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**DECLARATION  
OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
PORTOFINO ESTATES**

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**DECLARATION  
OF  
RESTRICTIVE COVENANTS  
FOR  
PORTOFINO ESTATES**

**THIS DECLARATION** is made this 30 day of June, 2003 by **PRIME HOMES AT PORTOFINO ESTATES, Ltd**, a Florida limited partnership ("Declarant"). Declarant is the owner in fee simple of certain real property located in Miami-Dade County, Florida and Located within the City of Homestead pursuant to a plat to be recorded in the Records of Maps of Miami-Dade County, Florida.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the lots or tracts constituting such subdivision, Declarant states that all of the real property described above and each part thereof shall be held, transferred, sold, conveyed and occupied only subject to the following easements, covenants, conditions, charges, liens and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof. The Association, as hereinafter defined, is not a condominium association and therefore shall not be affected by the provisions of Chapter 718, Florida Statutes.

**Article I**

**Definitions**

**Section 1.** "Articles" or "Articles of Incorporation" shall mean the Articles of Incorporation of the Association attached hereto as Exhibit "C."

**Section 2.** "Assessments" shall mean those payments due pursuant to Article VII, or elsewhere within the Declaration, whether General Assessments or Special Assessments (as hereinafter defined), or a combination thereof.

**Section 3.** "Association" shall mean and refer to the Sub Association known as the Portofino Estates Property Owners' Association, Inc. a Florida not-for-profit corporation, its successors and assigns.

**Section 4.** "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

**Section 5.** "By-Laws" shall mean the By-Laws of the Association attached hereto as Exhibit "D."

**Section 6.** "Common Area" shall mean and refer to the real property legally described in Exhibit "A" attached hereto and incorporated herein by reference, and any other interest in real property acquired by the Association and deemed Common Area either in this Declaration or in the instrument of conveyance, together with any improvements on such tracts including, without limitation, all structures, recreational facilities, off-street parking areas, private streets, sidewalks, street lights, and entrance features, but excluding any public utility installations thereon.

**Section 7.** "Declarant" or "Developer" shall mean and refer to PRIME HOMES AT PORTOFINO ESTATES, LTD, a Florida limited partnership, its successors and assigns, if such successor or assignee acquires the undeveloped portion of the Properties and is designated as such by PRIME HOMES AT PORTOFINO ESTATES, LTD. The Declarant may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Declarant as to those rights which may have been assigned to them. "Builder" shall mean and refer to Prime Homes Builders and any other residential building company acquiring Lots or tracts of vacant land from the Declarant for the purpose of construction and sale of homes, their successors and assigns if such successor or assignee acquires the undeveloped portion of the Properties.

**Section 8.** "General Assessments" shall mean and refer to Assessments levied as general assessments in accordance with Article VII, Section 2 of this Declaration, or elsewhere within this Declaration.

**Section 9.** "Unit" shall mean and refer to a portion of the Property, whether developed or undeveloped, intended for development, use and occupancy as a residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration but not limitation) single-family attached 2-story townhomes on separately platted Lots, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Property. The term shall include all portions of the Lot or Unit owned including any residential dwelling or structure thereon. In the case of a parcel of vacant land or land in which improvements are under construction, the parcels shall be deemed to contain the numbers of Units designated for such parcel on the Plat, until such time as a certificate of occupancy is issued on all or a portion thereof by a local government entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units in the remaining land, if any, shall continue to be determined in accordance with this paragraph. "Lot" shall mean and refer to the parcels of land within the Property shown on the Plat to be recorded upon which has been or in the future will be located an attached single family residential dwelling.

**Section 10.** "Maintenance" shall mean the exercise of reasonable care to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed-free environment for optimum plant growth.

**Section 11.** "Master Association" shall mean and refer to the Waterstone Homeowners' Association, Inc., a Florida not-for-profit corporation.

**Section 12.** "Master Association Declaration" shall mean the Declaration of Covenants and Restriction of the Master Association and any amendments thereto.

**Section 13.** "Member" or "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot.

**Section 14.** "Mortgage" shall mean a mortgage or a deed of trust.

**Section 15.** "Mortgagee" shall mean and refer to any person or entity (i) holding a mortgage encumbering a Lot, which (ii) in the ordinary course of business makes, purchases, guarantees or insures mortgage loans, and which (iii) is not owned or controlled by the Owner of the Lot encumbered. A Mortgagee may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company, the Government National Mortgage Association, the Federal National Mortgage Association, an agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, a Mortgagee shall also mean the holder of any mortgage executed by or in favor of Declarant, whether or not such holder would otherwise be considered a Mortgagee.

**Section 16.** "Properties" shall mean and refer to all such Properties, and additions thereto (which additional Properties may or may not be contiguous to the real property described in Article II), as are subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

**Section 17.** "Special Assessment" shall mean and refer to Assessments levied as special assessments in accordance with Article VII, Section 4 of this Declaration or elsewhere within this Declaration.

**Section 18.** "Subdivision" shall mean the subdivided real property herein described and such additions thereto as may be brought within the jurisdiction of the association as herein provided.

**Section 19.** "Sub-Association" shall mean the Portofino Estates Property Owners' Association, Inc.

## **Article II**

### **Property Subject to this Declaration; Additions Thereto**

**Section 1. Legal Description.** The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Miami-Dade County, Florida and is more particularly described in Exhibit "B" attached hereto and made a part hereof.

**Section 2. Declarant's Right to Add or Withdraw Property.** Declarant shall have the right, and in its sole discretion, to add additional property (which may or may not be contiguous to the real property described in Section 1) to the scheme of this Declaration. Declarant shall also have the right to withdraw property from the scheme of this Declaration subject to the approval of Miami-Dade County. The addition or withdrawal by Declarant prior to turnover shall not require the consent or joinder of the Association, or any Owner or Mortgagee of any of the Properties. Subsequent to turnover, the Declarant must receive an affirmative vote by a majority of the Association Members prior to adding or withdrawing property. Upon addition of any property to the scheme of this Declaration, the Owners of such additional property shall be and become subject to this Declaration, including Assessments by the Association for their pro rata share of the Association expenses. The addition or withdrawal of lands as aforesaid shall be made and evidenced by filing in the Public Records of Miami-Dade County, Florida, a Supplemental Declaration with respect to the lands to be added or withdrawn.

## **Article III**

### **Powers of Association**

**Section 1. Powers.** In addition to the powers provided by statute and in its Articles of Incorporation and By-Laws, the Association, through the action of its Board, shall have the power, but not the obligation, to acquire, by purchase, lease or otherwise, one or more dwelling units for occupancy by its employees or independent contractors, and to enter into an agreement or agreements from time to time with one or more person, firms or corporations for management services.

**Section 2. Rules and Regulations.** The Association, through the action of its Board, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions for violations of the rules and regulations as well as violations of this Declaration or the Articles or By-Laws may include reasonable monetary fines, which shall be levied as Special Assessments as provided for in Article VII, Section 4 of this Declaration, and suspension of the right to vote and the right to use the Common Areas. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. In addition, the Association, through the



action of its Board, may by contract or other agreement, enforce local ordinances or permit the City of Miami-Dade to enforce ordinances on the Properties for the benefit of the Association or its Members.

#### Article IV

#### Membership in Association; Voting Rights

**Section 1. Member of the Association.** Every Owner of a Lot, by taking title to a Lot shall be a Member of the Association and shall be subject to the terms and condition of these Declarations; membership shall be appurtenant to and may not be separated from ownership of a Lot.

**Section 2. Class of Voting Member.** The Association shall have two classes of voting members as follows:

**Class A.** The Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in a given Lot, all such persons shall be members and the vote for such Lot shall be exercised as they may determine among themselves. In no event shall more than one vote be cast with respect to any Lot owned by Class A members.

