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**DECLARATION OF CONDOMINIUM
OF
BERMUDA GREENS, a Condominium**

MADE this 22nd day of November, 1991, by BERMUDA GREENS OF NAPLES, LTD., a Florida limited partnership, hereinafter called the "Developer", for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE LAND.** The Developer owns certain real property located in Collier County, Florida, as more particularly described on Page 1 of Exhibit "A" (hereinafter the "Land").

2. **SUBMISSION STATEMENT.** The Developer at this time hereby submits only those portions of the Land described on Page 4 of Exhibit "A" as Phase 1, and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration; excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility furnishing services to the Condominium.

2.1 **Covenants Run with Land.** The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it shall be amended from time to time, and an agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

3. **NAME.** The name by which this Condominium shall be identified is "BERMUDA GREENS, a Condominium", (the "Condominium"), and it is located at Imperial Golf Course Boulevard, Naples, Florida 33942.

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FORSYTH, SWALM & BRUGGER, P.A., Attorneys at Law, 600 Fifth Avenue South, Suite 210, Naples, Florida 33940

4. **DEFINITIONS:** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.

4.1 "Apartment" has the same meaning as the term "unit" as defined in the Condominium Act.

4.2 "Apartment Owner", "Unit Owner" or "Owner" means any person who owns a record fee simple interest in a unit in this Condominium, except that for purposes of interpreting the use and occupancy restrictions related to units as set forth in Section 12 of this Declaration, in cases where a primary occupant is to be designated for a unit because of the nature of its ownership, these terms refer to the primary occupant and not the record owner.

4.3 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.

4.4 "Association" means BERMUDA GREENS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.6 "BERMUDA GREENS COMPLEX" is that property described on Page 1 of Exhibit "B".

4.7 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Condominium Act as the "Board of Administration".

4.8 "Commons Association" means and refers to BERMUDA GREENS COMMONS ASSOCIATION, INC., a Florida Corporation not for profit, responsible for the ownership, maintenance and operation of certain property, parking areas, and recreational facilities within the BERMUDA GREENS COMPLEX. The Association shall be a member of the Commons Association.

4.9 "Commons Area" means and refers to that property owned by the Commons Association.

4.10 "Commons Documents" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for BERMUDA GREENS COMMONS and the Articles of Incorporation and the By-Laws for the Commons Association.

4.11 "Condominium Documents" means and includes this Declaration and all recorded exhibits hereto, as amended from time to time.

4.12 "Family" or "Single Family" shall refer to any one of the following:

- (A) One natural person.
- (B) Two or more natural persons, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.13 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, ceiling or wall coverings.

4.14 "Guest" means any person (other than the unit owner or his family) who is physically present in, or occupies an apartment on a temporary basis at the invitation of the apartment owner or other legally permitted occupant, without the payment of consideration.

4.15 "Institutional Mortgagee" means the mortgagee (or its assignee) of any mortgage against a condominium parcel, which mortgagee is the Developer, a bank, savings and loan association, private mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or any agency of the United States of America. The term also refers to any holder of a first mortgage against a condominium parcel, which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns. The term also includes any and all lending institutions, or the successors and assigns of such lenders (herein referred to as the "Lenders") which have loaned money to Developer or any entity or person which succeeds

to Declarant's position as Developer of part or all of BERMUDA GREENS, a Condominium and which hold a Mortgage upon any portion of the Properties securing such a loan.

4.16 "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.17 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.18 "Occupant" or "Occupy", when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.19 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.20 "Primary Occupant" means the natural person approved for occupancy when title to a unit is held in the name of more than two or more persons, or by a trustee or a corporation or other entity which is not a natural person.

4.21 "Rules and Regulations" means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached hereto as Exhibit "B", are surveys of the Land being submitted to condominium ownership, and plot plans which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 Unit Boundaries. Each unit shall include that part of the building and that part of the garages that lies within the following boundaries:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries and as illustrated in Exhibit "B", extended to their planar intersections with the perimeter boundaries:
- (1) Upper Boundaries. In all units located on the floors below the top floor of a building, the upper boundary shall be the horizontal plane of the unfinished lower surface of the ceiling. In all units located on the top floor, the upper boundary shall follow the contour of the interior unfinished surface of the drywall attached to the underside of the roof trusses.
 - (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the walls bounding the unit as shown in Exhibit "B" hereto, extended to their planar intersections with each other and with the upper and lower boundaries.
- (C) Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.
- (D) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimeter boundaries shall extend to the interior unfinished surfaces of such apertures, and their frameworks thereof. Exterior surfaces made of glass or other transparent material and all framings, casings and hardware therefor, shall be excluded from the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Unit Identification. The identification of each unit shall be by number, as indicated in Exhibit "B". The plot plan may be modified by the Developer as to the number of certain unit or

building types to create more of one unit type or less of another unit type. This may alter the exterior appearance of certain buildings slightly.

6.2 Appurtenances to Each Unit: Shares of Ownership The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:

- (A) An undivided ownership share in the land and other common elements and the common surplus, as follows:

$$\frac{1}{\text{Number of units submitted to condominium form of ownership}}$$

- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and By-Laws of the Association, attached hereto as Exhibits "C" and "D" respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit including parking spaces or carports, and the right to use the common elements.
- (D) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (E) The nonexclusive right to use the common areas, properties and facilities owned by BERMUDA GREENS COMMONS ASSOCIATION, INC., subject to all of the rules and regulations of the Commons Association.
- (F) Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit, together with its appurtenances, constitutes a "condominium parcel".

6.3 Use and Possession. A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and Association property in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons

having rights to use the condominium property. No unit may be divided nor may any fractional portion of a unit be sold, leased or otherwise transferred. The use of the units, common elements, limited common elements and Association property shall be governed by the condominium documents and (where appropriate) by rules and regulations adopted by the Board of Directors.

