COMBINED RESTATED DECLARATION OF CONDOMINIUM[1]
FOR
CONDOMINIUM I AT BARLETTA, A CONDOMINIUM
CONDOMINIUM II AT BARLETTA, A CONDOMINIUM
CONDOMINIUM III AT BARLETTA, A CONDOMINIUM
CONDOMINIUM IV AT BARLETTA, A CONDOMINIUM
CONDOMINIUM VAT BARLETTA, A CONDOMINIUM
CONDOMINIUM VI AT BARLETTA, A CONDOMINIUM
CONDOMINIUM VII AT BARLETTA, A CONDOMINIUM

MADE this ___ day of _____, _____, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, 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 Lee County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").

2. SUBMISSION STATEMENT. The Developer hereby submits the Land described in Exhibit "A" and all improvements erected or to be erected thereon, all easements, rights 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 Act, 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. 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

[1] Editor's Note: This document combines, for ease of review, the operative provisions of the seven (7) separate Declarations of Condominium ("Declarations") for Condominium I at Barletta, A Condominium; Condominium II at Barletta, a Condominium; Condominium III at Barletta, a Condominium; Condominium IV at Barletta, a Condominium; Condominium V at Barletta, a Condominium; and Condominium VI at Barletta, a Condominium. This document also includes all of the amendments for the individual Declarations as most recently amended through June 23, 2017. There still remain seven (7) separate Condominiums and Declarations and the "official" Declarations for the seven (7) Condominiums are recorded in the Lee County Public Records as follows: the Declaration of Condominium for Condominium I at Barletta, a Condominium, is recorded at O.R. Book 4580, Page 4517 *et seq.*, of the Public Records of Lee County, Florida; the Declaration of Condominium for Condominium II at Barletta, a Condominium, is recorded at O.R. Book 4828, Page 4326 *et seq.*, of the Public Records of Lee County, Florida; the Declaration of Condominium for Condominium III at Barletta, a Condominium, is recorded at Instrument No. 2005000069245, of the Public Records of Lee County, Florida; the Declaration of Condominium for Condominium IV at Barletta, a Condominium, is recorded at Instrument No. 2005000141415, of the Public Records of Lee County, Florida; the Declaration of Condominium for Condominium V at Barletta, a Condominium, is recorded at Instrument No. 2006000214070, of the Public Records of Lee County, Florida; the Declaration of Condominium for Condominium VI at Barletta, a Condominium, is recorded at Instrument No. 2006000369514, of the Public Records of Lee County, Florida; and the Declaration of Condominium for Condominium VII at Barletta, a Condominium, is recorded at Instrument No. 2006000421722, of the Public Records of Lee County, Florida. All of the Declarations have been amended from time to time. This document is for administrative convenience of the Association in having access to the relevant provisions of the Condominium Documents and all amendments in a single instrument.

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 may be amended from time to time, and shall signify agreement to be bound by its terms.

3. NAME. The names by which these Condominiums shall be identified is: Condominium I at Barletta, a Condominium; Condominium II at Barletta, a Condominium; Condominium III at Barletta, a Condominium; Condominium IV at Barletta, a Condominium; Condominium V at Barletta, a Condominium; Condominium VI at Barletta, a Condominium; and Condominium VII at Barletta, a Condominium, (the "Condominiums") and their address is Barletta Lane, Estero, Florida.

4. DEFINITIONS. The terms used in this Declaration and its exhibits shall have the meanings stated below and in the Act, unless the context otherwise requires.

4.1 **"Architectural Review Committee" or "ARC"** means the Architectural Review Committee as established and empowered in Section 6 of the Master Declaration.

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

4.3 "**Association**" means Condominiums at Barletta Association, Inc. (formerly known as Condominium I at Barletta Association, Inc.), a Florida corporation not for profit, as successor by merger to Condominium II at Barletta Association, Inc., Condominium III at Barletta Association, Inc., Condominium IV at Barletta Association, Inc., Condominium V at Barletta Association, Inc., Condominium VI at Barletta Association, Inc., and Condominium VII at Barletta Association, Inc., the entity responsible for the operation of the Condominiums known as Condominium I at Barletta, a Condominium, Condominium II at Barletta, a Condominium, Condominium III at Barletta, a Condominium, Condominium IV at Barletta, a Condominium, Condominium V at Barletta, a Condominium, Condominium VI at Barletta, a Condominium, and Condominium VII at Barletta, a Condominium. This is a multi-condominium association.

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

4.5 **"Board of Directors" or "the 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".

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

4.7 **"County"** All references in the governing documents to "a County" or "the County" or to a specific Florida County are intended to refer to Lee County, Florida, and shall be construed to do so.

4.8 **"Declarant"** or **"Developer"** means U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida. Wherever either term is used in this

Declaration, or in the Articles or Bylaws of the Association, it shall always be deemed to include any successor in interest to the Declarant's development rights and obligations.

4.9 **"Electronic Transmission"** means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams, facsimile transmissions of images, and text that is sent via electronic mail between computers.

4.10 **"Family" or "Single Family"** means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, 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.

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

4.12 **"Guest"** means any person (other than the unit owner and his family) who is physically present in, or occupies any unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration. Any person who occupies a unit for thirty (30) days, whether or not consecutive, in any calendar year shall no longer be considered a Guest and, instead, shall be considered a Resident, as the term is defined below.

4.13 **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage encumbering a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any other institutional lender providing financing of acquisition, development or construction, or any agency of the United States of America. The term also refers to any holder of a mortgage against a condominium parcel, which mortgage is guaranteed or insured 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 purchasing, guaranteeing or insuring residential mortgage loans, and their successors and assigns.

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

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

4.16 **"Master Association" or "the Master Association"** means Bella Terra of Southwest Florida, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Master Association Common Areas within Master Association, as described in the Governing Documents.

4.17 **"Master Common Areas"** means the real property and all improvements thereon owned or to be owned by the Master Association for the use and benefit of the members of Bella Terra.

4.18 **"Master Declaration"** means the Declaration of Covenants, Conditions, and Restrictions for Bella Terra, as originally recorded in O.R. Book 04236, at Pages 0511 to 0599, Public Records of Lee County, Florida, (the "Master Declaration"), and as it may be amended from time to time.

4.19 **"Occupant"** when used in connection with a unit, means a person who is physically present in a unit on two or more consecutive days, including staying overnight. "Occupy" means the act of staying overnight in a unit.

4.20 **"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.

4.21 **"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.

4.22 **"Voting Group"** means a group of members of the Master Association whose Living Units are represented by one (1) or more Directors of the Master Association, as more particularly described in Section 11.7 of the Bella Terra Declaration, and in a Supplemental Declaration to be recorded as provided therein.

4.23 **"Voting Interests of the Association"** refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are 336 Units, so the total number of Voting Interests of the Association is 336. Matters affecting the entire Association (all seven Condominiums), as determined by the Board of Directors, shall be decided by the Voting Interests of the Association. By way of example, but not limitation, the waiver of financial reporting requirements, amendments to the Articles of Incorporation, and amendments to the By-Laws are decided by the Voting Interests of the Association. Determining whether a voting item involves the Voting Interests of the Association as opposed to the Voting Interest of the Condominium shall be determined in the sole discretion of the Board of Directors of the Association.

4.24 "**Voting Interests of the Condominium**" means those voting items which are to be considered for vote by the Unit Owners in individual Condominiums in accordance with the Class Quorum and Voting procedures specified in Article 2.11 of the By-Laws. By way of

example, but not limitation, certain amendments to the Declaration of Condominium, the waiver or reduction of reserve funding, and decisions regarding rebuilding after a casualty shall be based upon the Voting Interests of the Condominium. Determining whether a voting item is a matter involving the Voting Interests of the Condominium, as opposed to Voting Interests of the Association, shall be determined in the sole discretion of the Board of Directors of the Association.

