

This instrument was prepared by:

Tarnela Eady Wiseman, Esquire

DeBoest, Knudsen, Stockman, Wiseman, Decker & Dryden, P.A.

600 Fifth Avenue South, Suite 301

Naples, Florida 34102

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
TORREY PINES AT PELICAN SOUND NEIGHBORHOOD**

THIS DECLARATION is made this 11th day of August, 1999, by WCI Communities, Inc., a Delaware corporation successor by merger of WCI Communities Limited Partnership, a Delaware limited partnership into Florida Design Communities, Inc., a Delaware corporation hereinafter called the "Developer" for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Lee County, Florida, as more particularly described in Exhibit "A" to this Declaration, and desires to create thereon a neighborhood of single family residences; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the Neighborhood, and to create a corporate entity to which should be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, and collecting and disbursing the assessments and charges hereafter created; and

WHEREAS, Developer has created a Florida corporation not for profit, known as Torrey Pines at Pelican Sound Neighborhood Association, Inc. for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit "A" to this Declaration, as that Exhibit may be amended from time to time, and all improvements thereon, shall be held, transferred, sold, conveyed and occupied subject to the Governing Documents and to the covenants, restrictions, easements, charges and liens hereinafter set forth, which shall run with the land and be binding upon and inure to the benefit of all present and future owners of Lots and Living Units. The acquisition of fee simple interest in any Lot, or the lease, occupancy, or use of any portion of a Living Unit, shall constitute an acceptance and ratification of all provisions of this Declaration and an agreement to be bound by its terms.

1. **DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as originally recorded in O.R. Book 3002, Pages 869 through 933, Official Records of Lee County, Florida, (the "Club Declaration"), as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

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1.1 "ARC" or "Architectural Review Committee" means the Committee described in Article XIII of the Club Declaration.

1.2 "Association" or "Neighborhood Association" means Torrey Pines at Pelican Sound Neighborhood Association, Inc. a Florida corporation not for profit.

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

1.4 "Club" means Pelican Sound Golf & River Club, Inc., a Florida corporation not for profit.

1.5 "Club Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Pelican Sound Golf & River Club, Inc., as recorded in O.R. Book 3002, Pages 869 through 933, Official Records of Lee County, Florida (the "Club Declaration"), as it may be amended from time to time.

1.6 "Club Documents" means the Club Declaration and all recorded exhibits to it, including the Articles of Incorporation and By-Laws of the Club, all as amended from time to time.

1.7 "Community Development District" or "CDD" means the River Ridge Community Development District which is a special purpose government unit created under Chapter 190, Florida Statutes, and which may fund, construct, operate and maintain certain infrastructure and community services within or outside the Properties.

1.8 "Community" or "Properties" means the real property described as such in to the Club Declaration, together with any additional property subjected to the Club Declaration from time to time.

1.9 "Developer" means WCI Communities, Inc., its grantees, successors and assigns. Developer shall have the right to assign any and all of the rights and privileges reserved for Developer under this Declaration. A Lot owner, solely by the purchase of a Lot, shall not be deemed a successor or assign of Developer or of the rights of Developer under the Governing Documents or by law unless such owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer.

1.10 "Governing Documents" means the Club Documents , as well as this Declaration and all recorded exhibits to it, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.

1.11 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Torrey Pines at Pelican Sound Neighborhood, as amended from time to time.

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

1.13 "Institutional Mortgage" shall refer to any one of the following:

- (A) A lending institution holding a mortgage encumbering a Lot, including without limitation any of the following types of institutions or entities: a federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida.
- (B) A governmental, quasi-governmental or private company that is engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration and the Department of Urban Development.
- (C) Developer and any investors and lenders, or the successors and assigns of such investors and lenders, who have loaned money to Developer to acquire land comprising the Neighborhood or to construct improvements, and who have a first mortgage lien on all or a portion of the Neighborhood securing such loan.

1.14 "Lease" means the grant by an owner of a temporary right to occupy the owner's Living Unit for valuable consideration.

1.15 "Living Unit," "Unit" or "Residence" means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.16 "Lot" means any one or more of the up to twenty four (24) platted parcels of land into which the Neighborhood has been or will be subdivided as shown in Exhibit "B," upon each of which a Living Unit has been or will be constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon," except where the context clearly requires a different interpretation.

1.17 "Neighborhood" means all the real property which is subject to this Declaration.

1.18 "Neighborhood Common Areas" means that real property dedicated to, owned by, or held by the Association or intended by Developer to be devoted to the common use and enjoyment of the owners in the Neighborhood. It is not presently contemplated that the Neighborhood will contain any Neighborhood Common Areas, but as provided in Section 13.3 hereof, Developer reserves the right to add Neighborhood Commons Areas. The term "Neighborhood Common Areas" shall be deemed to include the words "if any," unless the context clearly indicates otherwise.

1.19 "Occupant" when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

1.20 "Owner" or "Member" means a record owner of legal title to a Lot.

1.21 "Pelican Sound" means the name given to the master planned community being developed on the Properties by Declarant in Lee County in accordance with the Club Documents.

1.22 "Rules and Regulations" means the administrative rules and regulations governing procedures for administering the Association and the Neighborhood, as adopted amended or rescinded by resolution of the Board of Directors.

1.23 "Service Charge" means a charge against the owners of one or more Lots for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of those owners, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots so benefitted. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.24 "Temporary" or "Temporarily" means not more than sixty (60) days in any calendar year.

2. **CONTINUATION OF DEVELOPMENT.** The Neighborhood is being developed by the Developer into Lots intended for the construction of single family residences, and are located within the Pelican Sound Golf & River Club development. Other areas of Pelican Sound Golf & River Club may be developed as other forms of residential housing or commercial development, and may be under construction for an extended time. Incidental to that development, the quiet enjoyment of the Neighborhood may be unavoidably interfered with to some extent by construction and sales operations. From time to time, or Declarant (as such term is defined in the Club Declaration) and others may make public certain renderings, plans, or models showing possible future development of Pelican Sound Golf & River Club. Declarant does not warrant in any way the accuracy of these renderings, plans or models. They are primarily thematic in nature, and do not necessarily represent a guaranteed final development plan for the Pelican Sound Golf & River Club.

3. **ASSOCIATION; MEMBERSHIP VOTING RIGHTS.** The administration and management of this Neighborhood shall be by Torrey Pines at Pelican Sound Homeowners Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

3.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

3.2 **Bylaws.** The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "D" to this Declaration, as they are amended from time to time.

3.3 **Delegation of Management.** The Association may contract with a management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with

funds made available by the Association for such purposes. The Association and its officers, however, shall retain at all times the powers and duties provided in Sections 617.301-617.312, Florida Statutes (1995) as amended from time to time, and in the Governing Documents.

3.4 **Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

3.5 **Voting Interests.** The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. Votes shall be cast as provided in the Bylaws.