**Class B.** The Class B member shall be the Declarant. The Class B member shall be entitled to one (1) vote for each Lot in which it holds the interest required for membership by Section 1, plus two (2) votes for each vote which the sum of all Class A members are entitled to cast at any time, thus giving the Class B member a two-thirds majority of votes in the Association. The Class B membership shall cease upon the Declarant no longer holding the title to ninety percent (90%) of the Lots, including Lots on any additional property which may have been brought under the provisions of this Declaration by recorded supplemental declarations, as set forth in Section 2 of Article II hereof.

Notwithstanding any provision to the contrary, the Declarant shall have the right to elect the entire Board until such time as Declarant terminates the Class B membership. Thereafter, Declarant shall have the right to appoint one director so long as the Declarant owns any Lot in the Properties. The Declarant may waive its right to elect one or more directors by written notice to the Association, and thereafter such directors shall be elected by the Members. When the Declarant has terminated the Class B membership, all of the directors shall be elected by the Members in the manner provided in the Bylaws.

Within three (3) months after the date that 90% of the Units have been conveyed other than to a Developer (which definition does not include builders, contractors or others who purchase a parcel for the purpose of constructing improvements thereon for resale), the Declarant shall terminate the Class B Membership and the Declarant shall call a meeting, as provided in the Bylaws for Special Meetings, to advise the Members of the termination of Class B status and to provide for the turnover of control of the Board. On or before conveyance by the Declarant of the last Lot which it owns in the Properties (or sooner at the Declarant's option), the Declarant or its successors and assigns shall

convey and transfer the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

The turnover of control of the Board shall take place in the following manner:

1. The Membership shall identify and elect three Owners who are willing to serve on the Board of Directors.
2. The Declarant and the three Owners shall enter into a written mutual release executed prior to turnover and held in escrow.
3. Two of the three Declarant-appointed members of the Board of Directors shall tender their written resignations.
4. The remaining Declarant-appointed member of the Board of Director shall appoint two of the Owners selected by the Declarant to serve on the Board.
5. The remaining Developer-appointed member of the Board of Director shall tender his or her written resignation.
6. The remaining members of the Board of Directors shall appoint the third Owner designated by the Declarant to serve on the Board.

#### Article V

#### Maintenance

**Section 1. Common Areas.** The Association shall be obligated to accept any and all conveyances to it by Declarant of fee simple title, easements or leases to Open Space, Lakes, Surface Water and Storm Water Management Systems, Common Areas or Common Property, including Recreational Areas, subject to any and all obligations and restrictions imposed on such lands, or incumbent on the owner of such lands for the continued maintenance and operation of such lands, including, but not limited to, all environmental and drainage permits issued by any governmental authority. Use of the Common Areas is available to Members, guests and invitees of the Members, Declarant and Builder.

(a) Commencing with the date this Declaration is recorded, the Association shall be responsible and shall assume Declarant's obligations under any permit (such as by way of example only, water management) as well as for all maintenance of the Common Areas and any improvements or personal property thereon in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. Taxes, if any, for all Common Areas shall be the responsibility of the Association as of the date of such recordation. The Association shall at all times maintain in good repair, and shall replace as scheduled, any and all improvements situated on the Common Areas (upon completion of construction by the Declarant), including, but not limited to, all recreational facilities, including playground, swimming pool, clubhouse, guardhouse, landscaping, paving, drainage structures, street lighting fixtures, signs, irrigation systems, sidewalks, and other structures, except public utilities, all such work to be done as ordered by the Board acting on a majority vote of the Board members. In

addition, the Association shall maintain the Common Areas to the edge of the pavement of any collector or arterial street that is adjacent to the Common Areas. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. Furthermore, the Association may maintain any property owned by the CDD if it so chooses. In the event the Declarant, in its sole discretion, elects to install such street lighting, Declarant shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Declarant and the Association shall forthwith pay same to the Declarant.

(b) All work pursuant to this Section and all expenses hereunder shall be paid for by the Association through Assessments imposed in accordance with Article VII hereof. Such Assessments shall be against all Lots as set forth in Article VII, Section 2; provided, however, that the cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association, this Declaration or the Articles or By-Laws, shall be levied as a Special Assessment against such Member. No Owner may waive or otherwise escape liability for the Assessments for such maintenance by non-use (whether voluntary or non-voluntary) of the Common Areas or abandonment of its right to use the Common Areas.

(c) Each Owner whose property abuts and/or is contiguous, in part and/or in whole, to any common area which has dimensions that are smaller than the typical Lot (estimated at 5,000 square feet) and which is not being irrigated and/or has limited access to a local homeowners' association installed irrigation system, shall have the obligation to irrigate such common areas.

**Section 2. Declarant's Right to Common Areas.** Declarant shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent Properties and for the purpose of construction of any facilities on the Common Areas that Declarant elects to build. Declarant's rights in and to common areas, including any club house shall not relieve any Owner from making nor entitle any homeowner to prorate their making of any and all payments to the Association as prescribed hereby. Declarant hereby reserves the right, at all times after conveyance of the Common Property to the Association, to enter the Common Property, without prior notice, and to inspect the condition of the improvements and facilities owned by the Association. If Declarant determines, in its sole judgment, that the improvements or facilities are in need of repair or maintenance, it shall so notify the Association in writing, and it shall be the Association's sole obligation to promptly complete such repairs or maintenance. Failure of the Association to properly maintain and repair the Common Property shall relieve the Declarant of any liability to the Association or to any Member for any condition of the Common Property. Declarant shall have the right to make a record of its inspections, including, without limitation, by photographing and/or videotaping the Common Property, and shall have the right to perform tests or examinations to determine the condition of the Common Property, provided that Declarant shall indemnify the Association from any claims for personal injury, death, property damage or nonpayment asserted by persons claiming by, through or under the Declarant for injury, death or damage occurring as a result of such examinations or tests. Notwithstanding the foregoing, Declarant shall have no obligation to perform inspections of the Common Property owned by the Association. The deeds conveying the

Common Property to the Association may contain a recitation of this reservation, however failure to recite such reservation in such deeds shall not affect the rights of Declarant herein reserved.

**Section 3. Lot Maintenance.**

a. Lawn Maintenance. The Association shall provide maintenance of all lawn areas located within the Common Areas only. Irrigation systems for the Common Areas shall also be maintained by the Association, unless said Common Area is subject to the provisions of Article V, Section 1(c) as provided for above.

b. Lot Maintenance. Each Owner shall maintain or cause to be maintained the trees, shrubbery, grass and other landscaping on his Lot in a neat, orderly and attractive manner and consistent with the general appearance of the developed portions of the Property. Maintenance shall include, but not be limited to, watering, pruning and replacing as necessary the trees, shrubbery, grass and other landscaping located on each Lot. In addition to the above maintenance obligations, each Owner shall maintain all parking, pedestrian, recreational and other open areas, including the repaving of private driveways as necessary, located on the Lot, in a neat, orderly and attractive manner and consistent with the general appearance of the developed portions of the Property.

c. Exterior Maintenance. Each individual Owner shall provide exterior maintenance for their building as follows: paint, repair, replace and care for garage doors, fences and exterior building surfaces. In addition, each individual Owner shall maintain and repair its front residence door, windows, screening, driveway, entrance walk, patio deck, light fixtures, mail box, swimming pool, pool deck, roof, gutters and down spouts; provided, however, that the Association reserves the right to maintain such areas if, in its sole discretion, the Association deems it desirable. The Board shall estimate the cost of any such exterior maintenance for each year and shall fix the Assessments for each year, but the Board shall, thereafter, make such adjustment with the Owners as is necessary to reflect the actual cost of such exterior maintenance. Such Special Assessments for exterior maintenance shall be against all Lots as set forth in Article VII hereof (except for the exterior maintenance specifically requested by an Owner); provided, however, that the cost of any exterior maintenance caused by the negligent conduct of an Owner or by the failure of such Owner to comply with this Declaration, the Articles or the By-Laws, or with the lawfully adopted rules and regulations of the Association, shall be levied as a Special Assessment against such Owner. In addition, the Association may levy a Special Assessment against any Owner for any damage or injury caused by the negligent conduct of such Owner to any easement areas granted to provide access to perform the exterior maintenance. Nothing contained herein shall obligate the Association to make repairs or replacements of improvements damaged by fire, windstorm, hail or other casualty; such repairs or replacements shall be made by the Owner of the Lot which suffers damage. The Association shall not be obligated to repair any mechanical equipment (e.g., air conditioning unit) which is part of any residence located on any Lot, nor shall it be responsible for any repairs which could be made pursuant to the terms of any warranty covering a residence.