7. COMMON ELEMENTS; EASEMENTS.

7.1 Definition. The term "common elements" means all portions of the condominium property not included within the units, and includes without limitation the following:

- (A) All portions of the Land which have been submitted to condominium ownership by this Declaration or an amendment hereto.
- (B) All portions of the buildings and other improvements not included within the units, including limited common elements.
- (C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

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

7.3 Each of the following easements and easement rights over, across, and through the condominium property are hereby granted and conveyed and, notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium:

- (A) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.
- (B) Ingress and Egress. A non-exclusive easement in favor of each unit owner and occupant including future owners in Phases 2 through 5 if added to this Condominium, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths or walks. A non-exclusive easement shall exist in favor of each unit owner and occupant, including future owners in Phases 2 through 5 if added to this Condominium, their respective guests and invitees for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved and used for purposes of ingress and egress to the public ways.
- (C) A nonexclusive easement for pedestrians and vehicular traffic shall exist in favor of other unit owners within the BERMUDA GREENS COMPLEX, who pursuant to 23.9 of this Declaration, are unit owners within the BERMUDA GREENS COMPLEX over, through and across sidewalks, streets, paths, walks and other portions of the common elements as from time to time are paved and used for such purposes, for the purpose of ingress and egress to the public ways and of ingress and egress to their unit and the common areas intended for use of all unit owners within the BERMUDA GREENS COMPLEX.
- (D) Construction; Maintenance. The Association has the irrevocable right to access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common

elements or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units.

- (E) Sales Activity For as long as it holds any unit for sale in the ordinary course of business in Phases 1 through 5, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements (including, but not limited to, all recreational facilities) in order to establish, modify, maintain and utilize, as it and they deem appropriate, model apartments and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model apartments of the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales and promotion of the Condominium. The foregoing does not exempt the Developer from its obligation to pay assessments as otherwise provided for herein.
- (F) Utility and Access Easements. To the fullest extent lawful, the Developer reserves the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of the common elements and to grant access easements and to relocate any existing access easements in any portion of the common elements as the Developer shall deem necessary or desirable. Such easements or the relocation of existing easements may not prevent, or unreasonably interfere with, the use of the units.
- (G) The easements and rights described in (E) above shall terminate upon the sale of all units in the Condominium to purchasers other than a successor Developer.

7.4 Restraint Upon Separation and Partition The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. No action shall lie for partition of the common elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the units.

B. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their use has been designated are as described in this Declaration and as further identified on the attached survey and plot plan. The following common elements are hereby designated as limited common elements:

- (A) Covered Parking - There have been designated in Exhibit "B" certain numbered covered parking spaces or carports as limited common elements. These spaces are assigned to the exclusive use of specific units as shown in Exhibit B. Each unit shall always have the exclusive use of one assigned parking space. The cost of maintenance of all covered parking spaces shall be a common expense.
- (B) Air Conditioning and Heating Equipment - All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be limited common elements, and shall be maintained, repaired and replaced solely at the expense of the owner of the unit.
- (C) Balconies. The airspace comprising the screened balcony (sometimes referred to as a "lanai") attached to and serving exclusively each unit, shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning and care and replacement of screens. All exterior painting shall be the responsibility of the Association and shall be a common expense. No porch may be carpeted, covered or enclosed in any way other than as it is enclosed or covered upon the initial purchase from the Developer, nor may storm shutters of any kind be installed, without the prior written approval of the Board of Directors. The maintenance, repair or replacement and insurance of such approved carpeting, covering, shutters or enclosure shall be the responsibility of the unit owner.
- (D) Others - Any part of the common elements connected to or exclusively serving a single unit, and specifically required in Section 11 of this Declaration to be maintained, repaired or replaced

by or at the expense of the unit owner, shall be deemed a limited common element appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2 Exclusive Use; Transfer of Use Rights The exclusive use of a limited common element is appurtenant to the unit or units to which it is designated or assigned. The right to such use passes with the unit, whether or not separately described, and cannot be separated from it; except that the use rights to a particular carport or covered parking space may be exchanged or assigned between units by the following procedure:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors who shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration and be executed in the form required for the execution of a deed.
- (B) The transfer of rights shall be complete and effective when the certificate is recorded in the Public Records of Collier County, Florida. The cost of recording shall be borne by the unit owners desiring the exchange or transfer.

9. ASSOCIATION: The operation of the Condominium is by BERMUDA GREENS CONDOMINIUM ASSOCIATION, INC., a Florida corporation not for profit, which shall perform its function pursuant to the following:

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

9.2 By-Laws The By-Laws of the Association shall be the By-Laws attached as Exhibit "D", as they shall be amended from time to time.

9.3 Delegation of Management The Association may contract for the management and maintenance of the condominium property and authorize a management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements and Association property with funds made available by the Association for such purposes. The

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Association and its officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership The membership of the Association shall be comprised of owners of the units, as further provided in the By-Laws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The Officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

9.7 Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

9.13 Membership in Commons Association. The Association shall be a member of BERMUDA GREENS COMMONS ASSOCIATION, INC., and cannot withdraw its membership from the Commons Association unless one hundred percent (100%) consent is received from the other member associations. The unit owners in this condominium shall have a non-exclusive right to use the common area recreation facilities located on the property owned by the Commons Association. All use rights on property owned by the Commons Association are subject to its rules and regulations. This condominium's share of expenses for operating the commons Association shall be one hundred percent (100%) for so long as BERMUDA GREENS is the only condominium within the BERMUDA GREENS COMPLEX. At such time as future condominiums or homeowner's associations are created within the BERMUDA GREENS COMPLEX, this condominium's share of Commons Association expenses shall be an amount based on a fraction, the numerator of which will be seventy-eight (78) and the denominator of which shall be the total number of units within the BERMUDA GREENS COMPLEX. If all of the units in the BERMUDA GREENS COMPLEX are constructed and a certificate of occupancy received, then the denominator for this fraction shall be no more than two hundred sixty-four (264).

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. The power of the Association to levy and collect assessments includes regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly

chargeable against such unit under this Declaration or the Association's By-Laws. Assessments shall be levied and payment enforced as provided in Section 6 of the By-Laws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair or replacement of the common elements and Association property as well as assessments levied on the Association by the Recreation Association, if any, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors so determines, the cost of basic cable or satellite television programming to the units shall be a common expense.

10.2 Share of Common Expenses. The common expenses of the Condominium shall be shared by the unit owners in the same proportion as they share ownership of the common elements, as set forth in Section 6.2 above.

10.3 Ownership Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein.

10.4 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

10.5 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements or Association property, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to mortgagees and the Developer.