3.6 **Termination of Membership.** Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.7 **Association As Owner of Lots.** The Association has the power to purchase Lots and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

3.8 **Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of owners. A copy of the up-to-date roster shall be available to any owner upon request.

3.9 **Board of Directors.** Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

3.10 **Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 617, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.11 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least three-fourths (3/4ths) of the voting interests of the Association prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the Governing Documents;
- (D) the enforcement of the rules and regulations of the Association;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members, but in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the eminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4th) of the voting interests); or
- (F) filing a compulsory counterclaim.

This Section 3.11 shall not be amended without the approval of at least three-fourth (3/4ths) of all voting interests.

3.12 Official Records. The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Neighborhood. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Association shall maintain an adequate number of copies of the recorded Governing Documents to ensure their availability to members and prospective members, and may charge only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.13 Indemnification. The Association covenants and agrees that it will indemnify and hold harmless Developer and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about the Neighborhood, from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Developer may be compelled

to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.

4. ASSESSMENTS. The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas and association property, the expenses of insurance for the Association and/or directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a common expense by this Declaration or the Bylaws. If the Board enters into such a contract, the costs of a duly franchised cable or satellite television service obtained pursuant to a bulk contract shall be a common expense. The Club has the authority to enter into such an agreement for the Neighborhood in which case each Lot shall be billed directly by the Club as a portion of the Club's assessments.

4.1 Covenant to Pay Assessments. Developer, for each Lot within the Neighborhood, hereby covenants, and each subsequent owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (A) the Lot's prorata share of annual assessments based on the annual budget adopted by the Association;
- (B) the Lot's prorata share of any special assessments levied for expenses not provided for by the annual budget; and
- (C) any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, costs, and reasonable attorneys' fees shall bind each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to the Developer and Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots then included within the Neighborhood. Until the development of the Neighborhood is completed, and all Lots have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number twenty-four (24).

4.3 Developer's Guarantee of Assessments and Share for Lots Owned By It. The Developer guarantees that until December 31, 2000 annual and special assessments against each Lot for

all Association purposes will not exceed \$480.00 per year. During this period, Developer shall be excused from the payment of assessments for Lots owned by it, and instead shall pay that portion of all Association expenses actually incurred which exceeds Association revenues receivable from all other sources. After December 31, 2000, the Developer reserves the right to extend this guarantee period and to change the amount guaranteed. The guarantee period shall not under any circumstances extend beyond the period of Developer control. After this guarantee period, the Developer shall have the same responsibility for assessments as to Living Units for which a certificate of occupancy has been issued as any other owner; provided however, that under no circumstances shall the Developer ever have an obligation to pay assessments for any Lot owned by the Developer as long as the Lot remains unimproved.

4.4 Establishment of Liens to Secure Payment. All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot assessed. This lien is superior to any homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by recording a Claim of Lien by the Association in the public records of Lee County, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.5 Priority of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien for the Association, regardless of when the lease was executed. 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 any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment or charge which cannot be collected by reason of this Section shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

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

(A) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may

not exceed the greater of twenty-five dollars (\$25.00), or such other maximum as may be provided for by law.

(B) To suspend the voting rights of the owner in the Association during the period of delinquency if regular annual assessments are delinquent in excess of ninety (90) days.

(C) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association, in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

4.7 **Certificate.** The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate shall be protected thereby.

4.8 **Termination of the Association.** If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Club shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

5. **ARCHITECTURAL AND AESTHETIC CONTROL.** The Developer is seeking to create a Neighborhood of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Living Units, after the initial construction of the Living Units by the Developer, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval of Architectural Review Committee of the Club (the "ARC"). Except for the initial construction of Living Units and related improvements by the Developer, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Areas be performed without the prior written approval of the Board of Directors, as well as the ARC. In obtaining the written approval, the owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons. The membership, term of office, composition, compensation (if any), qualifications and procedures of the ARC shall be as provided in the Club Declaration and By-Laws of the Club.

6. **APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.**

6.1 **Appurtenances to Each Lot.** The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

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(A) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

(B) The non-exclusive right to use any Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

(C) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

(D) Class "A" membership and voting rights in the Club, and the non-exclusive right to use Club Common Areas, subject to the restrictions and limitations provided in the Governing Documents.

(E) Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Lots.

6.2 Use and Possession. An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas, if any, in accordance with the purposes for which they are intended, but no use of any Lot or Neighborhood Common Areas may unreasonably interfere with the rights of other owners or residents. No Lot may be subdivided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, and over the walkways and private roads laid out on the Club Common Area for use in common with all other owners, their tenants, guests and invitees. The portions of any Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of any Neighborhood Common Areas and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of owners to use any Neighborhood Common Areas for the purposes intended.

(C) The right of an owner to the non-exclusive use and enjoyment of any Neighborhood Common Areas and facilities thereon shall extend to the members of this immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

6.3 **Title to Neighborhood Common Areas.** On or before the date when owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey any Neighborhood Common Areas to the Association by quitclaim deed, 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. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of any Neighborhood Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Neighborhood Common Areas during periods of construction upon adjacent properties and for the purpose of construction of any facilities on the Neighborhood Common Areas that the Developer elects to build.

THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO ANY NEIGHBORHOOD COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESSED OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN THE NEIGHBORHOOD COMMON AREAS AND FACILITIES.

6.4 **Partition; Separation of Interests.** There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any owner or any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in co-tenancy. The ownership of any Lot and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.5 **Easements.** Each of the following easements and easement rights is reserved through the Neighborhood and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Neighborhood. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Neighborhood for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs,

pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Neighborhood.

(A) Utility and other Easements. The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, and to relocate any existing easements, in any portion of the Neighborhood, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Neighborhood. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the owner or the Association, any Living Unit or Lot encroaches upon any of the Neighborhood Common Areas, upon any other Lot, or any Neighborhood Common Area encroaches upon any Lot, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the Neighborhood Common Areas as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the Neighborhood Common Areas as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) Drainage. A perpetual, non-exclusive easement shall exist in favor of Developer, the Association, the Club, the CDD and their employees or other designees for the use of drainage areas established throughout the Neighborhood, and an easement for ingress, egress, and access to enter any portion of the Neighborhood in order to construct, maintain or repair, as necessary, any drainage areas and facilities thereon and appurtenances thereto, specifically including without limitation, access over and across portions of the Neighborhood Common Areas by the CDD or utility companies to utilize such areas for facilities for the transporting of treated effluents for irrigation purposes. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

(E) Club. A perpetual, non-exclusive easement shall exist in favor of the Club to perform any function on behalf of the Neighborhood, which forms the basis of a proper Neighborhood Expense, as further provided in the Club documents.

(F) Construction; Maintenance. The Developer and its agents, employees and contractors shall have the right to enter the Neighborhood and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the owners of their property.