**Section 4. Remedies for Failure to Maintain.** In the event an Owner shall fail to maintain the Lot as provided herein, the Association shall have the right to enter upon or into the Lot to correct, repair, maintain and restore the Lot and any improvements erected thereon, and any such entry by the Association shall not be deemed a trespass. No such entry shall be made without prior written notice mailed to the last known address of the Owner advising the Owner that unless corrective action is taken within ten (10) days, the Association will exercise its right to enter the Lot pursuant to this Section. All costs related to such correction, repair or restoration shall be the personal obligation of the Owner and shall become a lien against the Lot with the same force and effect of a lien created by the Owner's failure to pay Assessments when due. Nothing in this Section shall give rise to an obligation of the Association to maintain the exterior, interior or any portion of the Lot.

## Article VI

### Architectural Control Board

**Section 1. Architectural Control Board.** The Architectural Control Board (hereinafter "ACB") shall be a standing committee of the Association appointed by the Board. The Architectural Control Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Article and other provisions of this Declaration. The initial rules and regulations of the ACB are set forth in Exhibit "E" attached hereto and made a part hereof, and any amendment or modification of such rules and regulations shall not be deemed an amendment to this Declaration and need not be recorded in the Public Records. The members of the ACB need not be members of the Association and shall not be entitled to any compensation for services performed pursuant to this Section. A majority of the ACB may take any action the ACB is empowered to take and may designate a representative to act for the ACB. This Article VI shall not apply to the Declarant.

**Section 2. Owner to Obtain Approval.** No Owner other than the Developer shall make, install, place, or remove any building, fence, screen enclosure, porch, wall, patio area, pool, spa, landscaping or any other alteration, addition, improvement, or change of any kind or nature to, in or upon any portion of the Common Areas or the Owner's Lot, unless the Owner first obtains the written approval of the ACB, except that such approval shall not be required for any maintenance or repair which does not result in a material change in any improvement. In addition no Owner shall be prohibited from including Xeriscape or Florida friendly landscaping.

**Section 3. Association's Consent.** Any request by an Owner for approval by the ACB to any addition, alteration, improvement, or change shall be in writing and shall be accompanied by plans and specifications or other details as the ACB may deem reasonably necessary in connection with its determination as to whether or not it will approve same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable development of any Lot but may be withheld due to aesthetic considerations. Notwithstanding the foregoing, the ACB may withhold approval for upgraded landscaping to be installed by an Owner within that portion of its Lot to be maintained by the

Association solely due to maintenance and related considerations, and the ACB may withhold approval for construction of swimming pools due to nuisance and related considerations (such as the likelihood of interference with other residents of the Properties during construction). The ACB shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after request for such consent is made in writing to the ACB, and in the event the ACB fails to disapprove any request within such thirty (30) day period, the consent shall be deemed approved and upon request the ACB shall give written notice of such approval. In consenting to any plans or specifications, the ACB may condition such consent upon changes being made. If the ACB consents to any plan and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ACB, and subject to any conditions of the ACB's approval. The Board of Directors shall have the right to review and overturn the decisions of the ACB. Any Owner whose request for approval from the ACB has been denied, shall have the right to submit a written request to the Board for a review of the decision of the ACB. Such request must be accompanied by a complete copy of each and every plan, drawing and document submitted to the ACB, as well as copies of any correspondence or written communication between the Owner, or applicant, and the ACB, and shall state the arguments the Owner, or applicant, desires the Board to consider, and the exact form of relief requested. All such appeals shall be deemed *de novo* applications which shall be reviewed by the Board rather than the ACB, but which shall otherwise be governed by the requirements and procedures described in this Article.

**Section 4. No Liability.** Neither the ACB nor the Association shall be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ACB shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ACB, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and neither the ACB nor the Association shall be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

**Section 5. Remedy for Violations.** In the event this Section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ACB, or is not made in strict conformance with any approval granted by the ACB, the Association shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the ACB. The Association maintains the right to enter onto a Lot in violation to repair or remove any unauthorized alterations and may assess the Owner for the cost and/or impose daily penalties in accordance with this Declaration. Notwithstanding the above, the Association may pursue injunctive relief or any other legal or equitable remedy available to the Association in order to accomplish such purposes. Any action by the Association to enforce this Section must be commenced within one (1) year after the date of the violation. The foregoing shall be in addition to any other remedy set forth herein for violations of this Declaration.

**Section 6. ACB, the Master Association and any Sub-Association.** Notwithstanding anything to the contrary contained in any Declaration, by-laws or rules of any Sub-Association, this Declaration shall be construed in such a manner as to make subordinate the rights of any Sub-Association to the rights of the Master Association, as more particularly described herein, and any ACB or similar body of any Sub-Association shall accept any right and/or responsibilities delegated to it by the Master Association as required by the Master Association Declaration.

## Article VII

### Assessments

**Section 1. Creation of the Lien and Personal Obligation for the Assessments.** The Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual, General Assessments for general expenses as outlined in Section 2 hereof, and Special Assessments as provided in Section 5 hereof, such Assessments to be fixed, established and collected from time to time as hereinafter provided. The General Assessments and Special Assessments, together with such interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made and shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due. Assessments as to any Lot not containing an improvement shall be twenty-five percent (25%) of the Assessments for a Lot containing an improvement (excluding that portion of the Assessments due the Master Association, if applicable) plus the amount due any Sub-Association (as applicable) that is attributable to such Lot. Assessments shall be assessed against the Lots in the manner determined by the Association unless otherwise set forth in this Declaration.

The full Assessment as to each Lot upon which an improvement is constructed shall commence on the first day of the full calendar month after a certificate of occupancy for the improvement is issued, or upon the conveyance of the Lot by the Declarant or upon the first occupancy of the improvement, whichever occurs first. The obligation of each Owner to pay Assessments, both General and Special, shall not be abated nor decreased, in whole or in part, by reason of unfinished common elements, including but not limited to, community swimming pool(s) and/or club houses. The Declarant and Builder and all persons serving as an officer or agent of Declarant shall be excluded from the obligation to make any payments otherwise required of any homeowner notwithstanding the fact that one or more of the model homes may be transferred into the name of the Declarant or Builder or an officer or agent of the Declarant.

**Section 2. General Assessments.** The General Assessments levied by the Association shall be used exclusively for the general expenses of the Association. Disbursements shall be made by the Association for such purposes as are deemed necessary for the discharge of its responsibilities herein, for the common benefit of the Owners, and to reimburse Declarant for start-up expenses advanced by Declarant, excluding capital expenditures, but including personal property, furniture, or other items purchased or leased by Declarant. General expenses are any and all charges for the

maintenance of the Common Areas and exterior maintenance of the Lots (except that specifically requested by an Owner), and expenses related with operating the Association for the Members of the Association and their families residing with them, and their guests and tenants, including, but not limited to:

- a. Expenses of administration, maintenance, repair or replacement of the Common Areas;
- b. Water, sewer, garbage, electrical, lighting, telephone, gas and other necessary utility service for the Common Areas.
- c. Acquisition of furnishings and equipment for the Common Areas as may be determined by the Association, including without limitation all equipment, furnishings, and personnel necessary or proper for the use of the recreational facilities;
- d. Maintenance and repair storm drains, sanitary sewers and private streets within the confines of the Properties.
- e. Fire insurance covering the full insurable replacement value of the Common Area with extended coverage.
- f. Liability insurance insuring the Association against any and all liability to the public, to any Owner, or to the invitees or tenants of any Owner arising out of their occupation and/or use of the Common Area. The policy limits shall be set by the Association, and shall be reviewed at least annually and increased or decreased in the discretion of the Association.
- g. Workers' compensation insurance to the extent necessary to comply with applicable law, and any other insurance deemed necessary by the Board.
- h. A standard fidelity bond covering all members of the Board and all other employees of the Association in an amount to be determined by the Board.
- i. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Association is required to secure or pay pursuant to the terms of this Declaration or by law, or which shall be necessary or proper in the opinion of the Board for the operation of the Common Areas, for the benefit of lot owners, or for the enforcement of these restrictions.
- j. Reasonable reserves deemed necessary by the Board for repair, replacement or addition to the Common Area.
- k. Any other expenses agreed upon as general expenses by the Association.
- l. As otherwise set forth in this Declaration.