10.6 Application of Payments: Failure to Pay: Interest: Acceleration. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date set by the Association for payment. All payments on account shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and regular or special assessments, in such manner and amounts as the Board of Directors may determine. No partial payment which bears a restrictive endorsement shall be accepted. No payment by check is deemed received until the check has cleared. In any action under Section 718.116 of the Condominium Act the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment for the fiscal year in which the action is brought as if said balance had originally been due on the date suit is brought. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. Before exercising the right to accelerate the Association shall send to the delinquent owner a notice of intent to do so, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.7 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure, including all sums due because of the Association's exercise of the right to accelerate, as provided above. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.8 Priority of Lien. Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to any recorded first mortgage and any mortgage of which the Developer is the mortgagee, unless the Association's

Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded. The Association's lien shall be inferior to any lien of the Master Association. Any lease of a unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.9 Foreclosure of Lien. The Association may sue to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act and may also seek to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.10 Transfer of Ownership of Foreclosed Unit. If a foreclosure action is brought against the owner of a condominium parcel and the interest of the owner in the condominium parcel is sold, the owner's membership shall be cancelled and membership shall be issued to the purchaser at the foreclosure sale.

10.11 Certificate As To Assessments. Within fifteen (15) days after request by a unit owner or unit mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

10.12 Developer's Guarantee of Common Expenses. The Developer guarantees that from the recording of this Declaration until October 1991, quarterly assessments against each unit for common expenses will not exceed \$450.00. From October 1991 until October 1992 the Developer guarantees that quarterly assessments against each unit for common expenses will not exceed \$500.00. From October 1992 until control of the Association is turned over to unit owners other than the Developer the Developer guarantees that quarterly assessments against each unit for common expenses will not exceed \$550.00. During this period, Developer and all units owned by Developer shall not be subject to assessment for common expenses as provided herein. Instead, the Developer will fund the difference, if any, between assessments at the guaranteed level and the actual common expenses incurred during the guarantee period. If at any time during this period funds collected from assessments are not sufficient to provide payment, on a timely basis, of all common expenses, the Developer will fund deficits at the time such payment is due. Not later than thirty (30) days after the end of the guarantee period the Developer shall provide the accounting required by Rule 7D-18.006(9), Florida Administrative Code, and fund any outstanding deficits.

10.13 Capital Improvements. So long as the Developer holds any unit for sale in the ordinary course of business the Developer shall be exempt from assessments of the Developer as a unit owner for capital improvements unless the Developer gives its approval in writing. The Developer shall further be exempt from any action by the Association that would be detrimental to the sales of units by the Developer unless the Developer approves the action in writing.

11. MAINTENANCE: LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS: Responsibility for the protection maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvements shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical conduit up to the circuit breaker panel.
- (B) Rough plumbing.
- (C) All installations located within one unit but serving another unit, or located outside the unit, for the furnishing of utilities to more than one unit or the common elements.
- (D) Locks and keys to entrance doors.
- (E) All exterior building walls.
- (F) All air conditioning and heating equipment serving individual units.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within the unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a unit owner without prior Association approval as required elsewhere herein.

11.2 Unit Owner Maintenance. Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and certain limited common elements. The owner's responsibilities include, without limitation:

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The interior side of the entrance door.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures and outlets (including connections).
- (E) The circuit breaker panel.
- (F) Appliances.
- (G) Carpeting and other floor covering.
- (H) Interior door and all window hardware and locks.
- (I) Shower pans.
- (J) Other facilities or fixtures located or contained entirely within the unit which serve only the unit.
- (K) All interior, partition walls which do not form part of the boundary of the unit.

Any insurance proceeds paid to the Association with respect to any loss or damage within the unit covered by the Association's insurance, which loss would otherwise be borne by the unit owner, shall be paid to the unit owner.

11.3 Other Unit Owner Responsibilities. The unit owner shall also have the following responsibilities:

- (A) Balconies, Patios and Porches. Where a limited common element consists of a balcony, patio or porch area, the unit owner who has the right to the exclusive use of said balcony, patio or porch area shall be responsible for the maintenance, care and preservation of the paint and surface of the interior parapet walls, including floor and ceiling, within said area, if any; and any fixed and/or sliding glass doors in portions of the entrance way of said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, the replacement of light bulbs.

- (B) Interior Decorating. Each unit owner is responsible for all decorating within his own unit, including painting, wallpapering, panelling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.
- (C) Flooring. All units above the ground floor shall always have the floors covered with wall-to-wall carpeting installed over high quality padding, except carpeting is not required in kitchens, bathrooms or laundry rooms. An owner who desires to install in place of carpeting any hard-surface floor covering (e.g. marble, slate, ceramic tile, parquet) shall also install a sound absorbent underlayment of such kind and quality as to substantially reduce the transmission of noise to adjoining units, and must obtain written approval of the Board of Directors prior to making such installation. If prior approval is not obtained, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the unit owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending unit owner.
- (D) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the unit, visible from the exterior of the unit, shall be subject to the rules and regulations of the Association.
- (E) Modifications and Alterations. If a unit owner makes any modifications, installations or additions to his unit or the common elements, the unit owner and his successors in title shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions.
- (F) Use of Licensed and Insured Contractors. Whenever a unit owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the unit or common elements, whether with or without Association approval, such owner shall be deemed to have warranted to the Association and its members that his contractor(s) are properly licensed and fully insured, and that owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 Alteration to Units and Limited Common Elements by Unit Owner. No owner shall make or cause the making of any structural modifications or alterations to his unit or its appurtenant limited common elements without first obtaining the written consent of the Association, which consent shall be denied if a majority of the Board of Directors determines that the proposed modifications or alterations might adversely affect, or in any manner be detrimental to, the Condominium in part or whole. If any unit owner requests approval of an alteration or modification involving the removal of any interior partition, the Association may permit such removal if the partition to be removed is not a load-bearing partition and so long as the removal thereof would not materially affect or interfere with the utility services constituting common elements, if any, located therein. No owner shall cause his porch or lanai to be enclosed or cause any changes, structural or non-structural, to be made to the unit or building, including painting or other decoration outside of the unit, or the installation of any electrical wiring, television or radio antenna, appliance or jacuzzi, or in any manner change the exterior appearance of any portion of the Condominium, without the prior written consent of the Board of Directors. Any glass, screen, curtain, blind, shutter, awning or other item which may be installed on any porch or lanai is subject to regulation by the Board of Directors.

11.5 Alterations and Additions to Common Elements. The protection, maintenance, repair and replacement of the common elements is the responsibility of the Association and the cost is a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements without prior approval of at least a majority of the voting interests. However, if work reasonably necessary to protect, maintain, repair or replace the common elements also constitutes a material alteration or substantial addition to the common elements, no prior unit owner approval is required.

11.6 Enforcement of Maintenance. If after reasonable notice the owner of a unit fails to maintain the unit or its appurtenant limited common elements as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including but not limited to, entering the unit, under the conditions set forth in Section 11.8. Any expenses incurred by the Association in performing work within the unit as authorized by this Declaration shall be charged to the unit owner, together with reasonable attorney's fees and other expenses or collection, if any.