4.25 **"Voting Representative"** means the representative selected by the Members of this Neighborhood to be responsible for casting all votes the Members in the Neighborhood in all Master Association matters other than the election of Directors.

4.26 "**Common Expenses of the Association**" means those expenses for which all unit owners are liable to the Association, including but not limited to expenses of administration and operation of the Association and such other expenses as may be declared Common Expenses of the Association either by the Declarations, the Articles of Incorporation, these By-Laws or by the Board of Directors. Common Expenses of the Association include, but are not limited to, such items as cost of premiums for public liability insurance, accounting and general legal fees, and wages and fees for managerial and other services. Additionally, the costs of premiums for property insurance together with the associated deductibles, repair of damages below deductibles and damages in excess of coverage shall be treated as Common Expenses of the Association as authorized by the Act. Common Expenses of the Association also include reasonable insurance for directors and officers, and other expenses which are reasonably related to the general benefit of the unit owners of the several Condominiums even if such expenses do not attach to the property or the Condominiums of the Association.

Common Expenses of the Association shall be shared on a 1/336 basis by Condominium I at Barletta Owners, Condominium II at Barletta Owners, Condominium III at Barletta Owners, Condominium IV at Barletta Owners, Condominium V at Barletta Owners, Condominium VI at Barletta Owners, and Condominium VII at Barletta Owners. Determining the allocation of the Common Expenses of the Association as opposed to Common Expenses of the Condominium shall be in the sole discretion of the Board of Directors of the Association.

4.27 "**Common Expenses of the Condominium**" means those expenses for which Unit Owners in the individual Condominiums are liable to the Association. Except as otherwise provided herein, or determine by the Board of Directors, expenses pertaining to the maintenance, repair, and replacement of the Common Elements of the individual Condominiums are a Common Expense of the Condominium. By way of example, but not limitation, building painting and roof repair, are Common Expenses of the Condominium. Common Expenses of the Condominium specifically include all costs and expenses related to landscaping, separately metered utilities serving the Common Elements of the Condominium and not paid by the Master Association and irrigation within the Condominium Properties of the individual Condominiums. Notwithstanding the foregoing, Common Expenses of the Condominium shall not include the costs of premiums for property insurance together with the associated deductibles, repair of damages below deductibles and damages in excess of coverage, which shall be treated as a Common Expense of the Association. Determining the allocation of Common Expenses of the Condominium as opposed to Common Expenses of the Association shall be in the sole discretion of the Board of Directors of the

Association. When the Association receives a single billing for an item that is declared a Common Expense of the Condominium, the Board may allocate segments of said invoices to the individual Condominiums as the Board in its sole discretion deems fair and equitable. Common Expenses of the Condominium shall be shared by Condominium I at Barletta Unit Owners on a 1/60 basis; by Condominium II at Barletta Unit Owners on a 1/48 basis; by Condominium III at Barletta Unit Owners on a 1/48 basis; by Condominium IV at Barletta Unit Owners on a 1/48 basis; by Condominium V at Barletta Unit Owners on a 1/48 basis; by Condominium VI at Barletta Unit Owners on a 1/48 basis; and by Condominium VII at Barletta Unit Owners on a 1/36 basis. Reserves required by the Act and the Condominium Documents are a Common Expense of the Condominium.

4.28 **"Act" or "Condominium Act"** means the Condominium Act (Chapter 718, Florida Statutes, 2014), as it now exists or as it may be amended from time to time, including the definitions therein contained.

4.29 **"Resident"** means any person who is occupying a unit for thirty (30) days, whether or not consecutive, in any calendar year and shall include, as applicable, unit owners, Tenants and members of their respective Families who reside in the unit.

4.30 **"Charge"** means any legal or equitable indebtedness or obligation of a Unit Owner to the Association, or other sums owed to or due to the Association from a Unit Owner, or any cost or expense incurred by the Association on behalf of or because of a Unit Owner, other than Assessments for Common Expenses, which the Unit Owner is obligated to pay to the Association. Said obligations may arise by oral or written contract, by law or in equity, or may be created by these Condominium Documents.

4.31 **"Lien for Charges"** means a lien which is recorded to secure a Charge.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 **Survey and Plot Plans.** Attached to this Declaration as part of Exhibit "B" and incorporated by reference herein, are a survey of the Land 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 that lies within the following boundaries:

(A) **Upper and Lower Boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper Boundaries.** The horizontal plane or planes of the unfinished lower surface of the ceiling of the unit.

(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 plasterboard walls bounding the unit as shown in Exhibit "B" hereto, extended to their 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 unit shall be considered part of the boundary of a unit.

(D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefor, are excluded from the unit.

(E) **Utilities.** The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.

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 Section 5.2(D) above shall control over Exhibit "B".

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 **Shares of Ownership.** [***FOR CONDOMINIUM I***] The Condominium contains sixty (60) units. The owner of each unit also owns a one sixtieth (1/60th) undivided share in the common elements and the common surplus. [***FOR CONDOMINIUMS II THROUGH VI***] The Condominium contains forty-eight (48) units. The owner of each unit also owns a one forty-eighth (1/48th) undivided share in the common elements and the common surplus. [***FOR CONDOMINIUM VII***] The Condominium contains thirty-six (36) units. The owner of each unit also owns a one thirty-sixth (1 /36th) undivided share in the common elements and the common surplus.

6.2 **Appurtenances to Each Unit.** The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

(A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws 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, and the non-exclusive 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 casement in airspace which is vacated shall be terminated automatically.

(E) Other appurtenances as may be provided by law or by this Declaration and its exhibits. Each unit and 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 common areas 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 or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS.

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

(A) The Land.

(B) All portions of the buildings and other improvements on the Land 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 property that contributes to the support of a building or structure.

(E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

7.2 **Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, 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. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) **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. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. 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.

(B) **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.

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

(D) **Construction: Maintenance.** The Developer (including its designees and contractors) shall have the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the unit owners of the condominium property.

(E) **Sales Activity.** For as long as it holds any unit in the Condominium for sale in the ordinary course of business, the Developer and its designees shall have the right to use any units owned by it, and the common elements in order to establish modify, maintain and utilize, as it and they deem appropriate, model units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model units or 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, leases and promotion of the Condominium.

(F) The easements and rights described in (D) and (E) above shall terminate upon the sale of all units in the Condominium to purchasers other than a successor Developer.

7.3 **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 passes with the title to the unit, whether separately described or

not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

8. LIMITED COMMON ELEMENTS.

8.1 **Description of Limited Common Elements.** Certain common elements have been or may be 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 assigned are as described in this Declaration and as further identified on the attached survey and plot plan.

(A) **Covered Parking Spaces.** Certain one car covered parking spaces are shown in Exhibit "B." The exclusive right to the use of each covered parking space is assigned as a limited common element to the unit bearing the same number.

(B) **Stairs.** The exclusive use of any stairways, stairwells and railings which are attached to and which exclusively serve particular units is a limited common element for the units which they serve. The maintenance, repair and replacement thereof shall be the responsibility of the Association and shall be a common expense.

(C) **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, are limited common elements.

(D) **Lanai, Patio or Balcony.** The airspace comprising any lanai, patio or balcony attached to and serving exclusively a unit is a limited common element.

(E) **Others.** Any part of the common elements that is connected to and exclusively serves a single unit, and is 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, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware, locks and frames therefor.

8.2 **Exclusive Use.** The exclusive right to use a limited common element is an appurtenance to the unit or units to which it is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it.

9. ASSOCIATION. The operation of the Condominium is by Condominiums at Barletta Association, Inc., a Florida corporation not for profit, which shall perform its functions 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 **Bylaws.** The Bylaws of the Association shall be the Bylaws attached as Exhibit "D", as they are amended from time to lime.

9.3 **Delegation of Management.** The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company 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 and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 **Membership.** The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

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 in the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise 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 may impose reasonable fees for use of common elements or 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.

The Association shall not be required to provide a prospective purchaser or lienholder with information about the condominium or the Association other than information or documents required by law to be made available or disclosed.