By a majority vote of the Board, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. Annual Assessments shall be established by dividing the total Common Expenses of the Association by the total number of Lots or Units subject to assessment to derive a uniform base assessment amount applicable to all Lots. Special Assessments for capital improvements or expenses applicable to all Lots within the Property shall be established in the same manner; however, Special Asscsments applicable to a particular Lot for expenses attributable exclusively to such Lot, or the Owner thereof, shall be determined by dividing the applicable expense



by the number of Lots to which it applies.

**Section 3. Maximum Annual Assessment Rate.** Notwithstanding anything to the contrary, the maximum annual General Assessment on each Dwelling Unit shall not exceed \$50.00 per month through the date which is one year from the date this Declaration is recorded (Guaranty Period). With Declarant responsible for any shortfall until the end of the Guaranty Period. Declarant shall have the right, in its sole discretion, to extend the Guaranty Period beyond the one year period, on one or more occasions by written notice to the Association. Such notice shall specify the new expiration date for the Guaranty Period and the revised amount of the annualized General Assessment guaranty. In no event shall the Guaranty Period continue to be in effect subsequent to the date upon which Declarant shall cease to control the Association, as provided for in the Declaration.

**Section 4. Date of Commencement of General Assessments; Due Dates.** The General Assessments shall commence on the first day of the month next following the recordation of this Declaration. Thereafter, the Board shall fix the date of commencement and amount of the Assessment against each Lot at least thirty (30) days in advance of the commencement period. The General Assessments shall be payable in advance in monthly installments or as otherwise determined by the Board.

Following the Guaranty Period, the amount of the General Assessment may be changed at any time by the Board from that originally adopted or that which is adopted in the future. The General Assessment shall be for the calendar year, but the amount of the General Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

**Section 5. Special Assessments.** The Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement to the Common Area, including fixtures and personal property related thereto. In addition, a Special Assessment may be levied against one or more Lots for the following:

- a. Special services to a specific Lot or Lots which services are requested by the Owner(s) thereof.
- b. Charges for expenses of the Association which are not general expenses but which are attributable to a specific Lot or Lots and which are designated as a special charge.
- c. Reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or tenants.
- d. Late charges, user fees, fines and penalties.
- e. Any other charge which is not a general expense.
- f. Any general expense which exceeds the amount budgeted, or any emergency expense which exceeds the amount of any reserves or other Association funds.
- g. As otherwise set forth in this Declaration.

The Board shall fix the amount and due date of any Special Assessment by resolution, which resolution shall also set forth the Lot(s) subject to such Special Assessment.

**Section 6. Trust Funds.** The portion of all General Assessments collected by the Association as reserves for future expenses, and the entire amount of all Special Assessments collected for capital improvements, shall be held by the Association in trust for the owners of all Lots, as their interest may appear.

**Section 7. Declarant Payment of Assessments.** Declarant shall be liable for any shortfall in the payment of General Assessments for operating expenses of the Association during the Guaranty Period only. Throughout the Guaranty Period, Declarant shall not be liable for General Assessments for any Lots and/or Units owned by Declarant, but in lieu thereof, Declarant shall be responsible for any shortfall in general expenses of the Association receivable from the other Owners. During the Guaranty Period the General Assessments shall be established by the Declarant, though not exceeding the Maximum Amount established therein, based upon Declarant's good faith estimate of what the expenses of the Association would be if all Lots within the Property were improved, so the General Assessments for such period would be approximately what said general Assessments would be if the development for the Property as contemplated by Declarant was complete. When the Declarant has sold all Lots, the Declarant shall have no further liability of any kind to the Association for the payments of Assessments, deficits or contributions.

**Section 8. Working Capital Fund.** The Declarant shall establish a working capital fund for the initial months of operation of the Association, which shall be collected by the Declarant from each Lot purchaser at the time of conveyance of each Lot to such purchaser in an amount equal to two (2) months of the annual General Assessment for each Lot. This fund is paid by individual homebuyers and not a Builder. Each Lot's share of the working capital fund shall be collected and transferred to the Association at the time of closing of the sale of the respective Lot. The purpose of this fund is to assure that the Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of General Assessments. The working capital fund is not a "reserve account" and may be spent by Declarant for all purposes in the furtherance of Declarant's objectives and general expenditures.

**Section 9. Collection of Assessment; Effect of Non-Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of the Association.** If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the default Owner a late fee of ten percent (10%) of the amount of the Assessment, or Ten and No 100 Dollars (\$10.00), whichever is greater, plus interest 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 by the Association. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay Assessments to the

Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, and for all other Assessments payable to the Association. If the Assessments and any late fees and interest are not paid on the date when due, then such Assessments and any late fees and interest shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon and following the Association sending to the defaulting and/or delinquent Owner fourteen (14) days prior written notice of placing a lien, same shall become a continuing lien on the Owner's Lot which shall bind such Lot in the hands of the Owner, its heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid Assessments and late fees with respect to such Lot. In any voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor.

The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the Lot on which the Assessment and late fees are unpaid, or may foreclose the lien against the Lot on which the Assessment and late fee are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such Assessment and late fee, attorney's fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and late fee as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of any such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the Assessments and late fees hereunder. The Association shall, upon demand at any time, furnish to any Owner liable for an Assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether such Assessment has been paid as to the Lot owned by the Owner making request therefore. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

**Section 10. Subordination of the Lien to Mortgages.** The lien of the Assessment provided for in this Article VII shall be subordinate to the lien of any first Mortgage recorded prior to the recordation of a claim of lien for unpaid Assessments. A Mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a Mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or Mortgagee shall hold title subject to the liability and lien of any Assessment becoming due after such foreclosure or conveyance in lieu of foreclosure. Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section 10 shall be deemed to be an Assessment divided equally among, payable by, and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

**Section 11. Exempt Property.** The Board shall have the right to exempt property subject to this Declaration from the Assessments, charges and liens created herein if such property is used (and as long as it is used) for any of the following purposes:

- a. As an easement or other interest therein dedicated and accepted by a public authority and devoted to public use or to the Master Association.
- b. As a part of the Common Areas as defined in Article I hereof.
- c. If the property is exempt from ad valorem taxation by the State of Florida.

## Article VIII

### Easements

**Section 1. Members' Easements.** Each Member of the Association and each tenant, agent and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, driveways and roads from time to time laid out on the Common Areas, for use in common with all such Members, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for walkways and/or driveways shall be for the common use and enjoyment of the Members of the Association and each Member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts and for the use of same in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

- a. The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas and facilities in compliance with the provisions of this Declaration and with any restrictions on the various plats of the Properties from time to time recorded;
- b. The right of the Association to suspend the voting rights and right to use the Common Areas and facilities by an Owner for any period during which any Assessment against his Lot remains unpaid for a period of over ninety days (provided Owner has first received 14 day advance written notice of said suspension); and for any infraction of this Declaration, the Articles or By-Laws, or any lawfully adopted and published rules and regulations of the Association.
- c. The right of the Association to adopt and enforce and regulations governing the use of the Common and all facilities at any time situated thereon.