11.7 Negligence: Damage Caused by Condition in Unit. Each unit owner shall be liable to the Association and to other unit owners for the expenses of any maintenance, repair or replacement

made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or lessees. If any condition, defect or malfunction existing within a unit, whether caused by the owner's negligence or otherwise, shall cause damage to the common elements or to other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not paid by insurance. If one or more of the units involved is not occupied at the time the damage is discovered, the Association may enter the unit without prior notice to the owner and take reasonable actions to mitigate or prevent the spread of the damage. The Association may, but is not obligated to, also repair the damage, with the consent of the owner.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the units during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The exercise of the Association's access rights shall be accomplished with due respect for the occupant's rights to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the occupant's property. The Association may retain a pass-key to all units. If a unit owner alters any lock or installs a new lock, the unit owner shall provide the Association with a key.

12. USE RESTRICTIONS: The use of the units shall be in accordance with the following provisions as long as the Condominium exists:

12.1 Units. Each unit shall at all times be occupied only by a single family, its servants and guests, as a residence and for no other purpose.

12.2 Occupancy in Absence of Owner. If the owner and members of his family who permanently reside with him are not in residence, and the unit has not been leased, the owner may permit his unit to be occupied by his guests only in accordance with the following:

- A. Any one person related to a unit owner within the first degree by blood, adoption or marriage, and that person's spouse and members of that person's family within the first degree by blood or adoption, are permitted to occupy the unit owner's apartment in the absence of the owner for a period not to exceed thirty (30) days. The number of occasions for this type of guest occupancy shall be limited to four (4) times in any twelve (12) month period.

- B. House guests not included within 12.2(A) are permitted for only one (1) family occupancy in the unit owner's absence and then only with the proviso that the family consist of no more than four (4) persons. Such guests may stay only two (2) weeks and the number of occasions for this type of guest occupancy in any unit shall be limited to three (3) in any calendar year.
- C. The Board of Directors may require all guests to be registered in advance.

12.3 Exceptions. Upon prior written application of the unit owner, Board of Directors may make such limited exceptions to the foregoing restrictions as may be deemed appropriate in the discretion of the Board, for the sole purpose of avoiding undue hardship or inequity. The making of one exception shall not be construed as a precedent for later exceptions.

12.4 Occupancy When Owner is Present. There is no restriction on the number of guests, whether related or unrelated to the owner, who may be present in the unit in the presence of the unit owner.

12.5 Minors. There are no age restrictions for owner/occupants of units or family members permanently residing with owner/occupants; however, all occupants under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of annoyance to other residents. Lessees are subject to age restrictions as described in 14 below.

12.6 Pets. The owner of each unit may keep two (2) small pets, of a normal domesticated household type (such as a cat or dog weighing no more than thirty (30) pounds) in the unit. The pet must be leashed or carried under the owner's arm at all times while on the condominium property outside of the unit. The ability to keep such a pet 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 Condominium. No pets of any kind are permitted in units when the owner is not in residence. No reptiles, amphibians or livestock may be kept in the Condominium.

12.7 Nuisances. No owner shall use his unit, or permit it to be used, in any manner which is reasonably disturbing, detrimental or a nuisance to the occupants of another unit, or which would not be consistent with the maintenance of the highest standards for a first class residential condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of

each unit shall be consistent with existing laws and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.6 Signs. No unit owner other than the Developer may post or display any signs anywhere on the condominium property, including "For Sale", "For Rent", "Open House" and other similar signs.

13. TRANSFER OF OWNERSHIP OF UNITS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the units and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of the units shall be subject to the following provisions, which each owner covenants to observe:

13.1 Forms of Ownership:

- (A) A unit may be owned by one natural person who has qualified and been approved as elsewhere provided herein.
- (B) Co-Ownership. Co-Ownership of units may be permitted. If the co-owners are other than husband and wife, the Association shall require the owners to designate in writing one approved natural person as "primary occupant". Occupancy of the unit by other persons shall be as if the primary occupant is the only actual owner. A change in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 13. No more than one such change will be approved in any twelve (12) month period.
- (C) Ownership by Corporations, Partnerships or Trusts. A unit may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and not to create circumstances in which the unit may be used as short-term transient accommodations for several individuals or families. The Association shall require a trustee, or corporation or other entity to designate in writing one natural person to be the "primary occupant". The occupancy of the unit by other persons shall be as if the primary occupant is the only actual owner. A change

in the primary occupant shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 13. No more than one such change will be approved in any twelve month period.

- (D) Life Estate. A unit may be subject to a life estate, either by operation of law or by a voluntary conveyance approved under 13.2 below. In that event, the life tenant shall be the only member from such unit, and occupancy of the unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the unit. Any consent or approval may be given by the life tenant alone, 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.

13.2 Transfers

- (A) Sale or Gift. No unit owner except the Developer may dispose of a unit or any interest therein by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.
- (B) Devise or Inheritance. If any unit owner acquires his title by devise or inheritance, his right to occupy or use the unit shall be subject to the approval of the Board of Directors. Approval shall not be denied to any devisee or heir who was the prior owner's lawful spouse at the time of death.
- (C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the unit without first being approved by the Board of Directors under the procedures outlined in Section 13.3 below.
- (D) To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to the manager, or to an ad hoc committee, which shall consist of at least three (3) members.

The Chairman of the committee shall be deemed a Vice-President, and as such shall be empowered to execute Certificates of Approval on behalf of the Association.

13.3 Procedures.

(A) Notice to Association.

- (1) Sale or Gift. An owner intending to make a sale or gift of his unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the intended closing date together with the name and address of the proposed purchaser or donee, a copy of the sales contract, if any, and such other information about the proposed purchaser as the Board may reasonably require. The Board may require a personal interview with the prospective purchaser and his spouse, if any, as part of the application process.
 - (2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the unit following the procedures in this Section or in Section 14.
 - (3) Failure to Give Notice. If no notice is given, the Board at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration.
- (B) Board Action. Within twenty (20) days after receipt of the required notice and all appearances and information requested, or not later than sixty (60) days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a

transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the foregoing period, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval

(1) Approval of the Association shall be withheld only if a majority of the whole Board so votes, after receiving a written opinion of legal counsel that such disapproval is for good cause. Good cause for disapproval shall include, without limitation, the following:

(a) The person seeking approval has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;

(b) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(c) The application for approval on its face indicates a strong likelihood that the person seeking approval will conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights and property of others, as evidenced by his conduct in other social organizations or associations, or by his conduct in this Condominium as a tenant, unit owner or occupant of a unit; or

(e) The person seeking approval failed to provide the information or appearances required to process the application in a timely manner.