Notwithstanding the foregoing, the Association shall be entitled to charge a reasonable fee to the prospective purchaser, lienholder, or member for its time in providing good faith responses to requests for information by or on behalf of a prospective purchaser or lienholder, other than that required by law, provided that such fee does not exceed $150.00 plus the reasonable cost of photocopying and any attorney's fees incurred by the Association in connection with its response.

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, such power to be exercised by the Board of Directors.

9.9 **Acquisition of Property.** The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 9.8 above, the power to acquire interests in real property may 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 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.

Additionally, the Association shall maintain the electronic mailing addresses and the numbers designated by members for receiving notice by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by members to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association, however, is not liable for an erroneous disclosure of the electronic mailing address or the number for receiving electronic transmission of notices.

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, including 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 Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

10.1 **Common Expenses.** Common expenses of the Condominium shall be as described in Article 4.30 and shall include all expenses of the operation, maintenance, repair, replacement and protection of the Common Elements of the Condominium and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a Common Expense of the Condominium. The Common Expense of the Association shall be as determined in Article 4.29.

10.2 **Share of Common Expenses.** The owner of each unit shall be liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 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 or by law.

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 monies owed by 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, 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 certain mortgagees.

10.6 **Application of Payments: Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day 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 the assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments as required by law. No payment by check is deemed received until the check has cleared.

10.7 **Acceleration.** If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for that fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. 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. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, 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 required by Section 718.116 of the Condominium Act, or may be sent separately.

10.8 **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 Lee County, Florida, stating the description of the condominium parcel, the name of the record owner, the name and address of the Association, 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. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 **Priority of Lien.** Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage, but is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

10.10 **Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

10.11 **Certificate As To Assessments.** Within fifteen (15) days after request by a unit owner, unit purchaser or 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. The Association may charge a reasonable fee for the preparation of the certificate.

10.12 **Statutory Assessment Guarantee: Liability of Developer for Common Expenses.** The Developer guarantees that from the recording of this Declaration, until December 31, 2006, or such earlier date as unit owners other than the Developer first elect a majority of the Directors of the Condominium Association (the "turnover date"), assessments against unit owners for common expenses will not exceed $692.67 per quarter. If the turnover date has not occurred by December 31, 2006, then the Developer further guarantees that from January 1, 2007, until the first to occur of the turnover date or December 31, 2007, assessments against unit owners for common expenses will not exceed $796.57 per quarter. If the turnover date has not occurred by December 31, 2007, the Developer further guarantees that from January 1, 2008, until the turnover date, assessments against unit owners for common expenses will not exceed $916.16 per quarter. During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

10.13 **Charges for Water and Sewer Service.** Notwithstanding any provision in this Declaration to the contrary, the Board shall have the authority to install, operate, maintain, repair and replace individual water meters (sub-meters) within each Unit that can be remotely read to determine the amount of water used by, and sewer service provided on behalf of, a particular

Unit during any given period of time. The Association's right of entry shall include the right to enter Units to install, operate, maintain, repair and replace (and, if necessary, read) sub-meters as a Common Expense of the Condominium. Charges associated with water and sewer service to the Units will be paid by the Association to the utility provider and then billed on an individual basis to each Unit based on usage, and not as a Common Expense. Reimbursement of expenses incurred by the Association for the provision of water and sewer service on a quantity used basis, including per Unit fees and charges affiliated with remote or third party reading of sub-meters, and a pro-rata share of non-consumption based use/service charges incurred by the Association, all as determined by the Board, shall be secured by a Lien for Charges.

10.14 **Lien for Charges.** There is created by this Declaration a common law and contractual lien to secure payment for any service which the Association provides for an individual Unit Owner or expenses which the Association incurs in regard to a Unit Owner and which are not otherwise secured by the statutory lien for Common Expenses. By way of example, but not limitation, a Lien for Charges exists to secure payment for individual water and sewer charges as set forth in Article 10.13 of this Declaration. The Lien for Charges shall be of equal priority to, shall accrue interest and late fees, and shall be foreclosed in the same manner as the Common Expense lien, including the right to recover interest, late fees, attorneys' fees, costs and expenses of collection.

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 improvement 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 wiring up to the circuit breaker panel in each unit.

(B) Water lines, up to the individual unit cut-off valve.

(C) Cable television lines up to the wall outlet.

(D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.

(E) Sewer lines, up to the point where they enter the individual unit.

(F) The exterior surfaces of the main entrance door to each unit.

(G) All exterior building walls, including painting, waterproofing, and caulking.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that 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 unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

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 of certain limited common elements. The owner's responsibilities include, without limitation:

(A) All screens, windows, window glass, and related hardware and frames.

(B) The entrance door to the unit and its interior surface.

(C) All other doors within or affording access to the unit.

(D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.

(E) The circuit breaker panel and all electrical wiring going into the unit from the panel.

(F) Appliances, water heaters, smoke alarms and vent fans.

(G) All air conditioning and heating equipment, thermostats, ducts and related installations serving the unit exclusively.

(H) Carpeting and other floor coverings.

(I) Door and window hardware and locks.

(J) Shower pans.

(K) The main water supply shut-off valve for the unit.

(L) Other facilities or fixtures which are located or contained entirely or partially within the unit and serve only the unit.

(M) All interior, partition walls which do not form part of the boundary of the unit.

11.3 **Other Unit Owner Responsibilities:**

(A) **Porches or Lanais.** Where a limited common element consists of a porch or lanai area, the unit owner who has the exclusive right to use the area shall be responsible for day-to-day cleaning and care of the walls, floor and ceiling bounding said area, if any; and all fixed glass and sliding glass doors in portions of the entrance way to said area, if any; and the wiring, electrical outlet(s) and fixture(s) thereon, if any, and the replacement of light bulbs. The Association is responsible for the maintenance, repair and replacement of all exterior walls of the building and the concrete slabs. No porch or lanai may be covered or enclosed in any way without the prior written approval of the Board of Directors. The maintenance, repair and replacement and insurance of such approved covering or enclosure is the responsibility of the unit owner. Maintenance, repair and replacement of all screening is the responsibility of the unit owner.

(B) **Covered Parking Spaces.** Maintenance of all interior spaces within the covered parking spaces shall be the unit owner's responsibility. Each unit owner shall keep the pavement surface of their covered parking space free of dirt, grime, grease and other debris. Maintenance of exterior, roof, and structural components of the covered parking space shall be by the Association and shall be a common expense.

(C) **Interior Decorating.** The unit owner is responsible for all decorating within his own unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(D) **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 any work being done. If the installation is made without prior approval 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.

(E) **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.

(F) **Modifications and Alterations.** If a unit owner makes any modifications, installations or additions to his unit or to the common elements with or without association approval, the unit owner, and his successors in title, shall thereby become financially responsible for:

(1) insurance, maintenance, repair and replacement of the modifications, installations or additions; and

(2) all damages to other property or persons caused by such modifications, installations or additions; and

(3) the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect other parts of the condominium property; and

(4) damage to the modifications, installations or additions caused by work being done by the Association.

(G) **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 the owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

11.4 **Appliance Maintenance Contracts.** If there shall become available to the Association a program of contract maintenance for kitchen appliances or water heaters within units and/or air-conditioning compressors and/or air handlers serving individual units, which the Association determines is to the benefit of the owners to consider, then upon agreement by a majority of the voting interests present, in person or by proxy and voting, at a meeting called for the purpose, or upon agreement by a majority of the voting interests in writing, the Association may enter into such contractual undertakings. The costs of such contractual undertakings to the Association shall be common expenses. All maintenance, repairs and replacements not covered by the contracts shall be the responsibility of the unit owner.

11.5 **Alteration of Units or Common Elements by Unit Owners.** No owner shall make or permit the making of any material alterations or substantial additions to his unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the ARC, as well as the approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the unit, are subject to regulation by the Board of Directors. No owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated, adverse effects on the Condominium.