The right of an Owner to the use and enjoyment of the Common Areas and facilities thereon shall extend to the members of its immediate family who reside with such Owner, subject to regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

**Section 2. Easements Appurtenant.** The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

**Section 3. Utility Easements.** Public utilities may be installed underground in the Common Areas when necessary for the service of the Properties or additional lands for which Declarant holds an option to purchase, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

**Section 4. Public Easements.** Firefighters, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

**Section 5. Easements of Encroachment.** The Declarant hereby reserves an exclusive easement for the unintentional encroachment by any structure upon the Common Area caused by or resulting from, construction, repair, shifting, settlement or movement of any portion of the Property, which exclusive easement shall exist at all times during the continuance of such encroachment as an easement appurtenant to the encroaching Property to the extent of such encroachment. An easement is hereby granted for encroachment in favor of an Owner in the event any portion of his or her dwelling unit or appurtenant improvements such as a driveway encroaches upon any of the Lots as a result of inaccuracies in survey, initial construction by Declarant, or due to settlement or movement or caused by changes in the building design or site plan, provided such changes have been approved by appropriate governmental authorities. Such encroaching improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching improvements in favor of the Owner thereof; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, Tenant, or the Association.

**Section 6. Additional Easement.** The Declarant (during any period in which the Declarant has any ownership interest in the Properties) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Properties and to grant access easements and to relocate any existing access easements in any portion of the Properties as the Declarant or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

**Section 7. Association Easement.** For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day. In the event of an emergency, such right of entry shall exist without notice. Each Owner hereby grants to the Association, its duly authorized agents,

employees or independent contractors such easements for ingress and egress, across the Lots and through improvements constructed upon the Lots, as may be reasonably necessary to effect and perform the exterior maintenance aforementioned.

**Section 8. Construction Easement.** Each Lot and the Common Area is hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including roof structures which overhang and encroach upon the servient Lot or Common Area, provided that the construction of such structure is permitted and approved as elsewhere herein provided. The Owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to construct improvements, and to maintain, repair and restore any improvements located on the dominant tenement, provided, however that such entry shall be allowed only during daylight hours and with the prior knowledge of the owner of the servient tenement. In case of emergency, such right of entry shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The Owner of the servient tenement shall not place any improvements, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this Section. Any such improvement, material or obstacle shall be promptly removed by the Owner of the servient tenement at that Owner's expense when requested by the Owner of the dominant tenement or Declarant notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area. In the event an Owner fails to move such improvement, material or obstacle, then the Association may remove same and the expense of such removal shall be charged to the Owner as a Special Assessment.

## Article IX

### General Restrictive Covenants

**Section 1. Applicability.** The provisions of this Article IX shall be applicable to all Lots situated within the Properties.

**Section 2. Land Use.** No Lot shall be used except for residential purposes. Temporary uses for model homes, parking lots, construction trailer, construction storage areas and or sales offices shall be permitted by the Declarant and Builder.

**Section 3. Change in Buildings.** No Owner shall make or permit any structural modification or alteration of any building except with the prior written consent of the ACB or its successor, and such consent may be withheld if, in the sole discretion of the party denying the same, it appears that such structural modification or alteration would adversely affect or in any manner endanger other dwelling units. No building shall be demolished or removed without the prior written consent of both the Board and Owner(s) of the immediately adjoining Lots. In the event any building is demolished or removed, if replaced, said building shall be replaced by the Owner of such Lot with a unit of similar size and type within twelve (12) months. In the event the building is not replaced, then the Owner shall sod and maintain the Lot.

**Section 4. Building Location.** Buildings shall be located in conformance with the Zoning Code of the City of Miami-Dade, Florida (the "Zoning Code") and any specific zoning approvals thereunder, or as originally constructed on a Lot by Developer or its successor or assignee. Whenever a variance or special-exception as to building location or other item has been granted by the authority designated to do so under the Zoning Code, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

**Section 5. Landscaping of Easements.** In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the recorded plat(s) of the Properties. No structure, planting or other material may be placed or permitted to remain within these easements that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Properties and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Common Areas under and through the utility easements as shown on the plat(s) and under and through such portions of the rear of each Lot beyond the building, as such buildings may from time to time be located. Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the subdivisions, whether in streets, rights-of-way or utility easements, shall be installed and maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

**Section 6. Nuisances.** No noxious or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted to the Association for a decision in writing, which decision shall be final. In addition, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot. Owner is responsible to operate the Lot irrigation system in order to maintain the landscaping. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the Owner shall fail or refuse to keep the demised premises free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be underground or placed in walled-in areas so that they shall not be visible from the adjoining Properties other than when placed curbside for "pick-up." Provided, however, any portion of the Properties not yet developed by Developer shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition.

**Section 7. Temporary Structures.** No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently, except that the Developer and Builder may park a trailer on the Properties during periods of construction. Declarant and Builder shall have the right to utilize all sales trailers and model homes in connection with the sale of other non-affiliated communities for which Declarant and/or Builder are developing and/or building.

**Section 8. Signs.** Except for one sign of not more than one square foot used to indicate the name of the resident, no "for rent", "for sale" or other sign of any kind shall be displayed to the public view on the Properties without the prior consent of the Board and, the Master Association provided that the Declarant and/or Builder, so long as it has not sold all of its Lots in the Properties, shall retain the right to disapprove any signs displayed to the public view. Notwithstanding the foregoing, this Section shall not apply to the Declarant and/or Builder for as long as it holds title to any portion of the Properties.

**Section 9. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Properties. 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 land subject to these restrictions.

**Section 10. Pets, Livestock and Poultry.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lots except that dogs, cats or other household pets may be kept, but no more than a total of two (2); provided, however, those pets which are permitted to roam free, or in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any property located adjacent to the Properties, may be expelled and removed from the Premises by the Board. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall be confined to a leash whenever they are outside.

**Section 11. Visibility at Intersections.** No obstruction to visibility at street intersections shall be permitted.

**Section 12. Commercial Trucks, Trailers, Campers and Boats.** No trucks or commercial vehicles, campers, mobile homes, motor homes, house trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages. Boats and boat trailers may be parked on the Lot provided that the boat and/or boat trailer is not visible from the street, or to adjacent lots, or across any lakes. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on same some reference to any commercial undertaking or enterprise, or vehicles of more than six feet (6') in height. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery and other commercial



services. Notwithstanding the foregoing, this Section shall not apply to the Declarant and or Builder for so long as it holds title to any portion of the Properties.

**Section 13. Fences.** No fence, wall or other structure shall be erected in the front yard, back yard or side yard except as originally installed by Declarant or its assignee unless approved by the ACB.

**Section 14. Garbage and Trash Disposal.** No garbage, refuse, trash or rubbish shall be deposited on any Lot except in a walled-in area; provided, however, that the requirements from time to time of Miami-Dade County for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

**Section 15. Drying Areas.** No clothing, laundry or wash shall be aired or dried on any portion of any Lot in an area exposed to view from any other Lot. Drying areas will be permitted only in locations approved by the ACB and only when protected from view by screening or fencing approved by the ACB.

**Section 16. Gas Containers.** No gas tank, gas container, or gas cylinder other than a maximum of two (2) per Lot of those for personal gas grills (and except those placed by the Declarant or approved by the ACB in connection with the installation of swimming pools and/or barbecues) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all such items (except those placed by the Declarant or approved by the ACB in connection with the installation of swimming pools and/or barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the ACB.

**Section 17. Communication Equipment.** Except as may be installed by the Declarant, no exterior radio or television antenna, satellite dish, microwave antenna or other antenna or device for sending or receiving television or radio signals may be erected or maintained on the exterior of any Unit in the Property in such a manner as to be visible to an observer from the street in front of the Unit. Television and/or radio receiving devices may be erected on the exterior of a Unit in a location that does not allow them to be visible to an observer from the street in front of the Unit if such devices are approved for installation by the ACB, provided however, that satellite receiving dishes in excess of 39 inches in diameter shall be prohibited on all Lots. Notwithstanding the foregoing, the Board of Directors of the Association shall have the authority to establish size limitations for television and radio receiving devices that do not have a material effect upon the appearance of the Unit which devices may be approved for use in areas that are visible to an observer from the street if advances in technology create devices that are unobtrusive and do not materially affect the appearance of the Unit. By acceptance of a deed to a Unit within the Property, each Owner agrees that this restrictive covenant is a reasonable limitation on the Owners' ability to receive television and/or radio transmissions, and (1) does not unreasonably delay or prevent installation, maintenance or use of television or radio receiving devices, (2) does not unreasonably increase the cost of installation, maintenance or use of television or radio receiving devices, (3) does not preclude reception of an acceptable quality television or radio signal, and (4) does not impose an unnecessary

burden, expense or delay on any Owner. Each Owner covenants with Declarant and every other Owner that the rights of the Association and all other Owners of Units in the Property in the protection of property values and the architectural character and aesthetics of the Property supersedes and takes precedence over the interests of each individual Owner in the placement of television and radio receiving devices, and that the limitations established in this Declaration provide each Owner reasonable alternatives for receiving quality television and radio signals without the necessity of erecting receiving devices in locations that are visible to observers from the street in front of the Unit or otherwise materially affect the appearance of the Unit. Therefore, each Owner agrees to be bound by this limitation and waives the benefits of any contrary rule or regulation promulgated by the Federal Communications Commission or other governmental body or agency.