13.4 Exception. The provisions of Sections 13.2 and 13.3 are not applicable to the acquisition of title by an institutional mortgagee who acquires title through the mortgage, whether by

foreclosure or deed in lieu of foreclosure, nor shall the Association's approval be required for the subsequent resale or lease of a unit by such mortgagee of the unit so acquired, but shall apply to the acquisition of title by any other person.

13.5 Unapproved Transfers. Any sale or other transfer of ownership which is not approved pursuant to this Section shall be void unless subsequently approved in writing by the Board.

13.6 Fees for Processing Applications for Approval to Purchase or Lease. Whenever herein the Board's approval is required to allow the sale, lease, or other transfer of an interest in a unit, the Association may charge a preset fee for processing the application, such fee not to exceed the maximum allowed by law. No fee may be charged for approval of the renewal or extension of a lease with the same lessee.

14. LEASING OF UNITS: All leases of units must be in writing. A unit owner may lease only his entire unit, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be one natural person.

14.1 Procedures.

- (A) **Notice.** An owner intending to lease his unit shall give to the Board of Directors or its designee written notice of such intention at least fifteen (15) business days prior to the starting date of the proposed lease, together with the name and address of the proposed lessee, an executed copy of the proposed lease, and such other information as the Board may reasonably require.
- (B) **Approval.** After the required notice and fees, and all information requested have been provided, the Board or its designee shall approve or disapprove the proposed lease within fifteen (15) business days. If the Board neither approves nor disapproves within the fifteen (15) day period such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.
- (C) **Disapproval.** If a proposed lease shall be disapproved, the lease may not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

- (1) The notice is not accompanied by the required application fee and any security deposit required to be paid to the Association.
- (2) The unit owner is delinquent in the payment of assessments at the time the application is considered;
- (3) The unit owner has a history of leasing his unit to troublesome tenants and/or refusing to control and accept responsibility for the occupancy of his unit;
- (4) The real estate company handling the leasing transaction on behalf of the unit owner has a history of not adequately screening applicants or recommending undesirable tenants;
- (5) The application on its face appears to indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Condominium;
- (6) The prospective lessee is, or reasonably appears to be, one or more college students on "spring break" or other holiday.
- (7) The prospective lessee has been convicted of a felony involving violence to persons or property, or a felony demonstrating dishonesty or moral turpitude;
- (8) The prospective lessee has a history of conduct which evidences disregard for the rights and property of others;
- (9) The prospective lessee evidences a strong probability of financial irresponsibility;
- (10) In the case of a renewal, the lessee has during previous occupancy, evidenced an attitude of disregard for the provisions in the Condominium documents and House Rules; or
- (11) The prospective lessee gives false or incomplete information to the Association as part of the application procedure.

- (D) Failure to Give Notice. If proper notice and information is not given, the Board at its election may approve or disapprove the lease without prior notice. If it disapproves, the Board shall proceed as if it received notice on the date of such disapproval; however, the proposed lessee may provide the Board with the required notice and request reconsideration. Any lease entered into without approval or in violation of the above provisions shall, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the lessee without securing consent to such eviction from the unit owner.
- (E) Applications; Assessments. Applications for authority to lease shall be made to the Association on such forms and include such terms and security deposits as the Board may, from time to time, provide. The legal responsibility for paying condominium assessments may not be delegated to the lessee, nor to a rental agent.
- (F) Notice of disapproval shall be sent or delivered to the unit owner or his rental agent, if any. To facilitate approval of leases, the Board of Directors may by resolution delegate its approval powers to the manager.

14.2 Term of Lease. No unit may be leased for a term of less than thirty (30) days. No unit may be leased more than four (4) times in any twelve-month period. No lease may be for a term of more than one (1) year, and no option for the lessee to extend or renew the lease beyond a one year period without Association approval shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

14.3 Occupancy During Lease Term. No one but the lessee, his family and their guests may occupy the unit during the term of a lease. The total number of overnight occupants of a leased unit is limited to six (6) persons.

14.4 Use of Common Areas and Recreational Facilities. To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation facilities or parking facilities located in the common areas. However, the unit owner may retain the right to use the facilities to the exclusion of the lessee.

14.5 Regulation by Association. All of the provisions of the condominium documents and the rules and regulations of the Association shall be applicable and enforceable against any person occupying a unit as a lessee or guest to the same extent as against an owner. A covenant on the part of each lessee to abide by the rules and regulations of the Association and the provisions of the Condominium documents, designating the Association as the owner's agent, with the authority to terminate any lease agreement and evict the tenants, in the event of violations by the tenants of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not.

15. INSURANCE. In order to adequately protect the Association, the Association property and the condominium property required to be insured by the Association, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry, and may obtain and keep in force any or all additional insurance coverage it deems necessary. The name of the insured shall be the Association and the unit owners without naming them, and their mortgagees, as their interests shall appear.

15.2 Required Coverage The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all Association property, in an amount determined annually by the Board of Directors, such insurance to afford at least the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm) vandalism, malicious mischief, and all other hazards covered by the standard "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 required by the Board of Directors of the Association, with cross liability endorsement to cover liabilities of the unit owner as a group to a unit owner.
- (C) **Automobile.** Automobile liability for bodily injury and property damage for all owner and/or non-owned motor vehicles in such limits of protection and with such coverage as may be required by the Board of Directors of the Association.

- (D) Compensation. The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.
- (E) Statutory Dishonesty Bond (minimum amount as required by Florida law).

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

- (A) Additional flood insurance.
- (B) Broad Form Comprehensive General Liability Endorsement.
- (C) Directors and Officers Liability.
- (D) Medical Payments.
- (E) Leakage, seepage and wind-driven rain.
- (F) Loss or damage caused by flood.

15.4 Description of Coverage. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

15.5 Plate Glass Insurance. The Board of Directors may, in the exercise of its discretion, determine that the limited common element plate glass as described in Section 8.1(B) and Section 5.2(D) within the perimeter walls of the units may be more economically insured by the Association under such coverages as the Association shall obtain, as elsewhere provided in this Declaration. If so, the Condominium Association shall be deemed to have an insurable interest in the plate glass. Upon such determination by the Board, it shall be the Association's obligation and expense to repair or replace any such plate glass as is damaged through casualty loss and is so insured or which may be so insured regardless of whether a deductible is involved. Otherwise the replacement of the plate glass in the perimeter walls of a unit by reason of damage or destruction through casualty loss shall be the unit owners' responsibility. Nothing herein shall be deemed to alter the unit owner's obligations for maintenance of plate glass where that obligation otherwise exists. The term "plate glass" as used herein is descriptive of all glass in exterior perimeter boundaries of units, including picture windows

and sliding glass doors, and is not descriptive of the process whereby glass is manufactured or prepared (e.g., "float" process).