11.6 **Alterations and Additions to Common Elements and Association Property.** There shall be no material alterations or substantial additions to the Common Elements of this Condominium, except as authorized by the Board of Directors. Provided, however, that if any such

alteration or addition requires the expenditure of more than $10,000 in the aggregate in any calendar year in which the work is authorized, the Board shall obtain approval of at least a majority of the Voting Interests of the Condominium present, in person or by proxy, and voting at a duly noticed meeting of the Members in that Condominium at which a class quorum has been established. Any material alteration of or substantial addition to the Common Elements of a Condominium exceeding that amount shall be approved by at least a majority of the Voting Interests of the Condominium present, in person or by proxy, and voting at a duly noticed meeting of the Members in that Condominium at which a class quorum has been established. Necessary maintenance of the Common Elements, regardless of the level of expenditure, is the responsibility of the Board of Directors.

11.7 **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 may 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, with or without notice to or consent of the tenant or unit owner, to repair, replace, or maintain any common elements or of any portion of the unit to be maintained by the Association pursuant to this Declaration. 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.

11.8 **Negligence: Damage Caused by Condition in Unit.** The owner of each unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other units, or personal property made necessary by his act or negligence, or by that of any member of his family or his guests, employees, agents, or tenants. Each unit owner has a duty to maintain his unit, any limited common element appurtenant to the unit (except those limited common elements required to be maintained by the Association), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other units, the common elements or the property of other owners and residents. If any condition, defect or malfunction, resulting from an owner's failure to perform this duty causes damage to other units, the common elements, association property or property within other units, the owner of the offending unit shall be liable to the person or entity responsible for repairing the damaged property 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 action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the owner.

11.9 **Association Access to Units.** The Association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair or replacement of any common elements or of any portion of a unit to be maintained by the Association, pursuant to the Declaration or as necessary to prevent damage to the common elements or to a unit or unit.

11.10 **Pest Control.** The Association may supply pest control services for the inside of each unit, with the cost thereof being part of the common expenses. An owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the owner thereof must either

permit the Association's pest control company to enter his unit or must employ a licensed pest control company to enter his unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control services provided by the Association is a common expense, the election of an owner not to use the service shall not reduce the owner's assessments.

11.11 **Porch or Lanai Enclosures.** The Board of Directors may adopt a basic approved plan for screening and/or glassing-in of porches or lanais, subject to ARC approval. A unit owner may screen or enclose the porch or lanai serving his unit in accordance with the approved basic plans without specific consent from the Board of Directors, provided that such screening or enclosure conforms in all respects to the approved basic plans and specifications therefor.

11.12 **Hurricane Shutters.** Subject to approval by the ARC, the Board of Directors shall adopt and approve a model, style and color of hurricane shutter as a standard hurricane shutter for use in the Condominium. No hurricane shutter except of the standard model, color and style adopted by the Board of Directors shall be used in or upon the Condominium.

12. USE RESTRICTIONS. The use of the units and the common elements shall be in accordance with the following provisions, and with Section 5 of the Bella Terra Declaration, as long as the Condominium exists:

12.1 **Units.** Each unit shall at any time be occupied by only one family, its servants and guests, as a residence and for no other purpose. No business, commercial activity or profession may be conducted from any unit, nor may the name of the condominium or the address of any be publicly advertised as the location of any business. The use of a unit as a public lodging establishment shall be deemed a business or commercial use. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his unit. Such uses are expressly declared customarily incident to residential use. This Section 12.1 is, however, intended to prohibit commercial or business activity by a unit owner which would unreasonably disrupt the residential ambiance of the building, or make it obvious that a business is being conducted, such as by regular or frequent traffic in and out of the Condominium by persons making deliveries or pick-ups, by employees or other business associates, or by customers and clients.

12.2 **Age.** No unit may be leased or rented to a person unrelated to the unit owner who has not attained the age of twenty-one (21) years and the person leasing or renting same must reside in the unit for the duration of the lease or rental period. While a unit is leased, all Tenants and Residents must be at least twenty-one (21) years of age except for children or other dependents who are members of a Tenants' Family. There are no other restrictions on the age of Occupants of units.

12.3 **Pets.** The owner of each unit may keep no more than two (2) small pets, of a normal domesticated household type (such as a cat or dog) in the unit. Dogs and cats must be leashed or carried at all times while outside of the unit. The ability to keep pets is a privilege, not a right,

and the Board of Directors may order and enforce the removal of any pet which becomes a reasonable source of annoyance to other residents. The owner is responsible for cleaning up after his pet. No one other than a unit owner may keep a pet as authorized by this Section 12.3 and the unit owner must be in simultaneous residence with said pet. No pets of any kind are permitted in non-owner occupied units, including but not limited to leased units. No reptiles, rodents, poultry, amphibians, swine or livestock may be kept in the Condominium, but tropical fish or caged birds in reasonable numbers are permitted.

12.4 **Nuisances.** No owner shall use his unit, or permit it to be used, in any manner that is unreasonably 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, the governing documents and the condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.5 **Signs.** No signs may be erected or displayed in or on any Lot, Living Unit, or structure, except that a "For Sale" or "For Rent" sign no larger than ten (10) inches in height and no more than eighteen (18) inches in width is permitted. The sign shall conform to the drawing depicted on the attached sheet. The party seeking to erect or place a sign on their property shall be required to purchase the sign and sign post from a vendor designated by the Association. The vendor so designated by the Association shall be the only party authorized to place or install the sign on the owner's property. Owner's right to install a sign shall be further subjected to the following restrictions and those which may be later promulgated by the Architectural Review Committee:

A. The sign shall only contain the telephone number and the name of either the homeowner or the real estate company listing the property, if any;

B. Telephone number letters shall not exceed four (4) inches in height and the lettering indicating the homeowner or real estate company shall not exceed two (2) inches in height;

C. Color of the lettering shall be white and shall have a dark green background;

D. For single-family homes and villas, one (1) sign may be located in the front of the property, no closer than fifteen (15) feet from the street pavement and another sign may be located along the rear of the house, no farther than three (3) feet from the house; For condominiums, two (2) signs are permitted. One (1) sign may be located in the rear window of the unit;

E. The Architectural Review Committee may require that all signs installed or placed within the Community be constructed or installed by a vendor designated and approved by the Association, in order to insure conformity with these restrictions. The Association has designated RDM Graphics, 17311 Alico Road, Unit D, Fort Myers, FL 33912, (239) 267-4302 as the approved sign vendor.

12.6 **Motor Vehicles: Parking.** No motor vehicle shall be parked anywhere on the condominium property except within their assigned covered parking space or an uncovered parking space. Covered and uncovered parking spaces shall be used solely and exclusively for the parking of vehicles, subject to the restrictions set forth in this Section 12.6 and any rules adopted by the Board of Directors. Bicycles of the owner of a unit, or the owner's Family, Tenants, or Guests, stored in a parking space may only be stored in the covered parking space assigned to the owner's unit and must be attached to a bicycle rack located between the vehicle and the carport. No bicycles may be chained or otherwise attached to any carport post. All motor vehicles parked on the condominium property must prominently display a valid form of approval to park within the Bella Terra community. Valid forms of approval include transponders/bar code stickers, resident passes (which are issued to unit owners when driving a motor vehicle other than their primary motor vehicle), and guest passes all of which are issued by the Master Association. Resident passes and guest passes that have expired will not be considered a valid form of approval. No commercial trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on the condominium property. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept on the condominium property. For the purpose of the foregoing sentence, the term "kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less. Because the number of parking spaces is limited, the right of the occupants or owners of any unit to keep more than one motor vehicle in the Condominium may be limited or regulated by rules adopted by the Board of Directors. The Board of Directors shall also be authorized to promulgate additional rules regarding parking on the condominium property. For purposes of this paragraph "kept" shall mean present for either a period of twelve (12) consecutive hours or overnight, whichever is less. No house trailer, mobile home, motor home and the like may be kept on the Condominium more than two (2) times in any month. Any vehicle parked in violation of this Section or any rules adopted by the Board of Directors, as permitted by this Subsection 12.6, is subject to being towed away at the owner's expense without further warning.