(G) Sales Activity. The Developer and its agents, employees and contractors shall have an easement to use, without charge, any Lot owned or leased by the Developer, and the Neighborhood Common Areas in order to establish modify, maintain and utilize, as it and they deem appropriate, model homes and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model Living Units or the Neighborhood Common Areas to prospective purchasers or tenants, erect signs in the Neighborhood, and take all other actions helpful for sales, leases and promotion of the neighborhood and the Community.

(H) The easements and rights described in (F) and (G) above shall terminate upon the sale of all Lots to purchasers other than a successor Developer.

6.6 Easements for Playing Golf. Non-specific, non-exclusive easements are hereby created over all Lots, Living Units and any Neighborhood Common Areas to permit every act necessary, incidental, or appropriate to the playing of golf. These acts include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Living Units or Common Areas, the landing of errant golf balls upon the Lots, Living Units or Common Areas, the use of necessary and usual golf carts and maintenance equipment, the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course. The Association shall not be liable for damage to property of Lot owners from errant golf balls.

6.7 Assignment of Easements. The easements and easement rights reserved hereunder to the Developer may be assigned by the Developer in whole or in part to the Association, the Club, the CDD any town, county or state government or agency thereof, or duly licensed or franchised public or private utility, or any other designee of the Developer.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Responsibility of Owners. The maintenance, repair and replacement of each Lot and Living Unit is the responsibility of its owner, except as provided in Section 7.2 below. The owner's responsibility includes the driveway located on his Lot.

7.2 Landscaping. In order to provide a means by which the covenants in this Declaration requiring Lots to be maintained may be fulfilled without jeopardizing the security of the Community by the possibility of admission thereto of a large number of landscaping contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care and irrigation system maintenance for each and every Lot within the Neighborhood, and the cost shall

be a common expense; provided, however, such duty of maintenance shall not extend to areas specifically designated by the Association as an "area of high maintenance", such as a rose garden. Areas of high maintenance shall be maintained by the owner of the Lot or by special arrangement as may be approved by the Association.

7.3 Completion of Neighborhood. Developer shall undertake the work of developing all Lots and Living Units within the Neighborhood. The completion of that work, or the sale, lease, or other disposition of Living Units, is essential to the establishment and welfare of the Neighborhood as an ongoing residential community. In order that such work may be completed and the Neighborhood established as a fully-occupied residential community as soon as possible, nothing in this Declaration shall be understood or construed to prevent the Developer, or the employees, contractors or sub-contractors of Developer, or of Developer's transferees, from doing whatever they may reasonably determine to be necessary or advisable for the completion of the work and the establishment of the Neighborhood as a residential community. As used in this paragraph, the words, "its transferees" specifically exclude purchasers of Lots improved with completed residences.

7.4 Enforcement of Maintenance. If the owner of a Lot and Living Unit fails to maintain it as required in this Declaration, the Association may institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot, with or without consent of the owner. The Association may repair, replace, or maintain any item which constitutes a significant hazard to other property or residents, or which has a material adverse effect on the appearance of the Neighborhood. Any expenses so incurred by the Association shall be assessed against the owner as service assessments, together with reasonable attorney's fees and all other expenses of enforcement.

7.5 Negligence, Damage Caused by Condition in Living Unit. The owner of each Lot and Living Unit shall be personally liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees; but such liability shall be limited to the extent that such expenses are not met by the proceeds of insurance available to the injured person.

8. INSURANCE; DUTY TO RECONSTRUCT.

8.1 Duty to Insure and to Reconstruct. Each owner shall at all times maintain property insurance on his residence and all other insurable improvements in an amount equal to the full replacement cost thereof. If any Living Unit or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements shall remove all debris and cause repair or replacement to be made in accordance with the Club documents. All such repairs or replacements must restore the improvements to substantially their original character, design and appearance, and shall utilize and conform with the original foundation and appearance of the original improvements, except as otherwise approved by the ARC.

8.2 Failure to Reconstruct. If the owner of any Lot fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in the Club Documents, the Association shall give written notice to the owner of his default. If the

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

8.3 Failure to Insure; Association as Additional Insured. For the purpose of this Section 8, each owner of a Lot within the Neighborhood agrees that the Association shall be an additional insured under any contract of property insurance and/or flood insurance relating to his Lot and improvements constructed thereon. Further, the Association may require that all such policies be in an amount sufficient to finance the repair or replacement of the improvements, taking into account local construction costs and property values as they may exist, from time to time. The Association has the right to require each owner to produce proof of insurance. If an owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Association, or if the owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Association may but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Association's benefit. The costs incurred by the Association in procuring insurance shall become due and payable by the owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Association notifying the owner, in writing, that it has procured such insurance, and the costs thereof.

8.4 Association's Right of Entry. For the purpose of performing the duties authorized by Section 7 or this Section 8, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the Lot at reasonable hours.

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

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

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

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

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

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

8.7 Optional Coverage. The Association may purchase and carry such other insurance coverage as the Board of Directors may determine from time to time to be in the best interest of the Association and owners. Some common examples are:

(A) Flood insurance.

(B) Broad Form Comprehensive General Liability Endorsement.

(C) Directors and Officers Liability.

(D) Medical Payments.

8.8 Description of Coverage. A detailed summary of the coverages included in the Association's policies shall be available for each owner upon request. All Association insurance policies shall be available for inspection by owners upon request.

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

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

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

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

9. GENERAL COVENANTS AND USE RESTRICTIONS.

9.1 Residential Use. Each Living Unit shall be occupied by only one family and its temporary guests at any time, as a residence and for no other purpose. No time-sharing, business or commercial activity shall be conducted in or from any Living Unit. No person may publicly advertise the address of a Living Unit as the address of any business. The use of a Living Unit as a public lodging establishment shall be deemed a business or commercial use. This Section 9.1 shall not be construed to prohibit any Living Unit occupant from maintaining a personal or professional library, from keeping his personal, business or professional records in his Living Unit, or from handling his personal, business or professional telephone calls, written correspondence, or other communications in and from his Living Unit. Such uses are expressly declared customarily incident to residential use. This Section 9.1, however, is intended to prohibit commercial or business activity by an owner which would noticeably change the residential ambiance of the Neighborhood, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Neighborhood by persons making deliveries or pick-ups, employees or other business associates, or customers and clients. Notwithstanding the above provisions, the Developer, in its sole discretion, may permit one or more of its Living Units to be used or maintained as a sales office or as a model home.

9.2 Approval of Improvements by ARC. As described in Section 5 hereof and in the Club Documents, all buildings, structures, landscaping and improvements to be built on or in the Community, including the Neighborhood, must be approved by the ARC. The Club Declaration provides the procedure and method of obtaining said approval.

9.3 Leasing. An owner may lease his Living Unit without prior Association approval, subject to the Club Declaration and the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

(B) No Living Unit may be leased or rented for a term of less than thirty (30) consecutive days.