15.6 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 subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same in trust for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

- (A) **Common Elements.** Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.
- (B) **Units.** Proceeds on account of damage within units shall be held in shares based on the prorated amount of damage in each damaged unit as a percentage of the total damage in all units.

If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. No mortgagee shall have any right to participate in determining whether improvements will be rebuilt after casualty. The foregoing notwithstanding, insurance proceeds on account of any NFIP flood insurance policy on an individual unit purchased by the Association or by a unit owner shall be used only to repair or rebuild the unit to which the respective policy applies and that unit's appurtenant share of the common elements and no other unit owner or unit may directly benefit from said proceeds. If the Condominium is not to be restored or rebuilt, the proceeds shall accrue to the benefit of the respective unit owner and his mortgagees, if any.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

- (A) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.
- (B) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by them.

15.9 Association as Agent. The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the condominium property.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within a single unit or several units, any Association insurance proceeds on account of the damage, in shares computed as provided in 15.6 above, shall be distributed to the owner(s) of the damaged units. The owners of damaged units shall be responsible for reconstruction and repair within their units.

16.2 Damage to Common Elements - Less than "Very Substantial". Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

- (A) The Board of Directors shall promptly obtain detailed estimates of the cost of repair and

restoration, and shall negotiate and contract for the repair and reconstruction of the premises.

- (B) If the proceeds of insurance are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, and if other funds such as reserves are not available, levy a special assessment against all unit owners in proportion to their shares in the common elements for any deficiency. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for repair and restoration of the property.

16.3 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby one-half (1/2) or more of the units are rendered uninhabitable. Should such "very substantial" damage occur then:

- (A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration.
- (B) A membership meeting shall be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to rebuilding or abandonment of the Condominium.
- (1) If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the condominium property shall be restored or repaired unless two-thirds (2/3) of the voting interests shall vote for abandonment, or unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of unit, in which case the Condominium shall be terminated.
- (2) If the insurance proceeds and reserves available for restoration and repair are not sufficient to cover the cost thereof so that a special assessment will be required, then unless two-thirds (2/3) of the voting interests vote in favor of such special assessment and against abandonment of the Condominium, it shall be abandoned and the property removed from the provisions of the Condominium Act.

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if two-thirds (2/3) of the voting interests approve the special assessment, the Association shall levy such assessment and shall contract for such repairs and restoration. The special assessment shall be added to the proceeds available for repair and restoration of the property.

- (C) If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by a majority of the whole Board of Directors shall be binding upon all unit owners.

16.4 Application of Insurance Proceeds. It shall be presumed that the first monies disbursed for repair and restoration shall be from insurance proceeds; if there is a balance in the funds after the payment of all costs of repair and restoration, such balance shall be distributed to the unit owners, except as otherwise provided in Section 15.6.

16.5 Equitable Relief. In the event of damage to the condominium property which is to be repaired, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within four (4) months following the damage or destruction and is completed within twelve (12) months thereafter.

16.6 Plans and Specifications Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors and by the owners of three-fourths (3/4) of the units, and the Primary Institutional Mortgagees.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against the defaulting unit owner in the amount of

his award, or the amount of that award shall be set off against any sums payable to that owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Association property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

17.4 Association as Agent. The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

17.5 Units Reduced but Tenantable. If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) Restoration of Unit. The unit shall be made tenantable, if the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.
- (B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.
- (C) Adjustment of Shares in Common Elements. If the floor area of a unit is reduced by the taking, the number representing the share in the common elements appurtenant to the unit shall be reduced in the proportion by which the floor area of the unit is reduced by the taking, and then the shares of all

unit owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Untenantable. If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

- (A) **Payment of Award.** The fair market value of the unit immediately prior to the taking shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagee(s).
- (B) **Addition to Common Elements.** If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by some or all unit owners in the manner approved by the Board of Directors.
- (C) **Adjustment of Shares in Common Elements.** The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of units. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.
- (D) **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned unit to the unit owner and to condition the remaining portion of the unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by special assessment against all unit owners who will continue as owners of units after the changes in the Condominium affected by the taking. The assessments shall be made in proportion to the shares of those owners in the common elements after the changes affected by the taking.
- (E) **Arbitration.** If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association

within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit; and a judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisal shall be paid by the party selecting the appraiser.

17.7 Taking of Common Elements. Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

17.8 Amendment of Declaration. The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by amending this Declaration and its Exhibits. The amendment must be approved only by a majority of the Board of Directors, and the consent of unit owners or mortgagees is not required for any such amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by approval, in writing, of the owners of at least eighty percent (80%) of the units, and of the Primary Institutional Mortgagee.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3, and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

18.3 General Provisions. Upon termination, the former unit owners shall become the owners, as tenants in common, of all condominium and association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lienor of a unit owner, shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in

and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.

18.4 New Condominium. The termination of the Condominium does not bar creation of another condominium on all or any portion of the same property.

18.5 Partition; Sale. Following termination, the former condominium property and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, the former owners of seventy-five percent (75%) of the units determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

18.7 Provisions Survive Termination. The provisions of this Section 18 shall be deemed covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

19. OBLIGATION OF OWNERS:

19.1 Duty to Comply; Right to Sue. Each unit owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Condominium Act, the Declaration, the documents creating the Association, the By-Laws and the Rules and Regulations. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a unit owner against:

- (A) The Association;
- (B) A unit owner;
- (C) Anyone who occupies a unit; or

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- (D) Any member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or of a member to enforce any right, provision, covenant or condition which may be granted by the condominium documents shall not constitute a waiver of the right of the Association or member to enforce such right, provision, covenant or condition in the future. A provision of the Condominium Act may not be waived by a unit owner if the waiver would adversely affect the rights of the owner or defeat the purpose of the provision, except that unit owners or Directors may waive notice of specific meetings as provided in the By-Laws. Any written instrument or instruction given by a prospective purchaser or unit owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Condominium Act.

19.3 Attorney's Fees. In any legal proceeding arising out of an alleged failure of a tenant, unit owner or the Association to comply with the requirements of the Condominium Act or the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or unit owners under any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising such other additional rights, remedies, or privileges as may be granted by the condominium documents, or at law or in equity.