12.7 **Covered Parking Spaces.** Covered parking spaces, which are limited common elements, are for the sole purpose of parking operational motor vehicles and bicycles subject to the limitations set forth in Section 12.6 hereof. No covered parking space shall be permanently enclosed or converted to any other primary use without the prior written approval of the Board. Repair of motor vehicles, other than emergency repairs, is not permitted.

12.8 **Flags.** Any unit owner may display one (1) portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display in a respectful way portable, removable official flags, not larger than 4 ½ feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

13. LEASING OF UNITS. The lease of a unit is defined as occupancy of the unit by any person other than the unit owner, whether pursuant to verbal or written agreement, where said occupancy by the non-owner involves consideration (the payment of money, the exchange of goods or services, or any other exchange of value). The term "leasing" and "renting" shall be

used interchangeably for the purpose of this Declaration. The term "Tenant" and "Lessee" shall likewise be used interchangeably. No individual rooms may be rented and no transient tenants may be accommodated. "Rent-sharing" and subleasing are prohibited. All leases shall be for a minimum period of thirty (30) consecutive days. No lease may begin sooner than thirty (30) days after the beginning of the last lease. Leases may be extended or renewed, subject to Board approval. The total number of Occupants, including the Tenant(s) and Board-approved Residents, of a leased unit is limited to six (6) persons.

13.1 **Board Right of Approval**. The Board of Directors shall have the authority to approve all leases and renewals or extensions thereof, which authority may be delegated to a committee or agent. Any person residing in the unit after initial approval shall be subject to a separate application and approval process. No person may reside in a unit as a Tenant, Family member of a Tenant, Resident, or otherwise without prior approval of the Board of Directors. The Board shall have the authority to promulgate or use a uniform lease application and require such other information from the proposed Tenant and all proposed Residents as the Board deems appropriate under the circumstances. The Board may require an interview of any proposed Tenant and all proposed Residents of a unit, as a condition for approval. Any lease entered into without approval may, at the option of the Board, be treated as a nullity, and the Board shall have the power to evict the Tenant(s) and all unit Occupants with five (5) days' notice, without securing consent to such eviction from the unit owner.

13.2 **Approval Process; Disapproval**. All leases must be in writing. Any unit owner intending to lease his unit shall submit to the Association the name(s) of the proposed Tenant(s) and all proposed Resident(s), a copy of the proposed lease, an application, and any other requested information and required fees at least thirty (30) days in advance of the commencement of the lease or renewal or extension term. Upon receipt of all information and fees required by Association and an interview (if requested by the Board), the Association shall have the duty to approve or disapprove all proposed leases within thirty (30) days of receipt of such information for approval and the completion of the Tenant/Resident interview (if required), by sending written notification to the unit owner within such time frame. All requests for approval not acted upon within thirty (30) days shall be deemed approved. Applications for renewals or extensions of lease agreements shall be submitted at least thirty (30) days in advance of the expiration of the lease agreement. If the Association disapproves a proposed lease or renewal or extension, the unit owner shall receive a short statement indicating the reason for the disapproval, and the lease shall not be made, renewed, or extended. The Association shall neither have a duty to provide an alternate Tenant nor shall it assume any responsibility for the denial of a lease application if any denial is based upon any of the following factors:

(A) The person seeking approval (which shall hereinafter include all proposed Residents) has been convicted of or has pleaded no contest to:

(1) a felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years; or

(2) a felony demonstrating dishonesty or moral turpitude within the past ten (10) years; or

(3) a felony involving illegal drugs within the past ten (10) years; or

(4) any other felony in the past five (5) years; or

(5) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred;

(B) The person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

(C) The person seeking approval is currently on probation or community control;

(D) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures, or bad debts, or has a FICO credit score below 600;

(E) The application for approval on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the person seeking approval intends to conduct himself in a manner inconsistent with the Condominium Documents. By way of example, but not limitation, a Tenant taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Condominium Documents and may constitute grounds for denial;

(F) 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 housing facilities or associations, or by his conduct in this Condominium as a Tenant, Resident, Occupant or Guest;

(G) The unit owner or person seeking approval has failed to provide the information, fees, or appearances required to process the application in a timely manner;

(H) All Assessments, fines and other charges and monetary obligations against the unit and/or unit owner have not been paid in full;

(I) The application or investigation by the Association reveals that the rental will result in a violation of the Condominium Documents, including but not limited to the age restrictions set forth herein.

13.3 **Association Fee**. The unit owner or Tenant seeking approval of a lease of a unit shall pay a transfer fee for each applicant in an amount determined by the Board, which unless otherwise specified, shall be the maximum amount permitted by law. No charge shall be made in connection with an extension or renewal of a lease.

13.4 **Security Deposit**. The Board of Directors shall have the authority, as a condition of granting approval to a lease or renewal or extension thereof, to require that a prospective Tenant or unit owner place a security deposit in an amount not to exceed the equivalent of one month's rent into an escrow account maintained by the Association to protect against damage to the common elements or Association Property. Payment of interest, claims against the deposit,

refunds, and disputes under this paragraph shall be handled in the same fashion as provided in Part II of Chapter 83 of the Florida Statutes (2013) as amended from time to time.

13.5 **Tenant Conduct; Remedies**. The Board shall have the authority to promulgate a lease addendum. All leases shall include a lease addendum, if so promulgated by the Board. Said lease addendum and all other leases will provide, or be deemed to provide, that the Tenants and all Residents have read and agreed to be bound by this Declaration, Articles of Incorporation, Bylaws, and Rules and Regulations as the same may be amended from time to time (the "Condominium Documents"). The lease addendum and other leases shall further provide or be deemed to provide that any violation of the Condominium Documents shall constitute a material breach of the lease and subject the Tenant to eviction as well as any other remedy afforded by the Condominium Documents or Florida law. If a Tenant, Resident, other unit Occupant, Guest or invitee fails to abide by the Condominium Documents, the unit owner(s) shall be responsible for the conduct of the Tenants, Residents, Occupants, Guests and invitees and shall be subject to all remedies set forth in the Condominium Documents and Florida law, without waiver of any remedy available to the Association as to the Tenant. The unit owner shall have the duty to bring his Tenant's conduct (and that of the other unit Residents, Occupants, Guests and invitees) into compliance with the Condominium Documents by whatever action is necessary, including without limitation the institution of eviction proceedings without notice to cure, where legally permissible. If the unit owner fails to bring the conduct of the Tenant into compliance with the Condominium Documents in a manner deemed acceptable by the Association, or in other circumstances as may be determined by the Board, the Association shall have the authority to act as agent of the unit owner to undertake whatever action is necessary to abate the Tenants' noncompliance with the Condominium Documents (or the other noncompliance of other Residents, Occupants, Guests or invitees), including without limitation the right to institute an action for eviction against the Tenant in the name of the Association in its own right, or as agent of the unit owner. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with such actions, from the unit owner which shall be secured by a continuing lien in the same manner as Assessments for Common Expenses, to wit, secured by a lien for charges. Any uniform lease or lease addendum will provide, and all leases will be deemed to provide that the Association shall have the authority to direct that all rental income related to the unit be paid to the Association until all past due and current obligations of the Association have been paid in full, including but not limited to all past due Assessments, charges, other monetary obligations, late fees, interest, attorneys' fees and cost and expenses of collection.

13.6 **Liability**. The liability of the unit owner under the Condominium Documents shall continue notwithstanding the fact that he may have leased or rented his interest in the unit as provided herein.

13.7 **Use of Common Elements and Common Areas.** To prevent overtaxing the facilities, a unit owner whose unit is leased may not use the recreation or parking facilities during the lease term.

