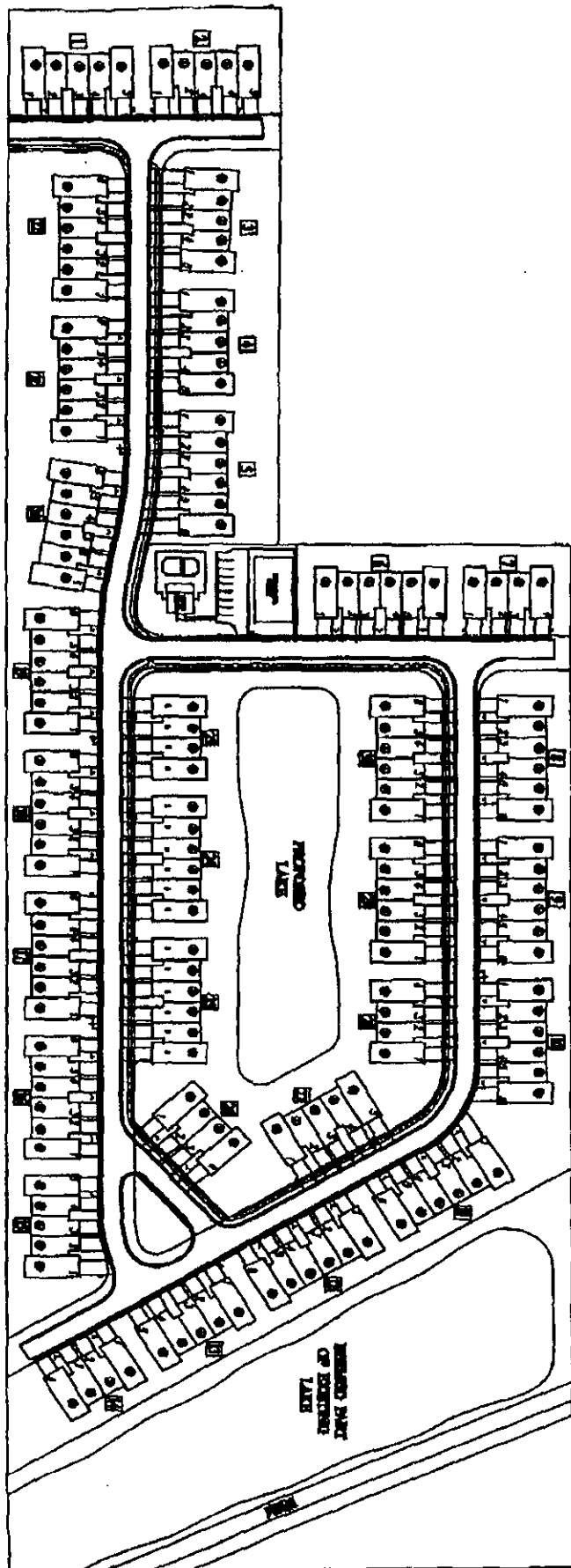
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# SOUTHERN HOMES COPPER OAKS LEE COUNTY, FLORIDA



- ☐ FOR PERMIT ORDER
- ☐ SUBMITTED FOR PERMIT
- ☐ UNDER CONSTRUCTION
- ☐ COMPLETED C.O.