**Section 18. Drainage.** No change in any drainage pattern of any Lot, after issuance of a certificate of occupancy for the dwelling thereon, or of any portion of the Properties, after all contemplated improvements have been completed, shall be made which will cause undue hardship to an adjoining Lot or adjoining property with respect to natural runoff of rain water.

**Section 19. Leasing.** No Lot shall be leased for less than a six (6) month period, nor shall a Lot be leased more than two (2) times during any twelve (12) month period. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on its Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Owner shall be assessed for same as in the case of any other Special Assessment. Furthermore, any violation of any of the provisions of this Declaration, of the Articles or the By-Laws, by any resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and the Owner shall be subject to the same liability as if such violation was that of the Owner.

**Section 20. Business Use.** No trade or business may be conducted in, or from any Lot, except that an Owner 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 terms "business" and "trade" as used in this Section 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 therefor.

**Section 21. Boating, Fishing and Swimming.** Boating and fishing in any water bodies within the residential property or Common Areas may be subject to any Rules promulgated from time to time by the Board, or any governmental authority. However, (i) no vessels using combustion engines shall be allowed on any lakes, and (ii) no swimming shall be permitted in any lakes. Neither Declarant, the Master Association nor any of their officers, directors, committee members, employees, management agents, contractors or subcontractors (collectively, the "Listed Parties") shall be liable for any property damage, personal injury or death occurring in, or otherwise related to, any water body; all persons using the same do so at their own risk. All Owners and users of any portion of the Project shall be deemed, by virtue of their acceptance of the deed or use of any facility at the Project, to have agreed to release the Listed Parties from all claims for any and all changes in the quality and level of the water in such bodies. All persons are hereby notified that from time to time alligators and other wildlife may habitate or enter into water bodies within or nearby the properties and may pose a threat to persons, pets and property, but that the Listed Parties 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.

Neither Declarant, the Association, nor any of the Listed Parties shall be liable or responsible for maintaining or assuring the safety, water quality or water level of/in any lake, pond, canal, creek, stream or other water body within the Property, except as such responsibility may be specifically imposed by, or contracted for with, an applicable governmental or quasi-governmental agency or authority. Further, none of the Listed Parties shall be liable for any property damage, personal injury or death occurring in , or otherwise related to, any water body. All persons using same do so at their own risk. All Owners and users of any portion of the Property located adjacent to or having a view of any of the aforesaid water bodies shall be deemed, by virtue of their acceptance of the deed to or use of, such property, to have agreed to release the Listed Parties from all claims for any and all changes in the quality and level of the water in such bodies.

**Section 22. Enforcement.** Failure of an Owner to comply with this Declaration, the Articles, By-Laws or rules and regulations adopted by the Association shall be grounds for immediate action to recover sums due the Association, for costs, damages, injunctive relief, or any combination thereof. The Association shall have the right to suspend the right of a violating Owner, his family, guests, lessees, sublessees or invitees to use the Common Areas for a reasonable period of time.

With respect to any tenant or any person present on any Lot or any portion of the Properties other than an Owner and the members of its immediate family permanently residing with the Owner on the Lot, if such person materially violates any provision of this Declaration, the Articles of Incorporation or Bylaws, or if such person is the source of annoyance to the residents of the Properties or willfully damages or destroys any Common Areas or personal property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Properties and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Properties and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such

Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

**Section 23. Fines.** In addition to all other remedies, in the sole discretion of the Board, a reasonable fine or fines, as provided in the Association's rules and regulations, which may be adopted from time to time, may be imposed upon an Owner for failure of an Owner, his family, guests, lessees, sublessees, or invitees to comply with any provisions of the Declaration, Articles, By-Laws or rules and regulations of the Association.

## Article X

### Ownership in the Master Association

**Section 1. Ownership in Master Association.** By taking title to a Lot, each Owner becomes subject to the terms and conditions of the Master Association Declaration. Among other things, it provides that an Owner shall become a member of the Master Association; shall acquire certain property rights to common areas within the Master Association; shall become subject to the assessments of the Master Association, which assessments, except special assessments, may be collected by the Association upon the request of the Master Association.

**Section 2. Notice to the Master Association.** Any Sub-Association shall promptly forward to the Master Association copies of all amendments to its Declaration, the Articles of Incorporation and Bylaws of the Sub-Association, and any easements or conveyances affecting the Common Areas prior to enactment. The Sub-Association shall also provide a current list of the names and mailing addresses of all Owners within fifteen (15) days after receiving a written notice from the Master Association.

**Section 3. Subordination of any Sub-Association.** Notwithstanding anything to the contrary contained in any Declaration, by-laws or rules of any Sub-Association, this Declaration shall be construed in such a manner as to make subordinate the rights of any Sub-Association to the rights of the Master Association, as more particularly described herein, and any Sub-Association shall accept any right and/or responsibilities delegated to it by the Master Association as required by the Master Association Declaration.

## Article XI

### Insurance and Casualty Losses

**Section 1. Insurance.** The Board, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in

an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respects bodily injury and property damage, a Two Million Dollar (\$2,000,000.00) limit per occurrence, if reasonably available, and a Five Hundred Thousand Dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance on the Common Areas shall be common expenses of the Association. The policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event of multiple parties, shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Areas shall be included in the General Assessment as provided in Article VII.

All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for the respective benefited parties as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

a. All policies shall be written with a company licensed to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

b. All policies on the Common Areas shall be for the benefit of the Owners and their Mortgagees as their interests may appear.

c. Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Board.

d. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees.

e. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Miami-Dade County, Florida, area.

f. The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

- i. a waiver of subrogation by the insurer as to any claims against the Board, its manager, the Owners, and their respective tenants, servants, agents, and guests;
- ii. a waiver by the insurer of its rights to repair, and reconstruct, instead of paying cash;
- iii. that no policy may be canceled, invalidated or suspended on account of any one or more individual Owners;
- iv. that no policy may be canceled, invalidated, or suspended on account of the conduct of any member of the Board, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee;
- v. that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- vi. that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

g. The Board may, in its discretion, obtain such other types of insurance for the Association as it deems necessary.

In addition to the other insurance required by this section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on Directors, officers, employees, and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the Directors best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association.

**Section 2. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon as provided for in Section 1 of this Article XI. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising its Lot, the Owner shall proceed promptly to repair or to

reconstruct the damaged structure in a manner consistent with the original construction, and the Owner shall pay the costs of any repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and the Owner shall continue to maintain the Lot in a neat and attractive condition.

**Section 3. Disbursement of Proceeds.** Policies shall be disbursed as follows:

a. If the damage or destruction to the Common Areas for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Areas or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in the capital reserves account.

b. If the Association determines, in accordance with Section 4 of this Article XI, that the damage or destruction to the Common Areas for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in subsection (a) above.

**Section 4. Damage and Destruction.**

a. Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

b. Any damage or destruction to the Common Areas shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether the Common Areas damage or destruction shall be repaired or reconstructed.

**Section 5. Repair and Reconstruction.** If the damage or destruction to the Common Areas for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds

are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for Article VII. Additional Assessments may be made by the Board in like manner at any time during or following the completion of any repair or reconstruction.