14. OWNERSHIP OF UNITS. The transfer of ownership of units shall be subject to the following restrictions:

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

14.2 **Designation of Member of the Master Association.** Where legal title to a unit is held in the name of two or more natural persons who are not husband and wife, or in the name of a corporation, partnership, or other entity which is not a natural person, the owner shall designate in writing one family as the member of the Master Association, as provided in Section 4 of the Master Declaration. For purposes of applying restrictions on the occupancy of units, the member and family designated to the Master Association shall also be deemed the owner of the unit.

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

15. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 **By the Unit Owner.** Each unit owner is responsible for insuring his own unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the unit and required to be repaired or replaced by the owner; and all alterations, additions and improvements made to the unit or the common elements by the owner or his predecessors in title. Each unit owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 **Association Insurance: Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the condominium documents, and may obtain and keep in force any or all additional insurance coverage as 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. To the extent permitted by law, the Association may self insure.

15.3 **Required Coverage.** The Association, as a Common Expense of the Association, shall maintain adequate insurance covering the buildings and other improvements on the condominium property that the Association is required to insure, as well as all Association Property, in such amounts, and with such deductibles, as is determined annually by the Board of

Directors to be reasonable in the exercise of its good business judgment, such insurance to afford at least the following protection:

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

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

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

(D) **Statutory Fidelity Bond.** To the extent required by law, fidelity bonds shall be required for those persons who control or disburse funds of the Association in the amount(s) required by the Condominium Act and the President, Secretary and Treasurer of the Association. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Association or its management agent at any one time. The premiums on such bonds shall be paid by the Association as a Common Expense.

15.4 **Hazard Insurance.** Every hazard insurance policy issued or renewed on or after January 1, 2004, to protect the condominium shall provide primary coverage for:

(A) all portions of the condominium property located outside the units;

(B) the condominium property located inside the units as such property was initially installed, or replacements thereof of like kind and quality and in accordance with the original plans and specifications or, if the original plans and specifications are not available, as they existed at the time the unit was initially conveyed; and

(C) all portions of the condominium property for which the declaration of condominium requires coverage by the Association.

Anything to the contrary notwithstanding, the terms "condominium property," "building," "improvements," "insurable improvements," "common elements," "association property," or any other term found in the declaration of condominium which defines the scope of property or casualty insurance that a condominium association must obtain shall exclude all floor, wall, and ceiling coverings, electrical fixtures, appliances, air conditioner or heating equipment, water heaters, water filters, built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware and similar window treatment components, or replacements of any of the foregoing which are located within the boundaries of a unit and serve only one unit and all air conditioning compressors that service only an individual unit, whether or not located within the unit boundaries.

Every hazard insurance policy issued or renewed on or after January 1, 2004, to an individual unit owner shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property. Each insurance policy issued to an individual unit owner providing such coverage shall be without rights of subrogation against the Association. All real or personal property located within the boundaries of the unit owner's unit which is excluded from the coverage provided by the Association as set forth above shall be insured by the individual unit owner.

15.5 **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) 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) Endorsement for loss by operation of local ordinance.

15.6 **Description of Coverage.** A detailed summary of the coverages included in the master policies, and copies of the master policies, shall be available for inspection and copying by unit owners or their authorized representatives upon request.

15.7 **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 the unit owners, 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.

15.8 **Insurance Proceeds.** The costs of premiums for property insurance together with the associated deductibles, repair of damages below deductibles and damages in excess of coverage shall be treated as Common Expenses of the Association as authorized by the Act and, as such, property insurance proceeds shall be held and disbursed based on all units in all Condominiums operated by the Association. Accordingly, all insurance policies purchased by the Association shall be for the benefit of the Association, the unit owners of all Condominiums operated by the Association and their mortgagees as their interests may appear, and all proceeds from policies purchased by the Association shall be payable only to the Association. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the unit owners of all Condominiums operated by the Association and their respective mortgagees in the following shares:

(A) **Common Elements**. Proceeds on account of damage to common elements of any Condominium operated by the Association shall be held in as many undivided shares as there are units in all Condominiums operated by the Association, the shares of each unit owner being equal to one over the total number of units in all Condominiums operated by the Association.

(B) **Units.** Proceeds received on account of damage within the units shall be held in prorated shares, based on the amount of damage within each damaged unit as a percentage of the total damage within all units in all Condominiums operated by the Association.

(C) **Mortgagee.** If a mortgagee endorsement has been issued as to a unit in any Condominium operated by the Association, the shares of the mortgagee and the unit owner shall be as their interests appear. No mortgagee shall have the right to require application of insurance proceeds to any mortgage it may hold against a unit, unless insurance proceeds on account of damage to that unit are not used for repairs, or the proceeds exceed the actual cost of repairs or reconstruction. Except as otherwise expressly provided, no mortgagee shall have the right to participate in determining whether improvements will be repaired or reconstructed after casualty.

(D) **Deductibles.** The policies may provide for reasonable deductibles. In the case of property insurance, the deductible shall be paid by the party who would be liable for the loss or responsible for repairs in the absence of insurance. If multiple parties would be responsible, the deductible shall be allocated among them in proportion to the amount each party's loss bears to the total. Deductibles shall be determined based on the total number of units in all Condominiums operated by the Association.

15.9 **Distribution of Proceeds.** Insurance proceeds from Association policies shall be distributed to or for the benefit of the unit owners in all Condominiums operated by the Association in the following manner:

(A) **Costs of Protecting and Preserving the Property**. If a person other than the person responsible for repair and reconstruction has properly advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) **Cost of Repair or Reconstruction.** If the damage for which the proceeds are paid is to be repaired or reconstructed the remaining proceeds shall be paid to defray the Costs as provided in Sections 15.8 (A) and (B) above. Any proceeds remaining after repairs and reconstruction shall be distributed to the beneficial owners, remittances to unit owners in all Condominiums operated by the Association and their mortgagees being paid jointly to them.

(C) **Failure to Repair or Reconstruct.** If it is determined in the manner elsewhere provided here in that the damages for which the proceeds are paid shall not be reconstructed or repaired, the proceeds on account of that damage shall be distributed to the beneficial owners, remittances to unit owners in all Condominiums operated by the Association and their mortgagees being payable jointly to them.

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

16. REPAIR OR RECONSTRUCTION AFTER CASUALTY. If any part of the condominium property of any Condominium operated by the Association 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 one or more units of any Condominium operated by the Association, any Association insurance proceeds on account of the loss or damage shall be distributed to the owner(s) of the damaged unit(s) in shares as provided in Section 15.8 above. The owner(s) of the damaged unit(s) shall be responsible for reconstruction and repair, and no other person, including the Association, is liable for the cost thereof in the absence of legal fault.

16.2 **Damage to Common Elements - Less than "Very Substantial".** Where loss or damage occurs to the common elements of any Condominium operated by the Association, 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 reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners in all Condominiums operated by the Association in an amount equal to one over the total number of units in all Condominiums operated by the Association for the deficiency. Such special assessments need not be approved by the unit owners. The proceeds from the special assessment shall be added to the funds 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 caused by a common occurrence whereby at least three-fourths (3/4ths) of the total units in this Condominium cannot reasonably be rendered habitable within sixty (60) days. Should such "very substantial" damage occur:

(A) The Board of Directors and the officers, or any of them, are authorized, regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions, as further provided in Section 4.16 of the Bylaws. This authority includes actions to protect life and property, to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and to alter the condominium property or association property as might be reasonable under the circumstances to protect the condominium property or association property from further damage or deterioration. This authority includes the authority to expend any and all available association funds, including reserves.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

(C) A meeting of the members shall be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

(1) If the insurance proceeds, reserves and other association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished without levying a special assessment against all unit owners in all Condominiums operated by the Association in an amount equal to one over the total number of units in all Condominiums operated by the Association that exceeds fifteen percent (15%) of the total annual budget for Common Expenses of the Association in the year in which the casualty occurred, the Condominium shall be repaired and reconstructed unless at least two-thirds (2/3rds) of the total voting interests of the Association vote for termination, in which case the Condominium shall be terminated.