20. **RIGHTS OF MORTGAGEES:**

20.1 Approvals. Written consent of the institutional mortgagee of a unit shall be required for any amendment to the Declaration which would decrease the percentage interests of the unit in the ownership of the common elements, except as provided in Sections 17.5(C), 17.6(C) and 17.8.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any unit or any part of the common elements, the record holder of any first mortgage on an affected unit shall be entitled to notice.

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20.3 Mortgage Foreclosure. Except as otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer of title shall not be liable for the share of common expenses or assessments attributable to the condominium parcel, or chargeable to the former owner of the parcel, which came due prior to the mortgagee's acquisition of title. Any unpaid share of common expenses which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a condominium parcel by foreclosure or by a deed in lieu of foreclosure may be excused from the payment of any assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any institutional mortgage or lien on any unit, the Association, on behalf of one or more unit owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the unit at the foreclosure sale. An institutional mortgagee shall have an unrestricted, absolute right to accept title to the unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the unit at the foreclosure sale. If the Association or any of its members redeem the mortgage or cure the default, it or they shall have a lien against the unit for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past due assessment.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees requesting same current copies of the condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20.6 Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

20.7 Lender's Notices. Upon written request to the Association, any institutional mortgagee shall be entitled to timely written notice of:

- (A) Any 60-day or longer delinquency in the payment of assessments or charges owed by the owner of any unit on which it holds a mortgage.
- (B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

21. DEVELOPER'S RIGHTS AND DUTIES: So long as the Developer or any successor in interest to the Developer holds any units in the BERMUDA GREENS COMPLEX for sale in the ordinary course of business, the following shall apply:

21.1 Developer's Use. Until the Developer has completed all of the contemplated improvements and has sold all of the units in the BERMUDA GREENS COMPLEX neither the unit owners nor the Association, nor their use of the condominium property shall unreasonably interfere with the completion of the contemplated improvements or the sale of units. The Developer may make any use of the unsold units (or units sold subject to a leaseback by the Developer for use as a model), the common elements and the common areas as may reasonably be expected to facilitate completion and sales, including, but not limited to, maintenance of a sales office, display of signs, leasing units, (subject to Association approval) and showing the units for sale to prospective purchasers.

21.2 Assignment All or any of the rights, privileges, powers and immunities granted or reserved to the Developer in the condominium documents may be freely assigned by the Developer, in whole or in part, to any person, entity, or nominee without the consent of any other unit owner or any holder of a mortgage secured by any unit. 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.

21.3 Amendment of Plans and Alteration of Boundaries and Apartment Dimensions. Developer reserves the right to modify the appointments, design or arrangement of any units, to add custom features requested by individual purchasers, or to alter the boundaries between units so long as Developer owns the units so altered, provided no such change shall be made without amendment of the condominium documents where appropriate to reflect the changes. Any such amendment need be signed and acknowledged only

by the Developer, and shall not require the approval of unit owners, unit purchasers, or the Association.

21.4 Sales of Units. To the extent permitted by law, the Developer shall have the right to sell or transfer ownership of any unit owned by it to any person, on such terms and conditions as the Developer deems in its own best interest, without need for Association approval.

21.5 Turnover. The Developer may turn over control of the Association to unit owners other than the Developer prior to the statutory dates by causing all of its appointed Directors to resign, whereupon it shall be the affirmative obligation of unit owners other than the Developer to elect Directors and assume control of the Association. Provided at least thirty (30) days' notice of the Developer's decision to cause its appointees to resign is given to unit owners, neither the Developer nor its appointees shall be liable in any manner in connection with such resignations, even if unit owners other than the Developer refuse or fail to assume control. After the Developer no longer appoints a majority of the Directors of the Association, but before the sale of the last unit to unit owners other than the Developer, the Developer shall be notified as to all actions taken by the Association or its Board of Directors. Any action taken by the Association or its Board of Directors which would be detrimental to the sale of units or would attempt to assess the Developer for capital improvements must be approved in writing by the Developer.

22. AMENDMENT OF DECLARATION. Except as otherwise provided above, amendments to this Declaration shall be proposed and adopted as follows:

22.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors or by written petition signed by the owners of at least one-fourth (1/4) of the units.

22.2 Procedure. Upon any amendment to this Declaration being proposed as provided above, the proposed amendment shall be submitted by the Board of Directors to a vote of the owners not later than the next annual meeting for which proper notice can still be given.

22.3 Vote Required Except as otherwise provided by law, or by specific provision of the condominium documents, this Declaration may be amended by concurrence of two-thirds (2/3) of the voting interests present in person or by proxy 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. Alternatively, amendments may be adopted without a meeting following the procedures set forth in Section 3.11 of the By-Laws.

22.4 Certificate: Recording A copy of each amendment shall be attached to a certificate reciting facts showing that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

22.5 Proviso. No amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the owner of a parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and his institutional mortgagee, if any, consents in writing to the amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain, which may be made as provided in Section 17.

22.6 Enlargement of Common Elements. The common elements designated by the Declaration may be enlarged to add real property acquired by the Association through amendment of this Declaration. The amendment must describe the interest in the property and must submit the property to the terms of the Declaration. The amendment must be approved by at least two-thirds (2/3) of the voting interests. The amendment must divest the Association of title and vest the same proportion as the undivided shares in the common elements that are appurtenant to the units.

22.7 Phasing Amendments. Notwithstanding the foregoing, the Developer has the right to amend this Declaration and its Exhibits to add Phases 2 through 5 to this Condominium pursuant to Section 23 of this Declaration and Section 718.403 of the Condominium Act. Such amendment shall not require execution by or consent thereto by unit owners, the Association, or the owner and holder of any lien or mortgage encumbering a condominium parcel in the land already submitted to condominium ownership, and said amendment is required to be executed only by the Developer, and recorded in the Public Records of Collier County, Florida, together with such joinders or consents as may be required under Section 718.104(3) of the Condominium Act.

22.8 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may

correct the error or omission by following the procedures set forth in the Condominium Act.

22.9 Amendment of Provisions Relating to Developer. As long as the Developer holds any unit in the Condominium for sale in the ordinary course of business, no amendment shall be effective to change any provision relating specifically to the Developer without the Developer's written consent.

23. PHASE DEVELOPMENT. This Condominium may be developed in phases pursuant to Section 718.403, Florida Statutes (1989). Phase 1 is the land and improvements being submitted to Condominium ownership by this Declaration, consisting of seventy-eight (78) units in seven 2-story buildings four of which contain twelve (12) units and three of which will contain ten (10) units.