## **Article XII**

### **Sales Activity and Declarant's Rights**

Notwithstanding any provision herein to the contrary, until the Declarant has completed, sold and conveyed all of the Lots within the Properties, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of Lots and any other sales activity of the Declarant, whether related to the Properties or other developments of the Declarant. The Declarant (or its duly authorized agents or assigns) may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, model homes, and/or parking lots for the showing of the property, and the display of signs, billboards, flags, placards and visual promotional materials. The Declarant shall have the right to use unimproved Lots for temporary parking, if any, for prospective purchasers and such other parties as Declarant determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein.

## **Article XIII**

### **Mortgagees' Rights**

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Properties. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the Articles and Bylaws of any Sub-Association.

**Section 1. Special FHLMC Provision.** So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing three Sections of this Article. Unless two-thirds (2/3) of the first Mortgagees or Owners give their consent, the Association shall not:

a. By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Areas which the Association owns, directly or indirectly (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Properties shall not be deemed a transfer);

b. Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner:



c. By act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Areas;

d. Fail to maintain fire and extended coverage insurance, as required by this Declaration; or

e. Use hazard insurance proceeds for any Common Areas losses for other than the repair, replacement, or reconstruction of such Properties.

The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Members where a larger percentage vote is otherwise required for any of the actions contained in this Section.

First Mortgagees may, jointly or single, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums on casualty insurance policies, or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

**Section 2. No Priority.** No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

**Section 3. Notice to Association.** Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

**Section 4. Amendment by Board.** Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provision of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Articles, By-Laws or Florida law for any of the acts set out in this Article. Until Turnover, any amendments to this Declaration (including, without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other owners associations, the dedication of any part of the Common Area for public safety, and the conveyance, mortgaging, or encumbrance of any part of the Common Property) must have prior written approval of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

**Section 4 (a)** Commercebank, N.A., a national banking association, holds a first mortgage on the entire Property as of the date hereof (the "Acquisition/Construction Mortgage"). As long as the Acquisition/Construction Mortgage is in effect, this Declaration may not be amended in any way that impairs or jeopardizes the rights of the holder of the Acquisition/Construction Mortgage and no Common Area or other portions of the Property may be withdrawn from the scheme of this Declaration, without in each such case the prior written consent of the holder thereof.

**Section 5. Failure of Mortgagee to Respond.** Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response form the Mortgagee within thirty (30) days of the date of the Association's request.

#### **Article XIV**

#### **Community Systems**

**Section 1. "Community Systems"** shall mean and refer to any and all cable television, telecommunication, security, alarm, irrigation, sprinkler or other lines, pipes, conduits, wires, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances now not known) installed by Developer and/or Declarant or pursuant to any grant of easement or authority by Developer and/or Declarant within the Properties and serving more than one Lot/Unit. Developer and/or Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the rights, duties or obligations with respect thereto to the Association, the Master Association or any other person or entity (including an Owner, as to any portion of a Community System located on/in his Lot/Unit). If and when any of the aforesaid entities receives such a conveyance, sale, transfer or assignment, such entity shall automatically be deemed vested with such rights of Developer and/or Declarant with regard thereto as are assigned by Developer and/or Declarant in connection therewith; provided, however, that if the Association is the applicable entity, then any Community Systems or portions thereof shall be deemed Common Areas hereunder and the Association's rights, duties and obligations with respect thereto shall be the same as those applicable to other Common Areas unless otherwise provided by Developer and/or Declarant. Any conveyance, transfer, sale or assignment made by Developer and/or Declarant pursuant to this Section (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Association, the Master Association or any Owner and (iii) if made to the Association, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed).

**Section 2. Notices and Disclaimers as to Community Systems.** Developer, Declarant, the Master Association or the Association, or their successors, assigns or franchisees and any applicable cable telecommunications system operator (an "Operator"), may enter into contracts for the provision of security services through any community systems. DEVELOPER, DECLARANT, THE MASTER

ASSOCIATION, THE ASSOCIATION AND THEIR FRANCHISEES, AND ANY OPERATOR, DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH SECURITY SYSTEM OR SERVICES, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME; AND EVERY OWNER OR OCCUPANT OF PROPERTY SERVICED BY THE COMMUNITY SYSTEMS ACKNOWLEDGES THAT DEVELOPER, DECLARANT, THE MASTER ASSOCIATION, THE ASSOCIATION OR ANY SUCCESSOR, ASSIGNEE OR FRANCHISEE OF THE DEVELOPER AND/OR DECLARANT OR ANY OF THE OTHER AFORESAID ENTITIES AND ANY OPERATOR, ARE NOT INSURERS OF THE OWNER OR OCCUPANT'S PROPERTY OR OF THE PROPERTY OF OTHERS LOCATED ON THE PREMISES AND WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES OR DEATHS RESULTING FROM SUCH OCCURRENCES. It is extremely difficult and impractical to determine the actual damages, if any, which may proximately result from a failure on the part of a security service provider to perform any of its obligations with respect to security services and, therefore, every owner or occupant of property receiving security services through the community systems agrees that Developer, Declarant, the Master Association, the Association or any successor, assign or franchisee thereof and any Operator assumes no liability for loss or damage to property or for personal injury or death to persons due to any reason, including, without limitation, failure in transmission of an alarm, interruption of security service or failure to respond to an alarm because of (a) any failure of the Owner's security system, (b) any defective or damaged equipment, device, line or circuit, (c) negligence, active or otherwise, of the security service provider or its officers, agents or employees, or (d) fire, flood, riot, war, act of God or other similar causes which are beyond the control of the security service provider. Every owner or occupant of property obtaining security services through the Community Systems further agrees for himself, his grantees, tenants, guests, invitees, licensees, and family members that if any loss or damage should result from a failure of performance or operation, or from defective performance or operation, or from improper installation, monitoring or servicing of the system, or from negligence, active or otherwise, of the security service provider or its officer, agents or employees, the liability, if any, of Developer, Declarant, the Master Association, the Association, any franchisee of the foregoing and the Operator or their successors or assigns, for loss, damage, injury or death sustained shall be limited to a sum not exceeding Two Hundred Fifty and No/100 (\$250.00) U.S. Dollars, which limitation shall apply irrespective of the cause or origin of the loss or damage and notwithstanding that the loss or damage results directly or indirectly from negligent performance, active or otherwise, or non-performance by an officer, agent or employee of Developer, Declarant, the Master Association, the Association or any franchisee, successor or assign of any of same or any Operator. Further, in no event will Developer, Declarant, the Master Association, the Association, any Operator or any of their franchisees, successors or assigns, be liable for consequential damages, wrongful death, personal injury or commercial loss.

In recognition of the fact that interruptions in cable television and other community systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of any community system shall be entitled to refund, rebate, discount or offset in applicable fees, for any interruption in community systems services, regardless of whether or not same is caused by reasons within the control of the then provider(s) of such services.

**Section 3. Certain Reserve Rights of Developer and/or Declarant with Respect to Community Systems.** Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual easement for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Developer and/or Declarant may in its sole discretion deem appropriate, including, without limitation, companies licensed to provide CATV service in Miami-Dade County, Florida, for which service Developer and/or Declarant shall have the right to charge any users a reasonable fee (which shall not exceed any maximum allowable charge provided for in the Code of Laws and Ordinances of Miami-Dade County; and

(c) the right to offer from time to time security services through the Community Systems.

## **Article XV**

### **General Provisions**

**Section 1. Duration.** The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Declarant, the Association or the Owner of any Lot subject to this Declaration, and their assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of two-thirds of the Lots has been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

**Section 2. Notice.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 3. Enforcement.** Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and failure by the Declarant, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association is hereby empowered to adopt reasonable rules and

regulations for the imposition of fines to be levied against any Owner for failure to comply with the terms of this Declaration, the Articles and By-Laws, or the rules and regulations of the Association. Any rule or regulation subjecting any Owner to fines shall include provisions for notice, hearing, appeal and fines. Fines shall constitute an Assessment due to the Association and upon failure to pay such fine within the period prescribed by the Association shall become a charge and continuing lien upon the Owner's Lot.