(C) No subleasing or assignment of lease rights is allowed. All of the provisions of the Governing Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit as a lessee or guest to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the Governing Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING OR THE INCOME TO BE DERIVED THEREFROM.

ANY OWNER WHO DESIRES OR INTENDS TO RENT HIS LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP.

9.4 **Nuisance.** No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents.

9.5 **Temporary Structures.** No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently, except by Developer.

9.6 **Signs.** To the extent lawful, the display of signs, advertisements and advertising shall be subject to the Club Declaration and the control of the Club. The Board of Directors shall have the right to summarily remove and destroy all unauthorized signs. This Section shall not apply to signs used by Developer or its agents to market Lots owned by it.

9.7 **Appearance; Refuse Disposal.** After closing of title, each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris and shall reasonably maintain his Living Unit. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

9.8 **Maintenance.** The Developer shall care for vacant or unimproved Lots within the Neighborhood, and clear tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary or desirable in the judgment of the Developer to keep the Lot in good order. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure Developer's or the Association's attorney's fees and other costs in connection with said foreclosure.

9.9 **Awnings and Windows.** Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the ARC.

9.10 **Fences.** No fence, wall, hedge or other similar structure shall be erected on any Lot, except as originally installed by Developer, and except any approved by the ARC.

9.11 **Lawns; Landscaping.** Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or paved parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas as provided in Section 7.2 above. Stone, gravel, or paving may not be used as a substitute for grass in a lawn. Certain areas as

determined by the Developer or the CDD shall remain in a natural or unimproved state. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency. No landscaping shall be installed, cut down, destroyed or removed without the prior written approval of the ARC.

9.12 Outside Lighting. Except as may be initially installed by Developer, no spotlights, floodlights, or other outdoor high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereof without the written authorization of the ARC. Low intensity lighting which does not unreasonably disturb the owners or other occupants of the Neighborhood shall be allowed. The owner of each Lot shall maintain the front yard lamp (if any), and keep it operating during all hours of darkness. The owner's responsibility includes the photoelectric cell and replacement of light bulbs.

9.13 Commercial Activities. No business or commercial activity shall be conducted in the Neighborhood, except the Developer's construction of improvements and the maintenance of sales offices or models.

9.14 Pets. The owner of each Living Unit may keep a reasonable number of household pets, such as a dog, cat, tropical fish or caged birds in a Living Unit, subject to reasonable regulation by the Club or the Association. All pets must be carried under the owner's arm or leashed at all times while outside of the Unit. The owner is responsible for cleaning up after his pet. The ability to keep such pets is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Neighborhood. No reptiles, amphibians, poultry or livestock may be kept in the Neighborhood. Pets shall not be left unattended on screened porches, lanais, yards or in garages.

9.15 Motor Vehicles; Parking. Parking in the Neighborhood is restricted to private automobiles and passenger-type "mini-vans," jeeps and pick-up trucks having a capacity of no more than two (2) tons. Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the property. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion for a period of three (3) weeks or longer; provided however, this shall not include operable vehicles left on the Lots by owners while on vacation. No commercial vehicles, campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers or house trailers shall be permitted to be parked or to be stored in the Neighborhood. For the purpose of this Section 9.15, "commercial vehicles" shall mean those which are not designed and used for customary personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The determination of the Club's Board of Directors as to the commercial nature of a vehicle shall be binding. The prohibitions on parking contained above in this Section 9.15 shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. No parking on lawns shall be permitted. No vehicle shall be parked anywhere but on paved areas intended for that purpose, or as approved by the Club for construction purposes. Nothing herein shall restrict Developer or its designees from placing, parking or storing vehicles that are engaged in any activity relating to construction, maintenance, sale or marketing of any Lots in the Neighborhood.

9.16 Garages, Carports and Accessory Buildings.

(A) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1), nor more than three (3), automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.

(B) Carports are not permitted.

(C) No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the ARC. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

9.17 Garage Sales. No garage sale, estate sale, flea market, auction, or similar event shall be held on any Lot without prior written approval of the Board of Directors and under no circumstances may more than one (1) such event be held on any Lot in any period of twelve (12) consecutive months.

9.18 Mailboxes, Lamp Posts. Mailboxes, front yard lamp posts, and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the ARC.

9.19 Antennas, Radio Equipment and Flagpoles. No antennae, aerials, ham radios or satellite dishes shall be placed upon any portion of a Lot or the Neighborhood Common Areas, except as may be required in connection with the provision of a cable television or master antenna system servicing the Neighborhood or that comply with the terms of the Club Documents or as may be allowed by any law. No ham radios or radio transmission equipment shall be operated or permitted to be operated within the Neighborhood without the prior written consent of the Board of Directors and the ARC. A flagpole, for display of the American flag only, may be permitted if its design and location are first approved by the ARC. An approved flagpole shall not be used to mount an antenna. It is the intent of this Section 9.19 to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances which is sometimes caused by ham radios, CB base stations or other high-powered broadcasting equipment. This Section 9.19 shall not apply to equipment used by the Developer or its agents to market Lots owned by Developer.

9.20 Swimming Pools. An owner, if approved by the ARC, may construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause. Any maintenance, repair and replacement of said swimming pool and enclosure shall be the responsibility of the owner.

9.21 Conservation Areas. Certain portions of the Neighborhood contain or are adjacent to wetland preservation or mitigation areas and upland buffers that are or will be designated as conservation areas on the plat of the Neighborhood ("Conservation Areas"), which Conservation Areas will be protected

by and be subject to a conservation easement in favor of the CDD and the South Florida Water Management District, and a conservation easement in favor of the CDD and the U.S. Army Corp of Engineers ("Conservation Easements").

The terms of the Conservation Easements shall provide that the Conservation Areas shall be maintained and managed in perpetuity by the CDD, its successors and assigns and the CDD shall enforce the terms and conditions of the Conservation Easements.

In accordance with the terms of the Conservation Easements, the CDD shall be responsible for the installation and perpetual maintenance of permanent physical signs/markers designating the Conservation Areas as required by South Florida Water Management District.

Any acts or uses detrimental to the preservation of the Conservation Areas in their natural condition shall be prohibited, with the exception of exotic or nuisance vegetation removal, or otherwise in accordance with the terms of the Conservation Easements and Permits. Pursuant to the terms of the Conservation Easements, exotic and/or nuisance vegetation may include Melaleuca, Brazilian pepper, Australian Pine, Japanese Climbing Fern, cattails, primrose willow and grape vine.

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

9.22 Lakes, Water Retention Ponds. No Lot or Neighborhood Common Areas shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the CDD and the South Florida Water Management District. No person other than the Developer or the Club may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

9.23 Open Space. Any land subject to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Areas or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Association, the Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment thereof for open space purposes.