23.1 Phase 1. The land contained within Phase 1 is legally described on Page 2 of Exhibit "A" to this Declaration and the survey and plot plan appear on Pages 1 and 2 of Exhibit "B". The Developer may make nonmaterial changes to the legal description of a Phase in accordance with Florida Statutes §718.403(2)(a).

23.2 Phase 2. Phase 2, is legally described on Page 3 of Exhibit "A". Page 2 of Exhibit "B" shows the approximate location of buildings and improvements to be located in Phase 2. It is contemplated that Phase 2, if added, will consist of five 2-story buildings with a minimum of fifty-two (52) units. One (1) building will contain twelve (12) units each and four buildings will contain ten (10) units for a total of fifty-two (52) units. The maximum number of units in Phase 2 would be sixty-four (64). Depending upon the number of units built in a Phase and the type of unit built, the exterior appearance of the buildings may vary slightly. The Developer may make nonmaterial changes to the legal description of a Phase in accordance with Florida Statutes §718.403(2)(a).

23.3 Phase 3. Phase 3 is legally described on Page 4 of Exhibit "A". Page 2 of Exhibit "B" shows the approximate location of buildings and improvements to be located in Phase 3. It is contemplated that Phase 3 will consist of three (3) 2-story buildings. One building will contain ten (10) units and two buildings will contain twelve (12) units each for a total of thirty-four (34) units. The maximum number of units that could be built in Phase 3 is forty (40). Depending upon the number of units built in a Phase and the type of unit built, the exterior appearance of the buildings may vary slightly. The Developer may make nonmaterial changes to the legal description of a Phase in accordance with Florida Statutes §718.403(2)(a).

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23.4 Phase 4. Phase 4 is legally described on Page 5 of Exhibit "A". Page 2 of Exhibit "B" shows the approximate location of buildings and improvements to be located in Phase 4. It is contemplated that Phase 4 will consist of three (3) 2-story buildings with a minimum of thirty-two (32) units. Two buildings will contain ten (10) units each and one building will contain twelve (12) units for a total of thirty-two (32) units. The maximum number of units that could be built in Phase 4 is thirty-eight (38). Depending upon the number of units built in a Phase and the type of unit built, the exterior appearance of the buildings may vary slightly. The Developer may make nonmaterial changes to the legal description of a Phase in accordance with Florida Statutes §718.403(2)(a).

23.5 Phase 5. Phase 5 is legally described on Page 6 of Exhibit "A". Page 2 of Exhibit "B" shows the approximate location of buildings and improvements to be located in Phase 5. It is contemplated that Phase 5 will consist of three (3) 2-story buildings with a minimum of thirty-four (34) units. Two buildings will contain twelve (12) units each and one building will contain ten (10) units for a total of thirty-four (34) units. The maximum number of units that could be built in Phase 5 is thirty-four (34). Depending upon the number of units built in a Phase and the type of unit built, the exterior appearance of the buildings may vary slightly. The Developer may make nonmaterial changes to the legal description of a Phase in accordance with Florida Statutes §718.403(2)(a).

23.6 Deadline for adding Phases 2 through 5; No Time Sharing. Phases 2 through 5 shall be added, if at all, not later than seven (7) years after the date of recording this Declaration in the Public Records of Collier County, Florida. No time share estates may be created in any phase of this Condominium.

23.7 Voting Rights and Ownership in Association. The owners of each unit collectively, will be entitled to cast one vote in Association affairs where a vote of the members is required or called for. The owners of each unit shall beneficially own a fractional share of the assets of the Association equal to the unit's fractional share of ownership of the common elements as stated in Section 6.2 of this Declaration.

23.8 Developer's Options as to Phases 2 through 5 Property. Any and all property included in Phases 2 through 5 as described in this Declaration shall not become part of this Condominium unless added to it by a recorded amendment to this Declaration. The decision to add Phase 2 through 5 is in the sole discretion of the Developer except that all phases may be declared immediately if required by the regulating authorities in Collier County. The land comprising Phases 2 through 5, if not added to the Condominium

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may be used by the Developer or its successors, grantees and assigns for any lawful purpose, including the creation of other separate condominiums if such development is approved by the appropriate government authorities.

25. MISCELLANEOUS

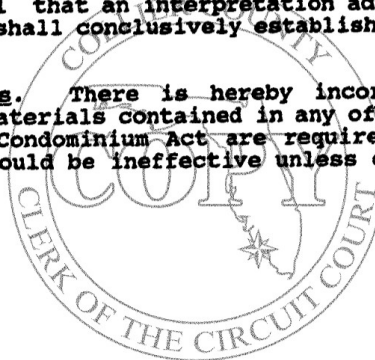
25.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any exhibit attached thereto, shall not effect the remaining portions thereof.

25.2 Applicable Statutes. The validity, application and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, particularly the Condominium Act, as it exists on the date this Declaration is recorded.

25.3 Conflicts. If there is a conflict between any provision of this Declaration and the Condominium Act, the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or By-Laws, the Declaration shall control.

25.4 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 it is 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.

25.5 Exhibits. There is hereby incorporated within this Declaration any materials contained in any of the exhibits hereto, which under the Condominium Act are required to be part of the Declaration, or would be ineffective unless contained herein.



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

Signed in the presence of:

BERMUDA GREENS OF NAPLES LTD., a Florida limited partnership

BY: CBG OF NAPLES, INC. GENERAL PARTNER

Bly J. DeNike
Witness
Bly J. DeNike

Suzanne Howard
Witness
Suzanne Howard

By: Stuart M. Wallace
President
Stuart M. Wallace
800 Seagate Drive, Suite 301
Naples, Florida 33940
(SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The instrument was acknowledged before me this 8th day of November, 1991, by Stuart M. Wallace, President of CBG OF NAPLES, INC., a Florida corporation, the general partner of BERMUDA GREENS OF NAPLES LTD., a Florida limited partnership, on behalf of the partnership.



Adrienne M. Swietlik
Notary Public (SEAL)
My Commission Expires:
Adrienne M. Swietlik

NOTARY PUBLIC, STATE OF FLORIDA.
MY COMMISSION EXPIRES MARCH 31, 1995.
BONDED THROUGH NOTARY PUBLIC UNDERWRITERS.



Prepared by:

John N. Brugger, Esquire
Forsyth, Swalm & Brugger, P.A.
600 Fifth Avenue South, Suite 210
Naples, Florida 33940

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