(2) If upon the advice of legal counsel and construction experts, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of units; or if the insurance proceeds, reserves and other association funds available for restoration and repair are not sufficient to cover the estimated cost thereof, and it is reasonably anticipated that the repairs and reconstruction can be accomplished only by levying special assessments exceeding fifteen percent (15%) of the total annual budget for Common Expenses of the Association in the year in which the casualty occurred, the Condominium shall be terminated, and the property removed from the provisions of the Condominium Act, unless at least two-thirds (2/3rds) of the total voting interests of the Association vote against termination. If the requisite number of unit owners vote against termination, the Board of Directors shall levy such assessments as are necessary, and shall proceed with the necessary repairs and restoration. The proceeds from the special assessments shall be added to the funds available for repair and reconstruction.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of special assessments required, a determination by at least two-thirds (2/3rds) of the Directors shall be conclusive, and shall be binding upon all persons.

16.4 **Application of Insurance Proceeds.** It shall always be presumed that monies disbursed for repair and reconstruction come first from insurance proceeds; if there is an excess of insurance proceeds left in the funds held by the Association after the payment of all costs of repair, and reconstruction, such balance shall be distributed to the unit owners in all Condominiums operated by the Association in an amount equal to one over the total number of units in all Condominiums operated by the Association, except as otherwise provided in Section 15.8 above.

16.5 **Equitable Relief.** In the event of damage to the common elements which renders any unit in this Condominium uninhabitable, if repairs and reconstruction are not begun and completed within a reasonable period of time, the owner of the uninhabitable unit may petition a court for equitable relief, which may include termination of the Condominium and partition of

the former condominium property. For purposes of this provision, it shall be conclusively presumed that repair and reconstruction has begun and been completed within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 **Plans and Specifications.** Any repairs or reconstruction 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, by the owners of at least three-fourths (3/4ths) of the units in all Condominiums operated by the Association, by the ARC, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any unit without the consent of the unit owner and his institutional mortgagee, if any.

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. Awards for the taking shall be deemed to be proceeds from insurance on account of the casualty. Notwithstanding the foregoing, awards for the taking shall be held and disbursed based on only the units in the Condominium. Even though the awards may be payable to unit owners in the Condominium, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a 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 a taking by condemnation or eminent domain will be determined in the same manner provided for determining whether damaged property will be repaired or reconstructed or after a casualty, except that only the voting interests of the Condominium shall have a right to vote on the issue. Accordingly, two-thirds (2/3rds) of the total voting interests of the Condominium, as opposed to the Association, shall be required to approve a certain action or inaction of the Association.

17.3 **Disbursement of Funds.** If the Condominium is terminated, the proceeds of all awards and other payments will be deemed common surplus of the Condominium and shall be distributed in proportion to the unit owners' shares in the common elements. If the Condominium is not terminated, but the size of the Condominium will be reduced, the owners of units to be diminished or eliminated, if any, will first 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 treated as a common surplus of the Condominium and shall be distributed in proportion to the unit owners' shares in the common elements.

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 a condemning authority for the purpose of realizing just compensation.

17.5 **Units Reduced but Habitable.** If the size of a unit must be reduced, and the remaining portion of the unit can be made habitable, 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 habitable. If the cost of doing so 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.

17.6 **Unit Made Not Habitable.** If the condemnation is of an entire unit or reduces the size of a unit so that it cannot be made habitable, 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 award shall be paid to the owner of the unit and to each mortgagee of the unit as their interests may appear, the remittance being made payable jointly to the owner and mortgagee(s).

(B) **Addition to Common Elements.** If possible and practical, any remaining portion of the unit shall become part of the common elements of the Condominium and shall be placed in condition for use by some or all unit owners of units in the Condominium in a 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 equitably distribute the ownership of the common elements among the changed number of units.

(D) **Assessments.** If the award to the Association for damage to the common elements resulting from a taking is not sufficient to pay the cost of converting the remaining portions 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.

17.7 **Taking of Common Elements.** Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall become part of the common surplus of the Condominium.

17.8 **Amendment of Declaration.** Any changes in units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation or eminent domain shall be accomplished by amending this Declaration and

Exhibits "A" and "B" in conformity to the changes mandated by Sections 17.5 and 17.6 above. Such amendments need be approved only by the owners of a majority of the units of the Condominium. Approval of, or joinder by, lien holders 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 caused to be terminated at any time by written agreement of the owners of at least three-fourth; (3/4ths) of the units of the Condominium, and the Primary Institutional Mortgagee.

18.2 **Very Substantial Damage.** If the Condominium suffers "very substantial damage" to the extent defined in Section 16.3 above, and it is not decided as therein provided that the Condominium will be reconstructed or repaired, the condominium form of ownership of the property in this Condominium will be terminated.

18.3 **Certificate of Termination.** The termination of the Condominium by either of the foregoing methods shall be evidenced by a Certificate of Termination, executed by the President or Vice-President with the formalities of a deed, and certifying as to the facts effecting the termination. The certificate shall also include the name and address of a Florida financial institution with trust powers, or a licensed Florida attorney, who is designated by the Association to act as Termination Director, and shall be executed by the Director indicating willingness and ability to serve in that capacity. Termination of the Condominium occurs when a Certificate of Termination meeting the requirements of this Section is recorded in the Public Records of Lee County, Florida. The recording of that Certificate of Termination automatically divests the Association and all unit owners of legal title, and vests legal title in the Termination Director named in the Certificate of Termination, to all real and personal property which was formerly the condominium property, without need for further conveyance. Beneficial title to the former condominium property is owned by the former unit owners as tenants in common, in the same undivided shares as each owner previously owned in the common elements of the Condominium. Upon termination, each lien encumbering a condominium parcel shall be automatically transferred to the equitable share in the condominium property attributable to the unit encumbered by the lien, with the same priority.

18.4 **Association Role in Termination.** The termination of the Condominium does not, by itself, terminate the Association. The members of the Board of Directors and the officers of the Association shall continue to have the powers granted in this Declaration, and in the Articles of Incorporation and Bylaws and shall continue to serve in that capacity on behalf of the other Condominiums operated by the Association and for the purpose of dealing with the sale of the former condominium property. Notwithstanding the foregoing, the former unit owners and their successors and assigns shall automatically cease to be members of the Association. The Termination Director shall hold title to the property for the benefit of the former unit owners and their successors, assigns, heirs, devisees, mortgagees and other lien holders, as their interests shall appear. If the former unit owners approve a sale of the property as provided in this Section, the Termination Director shall have the power and authority to convey title to the real property, and to distribute the proceeds in accordance with the provisions of this Section. The Termination Director shall be entitled to reasonable fees for acting in such capacity, and such fees, and all

costs and expenses incurred by the Termination Director in the performance of its duties, shall be paid from the proceeds of the sale of the former condominium property, and shall constitute a lien on the property superior to any other lien. The Director shall be entitled to indemnification by the Association from any and all liabilities and costs incurred by virtue of acting as Termination Director unless such liabilities are the result of gross negligence or malfeasance, but only to the extent that such costs can be paid as a Common Expense of the Condominium. The Termination Director may rely upon the written instructions and information provided to it by the officers, Directors and agents of the Association, and shall not be required to inquire beyond such information and instructions. In the event of the resignation or incapacity of the Director, a successor Director may be appointed by the Circuit Court of the county in which the Condominium is located on the petition of the Association.

18.5 **Partition: Sale.** Following termination, the former condominium property may be partitioned and sold upon the application of any unit owner of the Condominium. If following a termination, at least seventy-five percent (75%) of the voting interests of the Condominium agree to accept an offer for the sale of the property, the Board of Directors shall notify the Termination Director, and the Director shall complete the transaction. In that 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. If the unit owners of the Condominium have not authorized a sale of the former condominium property within 1 year after the recording of the Certificate of Termination, the Director may proceed to sell the property without agreement by the former unit owners. The proceeds of the sale shall be distributed by the Termination Director to the beneficial owners thereof, as their interests shall appear.