9.24 **Additional Restrictions.** The Club Documents contain additional restrictions which are applicable to the Neighborhood and the owners. In the event of a conflict between the provisions of this Declaration and the provisions of the Club Documents, the provisions of the Club Documents shall control; provided, however, that this Declaration and the other Neighborhood documents may contain provisions which are more restrictive than those contained in the Club Documents, in which event the more restrictive provisions shall control.

10. **OWNERSHIP OF LOTS.** The transfer of ownership of Lots shall be subject to the following restrictions:

10.1 **Notice to Association.** An owner intending to sell his Lot shall give the Association written notice of such intent at least seven (7) days prior to the closing of the sale, including the name of the purchaser and such other information about the purchaser as the Association may reasonably require. A new owner acquiring title shall provide to the Association a copy of the recorded deed, or other instrument evidencing title, within thirty (30) days after the transfer occurs.

10.2 **Designation of Golf Member of the Club.** Where legal title to a Lot is held in the name of two or more natural persons who are not husband and wife, or in the name of a corporation, partnership or other entity which is not a natural person, the owner shall designate in writing one individual or family as the regular member of the Club, as further provided in Rules and Regulations of the Club. For purposes of applying restrictions on the occupancy of Living Units, the individual or family designated to the Club shall also be deemed the owner of the Lot.

10.3 **Life Estate.** A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be as if the life tenant was the only owner. The life tenant shall be liable for all assessments and charges against the Lot. Any consent, approval or vote required may be given by the life tenant, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights.

11. **ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every owner, and all guests, tenants and occupants, shall at all times comply with Chapter 617, Florida Statutes, the Governing Documents, and the rules of the Club and of the Association. Before undertaking any remedy, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, this Chapter 617, the Governing Documents, and the rules of the Club and of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by a member against:

(A) The Association;

- (B) A member;
- (C) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions; and
- (D) Any tenants, guests, or invitees occupying a parcel or using the Neighborhood Common Areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section 11 does not deprive any person of any other available right or remedy.

11.1 Enforcement Action. Judicial enforcement of these covenants and restrictions shall be by a proceeding at law or in equity against any person or persons violating or attempting to violate any covenants 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 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.

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

11.3 Suspension of Common Area Use Rights; Fines. The Association may suspend, for a reasonable period of time, the rights of a member or a member's tenants, guests, or invitees, or both, to use any Neighborhood Common Areas and facilities. The Association may also levy reasonable fines not to exceed \$100 per violation, against any member or any tenant, guest, or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing as provided in (A) below, except that no fine shall exceed \$1,000.00 in the aggregate.

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

(B) The requirements of this Section 11.3 do not apply to the imposition of suspensions or charges upon any member because of the failure of the member to pay assessments or other charges when due, if such action is authorized by the Governing Documents.

(C) Suspension of Neighborhood Common Area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(D) Collection of Fines. A fine shall be treated as a special charge due to the Association ten (10) days after written notice from the Association to the owner of the imposition of the fine.

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

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

12. **THE CLUB.** By taking title to a Lot, the owner becomes subject to the terms and conditions of the Club Declaration as it may be amended from time to time.

12.1 Golf Membership in the Club. Each Lot shall have as an appurtenance one Golf membership in the Club, which membership shall carry such rights and obligations, and be exercised in such manner, as is more fully set forth in the Governing Documents. The Membership cannot be sold, conveyed or assigned separately from the Lot. Assessments and dues levied by the Club shall be paid directly by the Lot owner to the Club.

12.2 Membership and Voting in the Club. All owners in this Neighborhood are automatically Class "A" members of the Club. Notwithstanding such membership, only authorized representatives of the members shall be entitled to vote on behalf of all members at meetings of the members of the Club. At Club meetings, the votes of this Neighborhood shall be cast by the Association President, as Neighborhood Voting Representative.

13. **DEVELOPER'S RIGHTS AND DUTIES.** So long as the Developer holds any Lots in the Neighborhood for sale in the ordinary courses of business, the following shall apply, notwithstanding any other provisions to the contrary

13.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the Lots in the Neighborhood, neither the owners nor the Association, nor their use of the Lots and Living Units shall unreasonably interfere with the completion of the contemplated improvements or sales of Lots. The Developer may make any use of unsold Lots and Living Units as may reasonably be allowed by law.

13.2 Assignment of Development Rights. All or any portion of the rights, privileges, powers and duties of the Developer set forth in the Governing Documents may be assigned by the Developer to any person or entity, without the consent of any other owner or any holder of a mortgage secured by any

Lot. Upon the acceptance of such assignment by the assignee, the assignor shall be relieved of all liabilities and responsibilities to the extent of the assignment. In the event of the foreclosure of any mortgage owed by the Developer, or deed in lieu of such foreclosure, the person first acquiring title to such interest by reason of such foreclosure, or deed in lieu of foreclosure, shall succeed to all rights, powers, privileges and immunities of the Developer in and to such interest.

13.3 Amendment of Declaration. In addition to any other right of amendment or modification provided for in this Declaration and its recorded exhibits, the Developer, or any entity which succeeds to Developer's position as the Developer of any of the property described in Exhibit "A", may by any instrument filed of record, unilaterally modify, enlarge, amend, waive or add to any provision of this Declaration or any of its exhibits. This right specifically includes the right to amend this Declaration and its exhibits to bring additional Lots or Neighborhood Common Areas within the Neighborhood. The right to amend set forth in this paragraph shall expire when the Developer no longer holds any Lots in the Neighborhood for sale in the ordinary course of business. Any amendment made pursuant to this paragraph may be made by the Developer without notice or consent to the members or any other entity.

13.4 Sales or Leases of Lots. The Developer intends to sell all Lots and has no program for leasing. However, the Developer shall have the right to sell, lease or transfer any Living Unit owned by it on such terms and conditions as it deems in its own best interest.

THE DEVELOPER MAKES NO REPRESENTATIONS, AND TO THE FULLEST EXTENT PERMITTED BY LAW DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN THE NEIGHBORHOOD COMMON AREAS AND FACILITIES.