**Section 4. Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**Section 5. Amendment.** Prior to the closing of the first Lot, Declarant may amend this Declaration at any time. After such closing, the Declarant may amend this Declaration so long as it still owns property described in Exhibit "B" for development as part of the Properties and so long as the amendment has no material and adverse effect upon any right of any Owner; thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing seventy-five percent (75%) of the total votes of the Association, including seventy-five percent (75%) of Members other than the Declarant. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be recorded in the Public Records of Miami-Dade County, Florida. No amendment shall discriminate against any Owner or class or group or Owners, unless the Owners so affected join in the execution of the amendment. No amendment shall change the number of votes of any Owner or increase any Owner's proportionate share of the common expense unless the Owners and Mortgagees of such Lots so affected by such amendment join in the execution of the amendment. No amendment may prejudice or impair the rights or priorities of Mortgagees granted hereunder unless all Mortgagees join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Declarant, unless Declarant joins in the execution of the amendment.

**Section 6. FHA/VA Approval.** As long as there is a Class B membership, and so long as the Declarant wishes to maintain its HUD/VA approved status, the following actions will require the prior approval of the Department of Housing and Urban Development or the Veterans Administration: Annexation of additional properties, dedication of Common Area, and amendment of this Declaration. Furthermore, to the extent Declarant elects to, and if required as a condition of obtaining approval by FHA/VA, Declarant may make modifications to this Declaration, without the necessity of joinder of any Owner or any other party who may be affected.

**Section 7. Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the Board.

**Section 8. Waiver.** The failure of the Association to enforce any of the covenants or restrictions contained in this Declaration, the Articles, By-Laws or any rules and regulations shall not constitute a waiver of the right to enforce any other covenant or restriction.

**Section 9. Governing Law and Venue.** This Declaration shall be governed by and construed and interpreted according to the laws of Florida. All actions or causes arising out of the provisions of this Declaration shall be brought in Miami-Dade County, Florida.

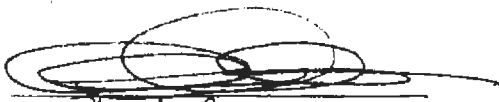
**Section 10. Attorneys' Fees.** Should any party bound by this Declaration employ an attorney or attorneys to enforce any of the provisions hereof, or to protect its interest in any matter arising under this Declaration, or to recover damages for any breach of this Declaration, the party prevailing shall be entitled to payment by the other party of all reasonable costs, charges and expenses, including attorneys' fees in the trial and appellate courts, expended or incurred in connection therewith by the prevailing party.

**Section 11. Waiver of Jury Trial.** All parties bound by this Declaration hereby knowingly, voluntarily, and intentionally waive the right all may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Declaration.

**Section 12. Effective Date.** This Declaration shall become effective upon its recordation in the Miami-Dade County Public Records.


EXECUTED the date first above written.

Signed, sealed and delivered  
In the presence of:

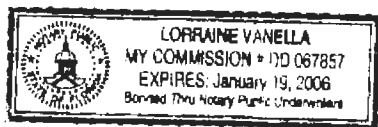


Rhonda Guy

**LORRAINE VANELLA**  
STATE OF FLORIDA )  
                          *Broward*    SS:  
COUNTY OF PALM BEACH )

PRIME HOMES AT PORTOFINO ESTATES,  
LTD., a Florida Limited Partnership  
By: PORTOFINO ESTATES BUILDERS,  
INC.,  
its General Partner  
By:   
Name: LARRY M. ABBO  
Title: VICE PRESIDENT

The foregoing instrument was acknowledged before me, this 18 day of <sup>December</sup> ~~July~~, 2003, by  
Larry M. Abbo as Vice-President of Portofino Estates Builders, Inc., a  
Florida corporation, as General Partner of Prime Homes at Portofino Estates, Ltd.



Notary Public  
My Commission Expires

11. **CERTIFICATION.** I, the undersigned, do hereby certify:

11.1 That I am the duly elected and acting Secretary of Hawks Landing Property Owners' Association, Inc., a Florida corporation not for profit; and

11.2 That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held as of the 24 day of November, 2003.

**IN WITNESS WHEREOF,** I have hereunto subscribed my name and affixed the seal of said Association as of the 21 day of November, 2003.

Marie Chandler

Secretary

STATE OF FLORIDA )  
                          ) BROWARD  
COUNTY OF PALM BEACH )

Nancy Villaman  
Nancy Villaman, President

The foregoing instrument was acknowledged before me this 21 day of November 2003, by Marie Chandler \* as Secretary of **PORTOFINO ESTATES PROPERTY OWNERS' ASSOCIATION, INC.**, a Florida corporation not for profit, on behalf of the corporation. She is personally known to me or has produced \_\_\_\_\_ as identification.

\*and Nancy Villaman as President

Lorraine Vanella  
Notary Public - Signature

[Seal]



Print Name

**LORRAINE VANELLA**

BYLAWS-16

JOINDER

PORTOFINO ESTATES PROPERTY OWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, hereby agrees to accept all of the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of the foregoing Declaration and Exhibits attached thereto.

IN WITNESS WHEREOF, PORTOFINO ESTATES PROPERTY OWNERS ASSOCIATION, INC. has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this 30 day of September, 2003.

WITNESSES:

P. Kerry Diaz  
P. Kerry Diaz  
Cheryl Rose  
Cheryl Rose

PORTOFINO ESTATES  
PROPERTY OWNERS ASSOCIATION, INC.

By: N. Villaman  
Name: Nancy Villaman  
Title: President

STATE OF FLORIDA )  
COUNTY OF Palm Beach ) SS.

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of December, 2003 by Nancy Villaman as President of Portofino Estates Property Owners Association, on behalf of the corporation. They are personally known to me or have produced as identification.



Cheryl Rose Clare  
Signature of person taking acknowledgment  
\_\_\_\_\_  
Name typed, printed or stamped  
\_\_\_\_\_  
Title or rank  
\_\_\_\_\_  
Serial number, if any

My Commission Expires:



**JOINER AND CONSENT OF MORTGAGEE**

Commercebank, N.A., a national banking association, being the owner and holder of that certain Mortgage and Security Agreement, dated May 29, 2003, and recorded in Official Records Book 21292, Page 1068, of the Public Records of Miami-Dade County, Florida, encumbering all or portions of the real property described in the foregoing Declaration of Restrictive Covenants for Portofino Estates and the Assignee under a related Assignment of Development Documents and Rights (wherein the rights of the Declarant thereunder are collaterally assigned to the undersigned), hereby consents to and joins in the filing of said Declaration.

The undersigned makes no warranty or representation of any kind or nature concerning the Declaration, any of its terms or provisions or its legal sufficiency and disclaims any such warranty or representation. Unless and to the extent that it expressly assumes them in an instrument signed by it and recorded in the Public Records of Miami-Dade County, Florida, the undersigned does not assume and shall not be responsible for any of the obligations or liabilities of the Declarant contained in said Declaration.

COMMERCEBANK, N.A.

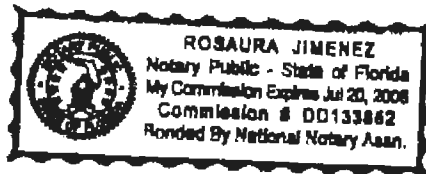
By: *Gus Treichel*  
Name: *Gus Treichel*  
Title: *Vice President*

STATE OF FLORIDA            )  
  ) SS:  
COUNTY OF MIAMI-DADE    )

The foregoing instrument was acknowledged before me this 19<sup>th</sup> day of September 2003, by Gustave V. Treichel, Vice Pres. of Commercebank, N.A., a national banking association, on behalf of the association. He is personally known to me/or produced \_\_\_\_\_ as identification.

*Rosaura Jimenez*  
Notary Public, State of Florida  
Print Name: Rosaura Jimenez

(SEAL)



MIADOCs 624844.1 KAC