18.6 **New Condominium.** The termination of the Condominium does not bar creation of another Condominium including all or any portion of the same property.

18.7 **Provisions Survive Termination.** The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed. The Board of Directors shall continue to function in accordance with the Bylaws and Articles of Incorporation, and shall have the power to levy assessments to pay the costs and expenses of maintaining the property until it is sold. The costs of termination, the fees and expenses of the Termination Director, as well as post-termination costs of maintaining the former condominium property and winding up the affairs of the Association, are common expenses of the Condominium, the payment of which shall be secured by a lien on the beneficial interest owned by each former unit owner, which to the maximum extent permitted by law, shall be superior to, and take priority over, all other liens.

19. OBLIGATIONS 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 Bylaws 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) Directors designated by the Developer, for actions taken by them prior to the time control of the Association is assumed by unit owners other than the developer.

(D) Any director who willfully and knowingly fails to comply with these provisions.

(E) Any tenant leasing a unit, and any other invitee occupying a unit.

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 Bylaws. 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 attorneys 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 Section 17.6(C) above. Such prior consent of the Mortgagee may not be unreasonably withheld.

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.

20.3 **Mortgage Foreclosure.** If the mortgagee of a first mortgage of record acquires title to a condominium parcel as a result of foreclosure of the mortgage, or by a deed given in lieu of foreclosure, the liability of the mortgagee 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 shall be governed by the Condominium Act, as it may be amended from time to time. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all unit owners, including the 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 during his period of ownership, whether or not the parcel is occupied, be excused from the payment of any assessments corning due during the period of such ownership:

20.4 **Redemption.** If proceedings are instituted to foreclose any 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. A 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.

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

20.6 **Financial Statement.** Any institutional mortgagee is entitled, upon written request, to a copy of the financial statement or financial report of the Association as delivered, to the owners 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 delinquency of sixty (60) days or longer 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 number or percentage of mortgage holders.

21. AMENDMENT OF DECLARATION. Except as otherwise provided above as to amendments made by the Developer, all amendments to this Declaration shall be proposed and adopted as follows:

21.1 **Initiation of Amendments; Approval.** A resolution for the adoption of a proposed amendment may be proposed by the Association President, a majority of the Board of Directors of the Association or by not less than 25% of the Voting Interests of the Association, or as to "Individual Condominium Amendments," as described below, 25% of the Voting Interests of the Condominium. Approval of Association-Wide Amendments must be by affirmative vote of two-thirds (2/3^{rds}) of the Voting Interests of the Association present, in person or by proxy, and voting at a duly noticed meeting of the Association at which a quorum is present. Individual Condominium Amendments shall be approved by two-thirds (2/3^{rds}) of the Voting Interests of the individual Condominium, present (in person or by proxy) and voting at duly noticed meeting of the Association at which a Class Quorum of Voting Interests Condominium is present. Amendments correcting errors or omissions on any of the Condominium Documents may be approved by the Board of Directors.

21.2 **Individual Condominium Amendments, Association-Wide Amendments.** The Board of Directors of the Association shall have the authority to determine whether to propose and/or apply proposed amendments to only this Condominium (i.e. "Individual Condominium Amendments"), or to both Condominiums (i.e., "Association-Wide Amendments"). In cases where the Board applies the amendment to all Condominiums, the term "Voting Interests of the Association" shall apply to all units operated by the Association, without regard to Condominium by Condominium results. Where the Board authorizes individual Condominium voting, all quorums, voting percentages and the like will be determined on a Condominium by Condominium basis. In all cases, the final decision as to whether to apply "Individual Condominium" or "Association-Wide" voting shall rest with the Board of Directors. Without limiting the generality of this clause, nor the Board's discretion, use restrictions such as pet provisions, lease restrictions and the like shall be applied on an Association-Wide basis. Conversely, and again without limiting the generality of the foregoing and the Board's discretion, in general, matters such as the allocation of maintenance and repair responsibilities between the individual Unit Owner and the Association, which affect only the financial interests of the members of a particular Condominium, will be considered the type of amendment to be voted upon on an Individual Condominium Amendment basis.

21.3 **Execution and Recording.** Approval of a duly-adopted amendment shall be evidenced by a certificate of the Association which shall include recording data identifying the Declaration or Declarations and shall be executed in the form required for the execution of a Deed. An amendment of the Declaration is effective when properly recorded in the Public Records of Lee County.

21.4 **Effective Date.** An amendment when adopted shall become effective after being recorded in the Lee County Public Records according to law.

21.5 **Proviso.** Provided, however, that no amendment shall change the configuration of any Unit or the share in the Common Elements appurtenant to it, or increase the Owner's share of the Common Expenses, unless the record Owner of the Unit concerned and all record Owners of the mortgages on such apartment shall join in the execution of the amendment, and all other Unit Owners approve the amendment.

21.6 **Mergers.** Bella Terra contains several condominiums or other forms of residential development, either with its own association, or in some case, where the governing associations

have merged. This multi-development, multi-association structure is administratively convenient and desirable from the Developer's perspective. However, it is possible that the owners, after they have assumed control of the various associations, will determine that it is in their best interest collectively to merge any or all of the condominiums and the common areas into a single condominium, in the manner contemplated by Section 718.110(7), Florida Statutes (2015), as amended from time to time. Notwithstanding any provision in this Declaration to the contrary, this Declaration and the recorded exhibits thereto may be amended in any way necessary to accomplish that purpose by the written consent of at least seventy-five percent (75%) of the voting interests and the approval of all record owners of liens on the condominium property, and no other approval, consent or joinder of any other person shall be necessary. Proviso: the amendments or new documents accomplishing such a merger must provide that:

(A) The security and priority of all existing mortgages and liens, and the rights of existing mortgagees and other lien holder, shall not be impaired by the merger;

(B) The then-existing restrictions on the use, occupancy and transfer of units shall not be materially changed as part of the merger; and

(C) The share of common expenses and ownership of the common elements for each unit in the new condominium shall be a fraction, the numerator of which is the number "one" (1), and the denominator of which is the total number of Living Units in all condominiums being merged.

22. MISCELLANEOUS.

22.1 **Severability.** The invalidity or non-enforceability 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.

22.2 **Applicable Statutes.** The validity, application and construction of this Declaration and its exhibits shall be governed by the Act.

22.3 **Conflicts.** If there is an irreconcilable conflict between any provision of this Declaration and the Governing Documents or the Condominium Act, the Governing Documents or the Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, this Declaration shall control. Nothing in the Governing Documents shall conflict with the powers and duties of the Association or the rights of the unit owners as provided in the Act.

22.4 **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 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.

22.5 **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.

22.6 **Headings and Capitalization.** The headings used in the condominium documents, and the capitalization of certain words, are for reference and convenience purposes only, and do not constitute substantive matter intended to be considered in construing the terms and provisions of these documents.

23. DISCLOSURE PURSUANT TO CHAPTER 2003-49 OF THE FLORIDA STATUTES.

FLORIDA STATUTES CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE BRINGING ANY LEGAL ACTION FOR AN ALLEGED CONSTRUCTION DEFECT IN YOUR HOME. SIXTY DAYS BEFORE YOU BRING ANY LEGAL ACTION, YOU MUST DELIVER TO THE OTHER PARTY TO THIS CONTRACT A WRITTEN NOTICE REFERRING TO CHAPTER 558 OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE SUCH PERSON THE OPPORTUNITY TO INSPECT THE ALLEGED CONSTRUCTION DEFECTS AND TO CONSIDER MAKING AN OFFER TO REPAIR OR PAY FOR THE ALLEGED CONSTRUCTION DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER WHICH MAY BE MADE. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THIS FLORIDA LAW WHICH MUST BE MET AND FOLLOWED TO PROTECT YOUR INTEREST.

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