13.5 Security. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE NEIGHBORHOOD DESIGNED TO MAKE THE NEIGHBORHOOD SAFER THAN IT OTHERWISE MIGHT BE. DEVELOPER SHALL NOT IN ANY WAY OR MANNER BE HELD LIABLE OR RESPONSIBLE FOR ANY VIOLATION OF THIS DECLARATION BY ANY PERSON OTHER THAN DEVELOPER. ADDITIONALLY, NEITHER DECLARANT, (AS SUCH TERM IS DEFINED IN THE CLUB DECLARATION), OR DEVELOPER, THE CLUB, NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE TO HOLD DECLARANT, DEVELOPER, THE CLUB AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, THE CLUB, DECLARANT, OR DEVELOPER, NOR ANY SUCCESSOR DECLARANT OR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE NEIGHBORHOOD. NEITHER THE ASSOCIATION, THE CLUB, DECLARANT OR

DEVELOPER, NOR ANY SUCCESSOR DECLARANT, OR DEVELOPER SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OR SECURITY MEASURES UNDERTAKEN, IF ANY. ALL OWNERS AND OCCUPANTS OF ANY LOT, AND TENANTS, GUESTS AND INVITEES OF OWNERS, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS, DECLARANT, OR DEVELOPER, OR ANY SUCCESSOR DECLARANT OR DEVELOPER DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO THE GUIDELINES ESTABLISHED BY DECLARANT, DEVELOPER, THE CLUB, THE ARC OR THE ASSOCIATION MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS, THE ARC, DECLARANT, DEVELOPER, ANY SUCCESSOR DECLARANT OR DEVELOPER ARE NOT INSURERS AND THAT EACH OWNER AND OCCUPANT OF ANY LOT AND EACH TENANT, GUEST, AND INVITEE OF THE UNIT OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND LIVING UNITS AND TO THE CONTENTS OF LIVING UNITS AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD, THE CLUB AND ITS BOARD OF DIRECTORS, THE ARC, DECLARANT AND ANY SUCCESSOR DECLARANT, DEVELOPER, OR ANY SUCCESSOR DECLARANT OR DEVELOPER HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER OR OCCUPANT OF ANY LOT, OR ANY TENANT, GUEST OR INVITEE OF AN OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE NEIGHBORHOOD, IF ANY.

14. TURNOVER OF CONTROL OF ASSOCIATION.

14.1 Time of Turnover. Owners other than the Developer shall be entitled to assume control of the Association by electing a majority of the Board of Directors not later than ninety (90) days after the conveyance of title, to owners other than Developer, of at least ninety percent (90%) of the Lots within the Neighborhood. At that time the Directors appointed by the Developer shall resign. The election shall occur at a meeting of the members (the "Turnover Meeting").

14.2 Procedure for Calling Turnover Meeting. Not less than sixty (60) days prior to the Turnover Meeting, the Association shall notify in writing all owners of the date, time and place of the Turnover Meeting.

14.3 Early Turnover. The Developer may turn over control of the Association to owners other than the Developer prior to the turnover deadline set forth above by causing all of its appointed Directors

to resign, whereupon it shall be the affirmative obligation of owners other than the Developer to elect Directors and assume control of the Association. Provided at least sixty (60) days notice of Developer's decision to cause its appointees to resign is given to owners, neither the Developer, nor such appointees, shall be liable in any manner in connection with such resignations, even if owners other than the Developer refuse or fail to assume control.

14.4 Developer Representative. The Developer is entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots. After the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting a majority of the Directors.

15. COMMUNITY DEVELOPMENT DISTRICT. A uniform community development district pursuant to Chapter 190, Florida Statutes, known as River Ridge Community Development District ("CDD") exists to administer all or a portion of the Properties, including this Neighborhood. CDD will provide certain urban infrastructure facilities and services and will have the authority to levy and collect fees, rates, charges, taxes and assessment to pay for, finance and provide such services. CDD is empowered to plan, establish, acquire, construct and reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure which may include, without limitation, the following:

- (A) water management and control lands within the CDD;
- (B) roads and bridges;
- (C) potable water distribution;
- (D) sewage collection;
- (E) waste water management;
- (F) irrigation;
- (G) perimeter landscaping; and
- (H) limited access assurance services.

CDD will impose taxes and/or assessments on the Lots through a special taxing district. These assessments pay the construction, operation and/or maintenance costs of certain public facilities within CDD and are set annually by its governing board. These assessments are in addition to county and all other taxes and assessments provided for by law.

These fees, rates, charges, taxes and assessments will either appear on the annual real estate bill for each unit as a separate and district tax payable directly to the Lee County Tax Collector or on a separate bill issued to each owner by the CDD.

Each owner agrees, by acceptance of a deed or other instrument conveying title to a Lot, to pay any and all fees, rates, charges, taxes and assessments imposed by CDD with respect to the Lot, and to abide by all of the rules and regulations of CDD, as they may be amended from time to time.

16. DURATION OF COVENANTS; AMENDMENT OF DECLARATION:

16.1 Duration of Covenants. The covenants, conditions, and restrictions of this Declaration shall run with and bind the Neighborhood, and shall inure to the benefit of and be enforceable by the Association, the Developer and any owner, their respective legal representatives, heirs, successors and assigns, for an initial period that expires on the thirtieth (30th) anniversary of the date of recordation of the Declaration of Covenants, Conditions, Restrictions, and Easements for Pelican Sound Golf & River Club, Inc. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least three-fourths (3/4ths) of the votes cast at a duly held meeting of members of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of any meeting at which such a proposal will be considered shall be given at least forty-five (45) days before the meeting. If the members vote to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Association, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. The certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

16.2 Amendments; Proposal. Notwithstanding the foregoing, this Declaration may be amended from time to time by a vote of the members. Amendments may be proposed by the Board of Directors or by written petition to the Board signed by at least one-fourth (1/4th) of the voting interests. The proposed amendments must be submitted to a vote of the members not later than the next annual meeting.

16.3 Amendments; Vote Required. Except as otherwise provided by law by Sections 3.11 and 13.3 of this Declaration, or by other specific provision of the Governing Documents, a proposed amendment to this Declaration shall be adopted if it is approved by at least two-thirds (2/3rds) of the voting interests of the Association present and voting at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. Unless otherwise provided by law, notice of proposed amendments shall be in substantially the same form as is specified in Chapter 718, Florida Statutes, for proposed amendments to a Declaration of Condominium. No amendment shall change any Lot's share of liability for assessments or any owner's voting rights, unless the owner consents to the amendment.

16.4 **Amendments; Certificate; Recording; Effective Date.** A copy of each amendment shall be attached to a certificate attesting that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration was originally recorded, and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County.

16.5 **Exceptions.** Wherever in this Declaration the consent, approval, or affirmative vote of more than two-third (2/3rds) of the voting interests is required in order to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

16.6 **Amendment of Provisions Relating to Developer.** As long as the Developer holds any Lot for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Developer without the Developer's written consent.

17. GENERAL PROVISIONS.

17.1 **Waiver.** Any waiver by Developer of any provisions of this Declaration or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

17.2 **Severability.** If any section, subsection, sentence, clause, phrase or portion of this Declaration is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portion thereof.

17.3 **Headings and Capitalization.** The headings of Sections and paragraphs herein, and the capitalization of certain words, are for convenience only, and do not affect the meaning or interpretation of the provisions of this Declaration.

17.4 **Notices.** Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner in the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

17.5 **Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

17.6 **Rule Against Perpetuities.** In the event any court should hereafter determine any provisions as originally drafted herein in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of the period involved, the period specified in this Declaration shall not thereby become invalid, but instead shall be reduced to the maximum period

allowed under such rule of law, and for such purpose. "Measuring lives" shall be that of the incorporator of the Association.

IN WITNESS WHEREOF, Developer has executed this Declaration the day and year first above written.

Signed in the presence of:

Ann C. Roczek
Witness
Ann C. Roczek
Printed Name of Witness

Mary S. Cook
Witness
Mary S. Cook
Printed Name of Witness

WCI COMMUNITIES INC., a Delaware corporation

By: Vivien N. Hastings
Senior Vice-President
24301 Walden Center Drive
Bonita Springs, Florida 34134

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11th day of August, 1999, by Vivien N. Hastings as Senior Vice-president of WCI Communities, Inc., a Delaware corporation, on behalf of said corporation.

Notary Public-State of Florida:

Sign Ann C. Roczek
Print Ann C. Roczek
Personally Known ; or Produced Identification _____
Type of Identification Produced: _____
Affix Seal Below:



Pelican Sound
Golf & River Club

TORREY PINES AT PELICAN SOUND NEIGHBORHOOD
DECLARATION

This instrument prepared by
Stephen C. Pierce, Esq.
24301 Walden Center Drive
Suite 300
Bonita Springs, Florida 34134

JOINDER AND CONSENT OF OWNER

HCC INC., a Florida corporation ("HCC"), as owner of all of the land described on Exhibit "A" to the Declaration of Covenants, Conditions and Restrictions for Torrey Pines at Pelican Sound Neighborhood (the "Declaration") to which this Joinder and Consent is attached, does hereby join in and consent to the Declaration this 20th day of August, 1999.

HCC, INC.

By: *Charles J. Huether*
Charles J. Huether

Its: President
9131 College Parkway, Suite 13B
Fort Myers, Florida 33919

(Corporate Seal)

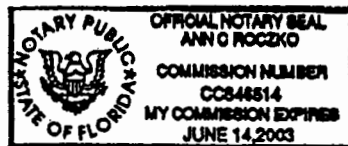
STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 20th day of August, 1999, by CHARLES J. HUETHER, as President of HCC, Inc., a Florida corporation, on behalf of the corporation, who is personally known to me.

Ann C. Roczko
Notary Public, State of Florida

My Commission Expires:

Ann C. Roczko
Printed Name of Notary Public



CONSENT OF MORTGAGEE

KEYSTONE FINANCIAL BANK, N.A. f/k/a Pennsylvania National Bank and Trust Company, a national banking association, being the owner and holder of the following documents (the "Security Documents"):

Real Estate Mortgage, Assignment and Security Agreement recorded in O.R. Book 3133, Page 146 in the Public Records of Lee County, Florida (the "Mortgage").

which Mortgage constitutes a lien upon the real property described in the within and foregoing Declaration and General Protective Covenants for Torrey Pines at Pelican Sound (the Declaration"), hereby consents to WCI Communities, Inc., a Delaware corporation successor by merger to WCI Limited Partnership into Florida Design Communities, Inc., a Delaware corporation subjecting the lands described therein to the provisions of the Declaration and agrees that the lien and encumbrance of the mortgage shall be subordinate to the Declaration.

IN WITNESS WHEREOF, Keystone Financial Bank, N.A. f/k/a Pennsylvania National Bank and Trust Company, a national banking association being Mortgagee, has caused these presents to be duly executed by its duly authorized officer this 10th day of August, 1999.

WITNESSES:

KEYSTONE FINANCIAL BANK, N.A. f/k/a Pennsylvania National Bank and Trust Company

Gloria Zahorchak
Witness Signature
GLORIA ZAHORCHAK

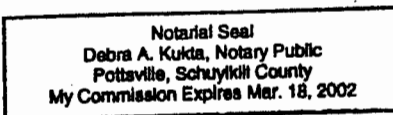
By: Jesse Stine Print Name
Print: Jesse Stine
Title: Senior Vice President

Marliese L. Guers
Witness Signature
Marliese L. Guers
Print Name

(CORPORATE SEAL)

STATE OF PENNSYLVANIA
COUNTY OF SCHUYLKILL

The foregoing instrument was acknowledged before me this 10th day of August, 1999, by JESSE STINE as SR. VICE PRES. of Keystone Financial Bank, N.A. f/k/a Pennsylvania National Bank and Trust Company a national banking association on behalf of said corporation.



Member, Pennsylvania Association of Notaries

Notary Public-State of Pennsylvania
Sign Debra A. Kukta
Print DEBRA A. KUKTA
Personally Known x; or Produced Identification
Type of Identification Produced:
Affix Seal Below:

LEGAL DESCRIPTION
BEING PART OF SECTION 29 AND 32,
TOWNSHIP 46 SOUTH, RANGE 25 EAST,
LEE COUNTY, FLORIDA.

Commencing at the northwest corner of the northeast quarter of said Section 32,
Township 46 South, Range 25 East, Lee County, Florida;
Thence North 89°49'47" East 183.92 feet along said north line of the northeast quarter of
said section 32;

Thence leaving said north line North 00°10'13" West 120.75 feet to the Point of
Beginning of the Herein described parcel; Also being the north line of 55.00 foot Access
and Utility Easement, as recorded in the O.R. Book 3074, Pages 1344 Through 1347 of
the Public Records of Lee County, Florida;

Thence North 00°10'13" West 17.25 feet;
Thence North 11°42'02" East 29.38 feet;
Thence North 28°08'59" East 14.88 feet;
Thence North 44°10'11" East 17.21 feet;
Thence North 41°05'58" East 22.00 feet;
Thence North 31°33'57" East 31.67 feet;
Thence North 25°12'04" East 26.51 feet;
Thence North 24° 30'27" East 26.36 feet;
Thence North 30°04'07" East 23.23 feet;
Thence North 31°25'46" East 22.32 feet;
Thence North 37°03'24" East 21.66 feet;
Thence North 33°15'54" East 26.36 feet;
Thence North 22°57'50" East 22.60 feet;
Thence North 02°48'56" East 21.54 feet;
Thence North 04°23'55" East 27.59 feet;
Thence North 30°09'36" East 30.19 feet;
Thence North 41°49'13" East 17.98 feet;
Thence North 57°59'41" East 16.64 feet;
Thence North 38°05'20" East 16.58 feet;
Thence North 02°54'01" West 25.64 feet;
Thence North 30°58'50" East 22.92 feet;
Thence North 47°43'35" East 16.69 feet;
Thence North 61°36'59" East 100.29 feet;
Thence North 89°14'28" East 32.25 feet;
Thence South 50°03'03" East 23.35 feet;
Thence South 30°44'25" East 76.31 feet;
Thence South 23°14'42" East 35.95 feet;
Thence South 10°37'11" East 50.52 feet;
Thence South 23° 57'45" East 39.30 feet;
Thence South 27°03'02" East 46.79 feet;
Thence South 22°04'04" East 53.10 feet;
Thence South 17°18'37" East 38.76 feet;

EXHIBIT "A"
A-1

Thence South $10^{\circ}01'32''$ East 47.37 feet;
Thence South $27^{\circ}36'38''$ East 58.36 feet;
Thence South $32^{\circ}17'03''$ East 111.93 feet;
Thence South $08^{\circ}56'38''$ West 542.83 feet;
Thence south and southwesterly 175.23 feet along the arc of a tangential circular curve concave to the west having a radius of 302.50 feet through a central angle of $33^{\circ}11'23''$ and being subtended by a chord which bears South $25^{\circ}32'19''$ West 172.79 feet; also being the northerly line of a 10 foot Utility Easement as recorded in O.R. Book 2984, Pages 3548 through 3578 of the Public Records of Lee County, Florida;
Thence North $65^{\circ}06'35''$ West 82.02 feet along the said northerly line of the 10.00 foot Utility Easement;
Thence northwesterly 126.18 feet along the arc of a tangential circular curve concave to the northeast having a radius of 165.00 feet through a central angle of $43^{\circ}48'54''$ and being subtended by a chord which bears North $43^{\circ}12'35''$ West 123.13 feet; to a Utility Easement as recorded in O.R. Book 3096, Pages 1411 through 1416 of the Public Records of Lee County, Florida;
Thence along the said Utility Easement as recorded in O.R. Book 3096, Pages 1411 through 1416 the following (3) described courses;
1) thence North $75^{\circ}33'10''$ East 10.87 feet;
2) thence North $14^{\circ}26'50''$ West 10.00 feet;
3) thence South $75^{\circ}33'10''$ West 11.75 feet; to the said easterly line of a 55.00 foot Access and Utility Easement;
Thence along said easterly line of a 55.00 foot Access and Utility Easement the following (4) described courses;
1) thence northwesterly and northerly 121.43 feet along the arc of a tangential circular curve concave to the east having a radius of 165.00 feet through a central angle of $42^{\circ}10'00''$ and being subtended by a chord which bears North $03^{\circ}16'22''$ East 118.71 feet;
2) thence North $24^{\circ}21'22''$ East 177.54 feet;
3) thence northerly and northwesterly 454.74 feet along the arc of a tangential circular curve concave to the southwest having a radius of 227.50 feet through a central angle of $114^{\circ}31'35''$ and being subtended by a chord which bears North $32^{\circ}54'26''$ West 382.73 feet;
4) thence South $89^{\circ}49'47''$ West 131.11 feet to the Point of Beginning of the herein described parcel.

Containing 7.301 acres more or less.

Subject to easements and restrictions of records.

Bearings are based on the said north line of the northeast quarter of Section 32, Township 46 South, Range 25 East, Lee County, Florida. North $89^{\circ}49'47''$ East.

EXHIBIT "A"

A-2

TORREY PINES

06.03.99

N.T.S.

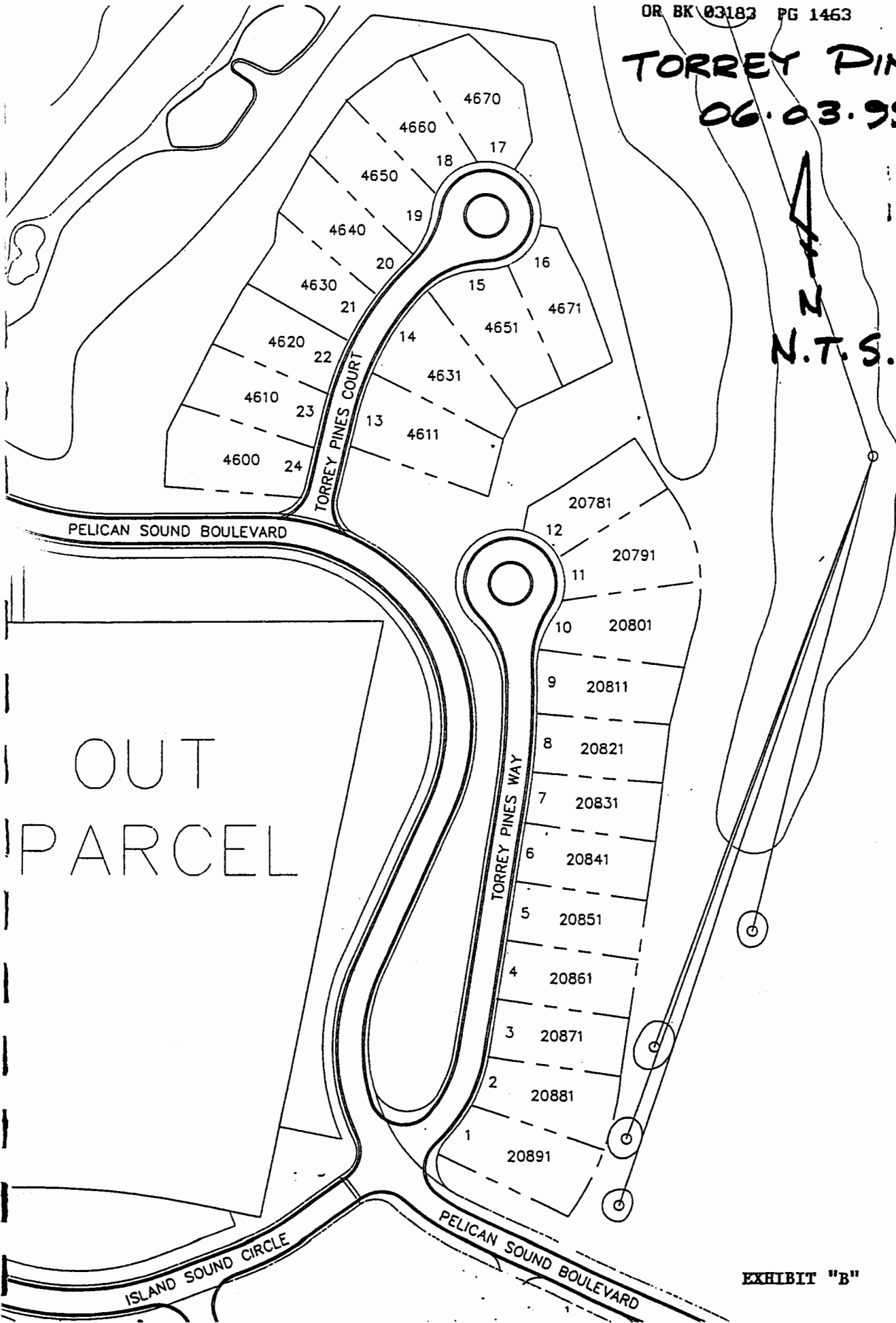


EXHIBIT "B"