Compiled Declaration for Easy Reference

(Does not contain all the amendments and supplements)

This AMENDED AND RESTATED DECLARATION AND GENERAL PROTECTIVE COVENANTS FOR PELICAN LANDING ("Declaration") is made this 3rd day of January, 1991, by WESTINGHOUSE BAYSIDE COMMUNITIES, INC., a Florida corporation, its successors and assigns ("Declarant"), AND joined in by Westinghouse Communities of Naples, Inc., a Florida corporation; Pelican's Nest Associates, Ltd., a Florida limited partnership; Stephen E. Dalton, as Trustee under that Land Trust Agreement dated January 27, 1988; and Pelican Landing Community Association, Inc., a Florida corporation not for profit ("Joined Owners").

W I T N E S S E T H:

WHEREAS, Declarant, Westinghouse Bayside Communities, Inc., presently having its principal place of business in Lee County, Florida, is or will be the primary developer of portions of real property which may become part of "Pelican Landing", and which may consist of residential property, commercial property, recreational property, hotel property and general common areas; and

WHEREAS, the Joined Owners are owners of portions of real property which may become part of Pelican's Landing; and

WHEREAS, Declarant has previously created covenants, conditions and restrictions to be imposed upon the "Properties" by means of that Declaration and General Protective Covenants for Pelican's Nest (now known as Pelican's Landing) recorded on November 17, 1988 in Official Records Book 2030, Page 663, as amended by the Amendment to Declaration and General Protective Covenants dated December 6, 1989 and recorded at Official Records Book 2113, Page 2958, and as further amended by the Second Amendment to Declaration and General Protective. Covenants dated April 27, 1990 and recorded in Official Records Book 2147, Page 3284, all of the Public Records of Lee County, Florida ("Prior Declaration"); and

WHEREAS, Declarant, by recording the Prior Declaration, imposed those certain protective covenants, conditions and restrictions set forth therein upon only the real property referred to in such Prior Declaration, all of which by this Declaration becomes part of the Properties; and

WHEREAS, Declarant may in the future elect: (a) to subject additional properties to this Declaration; (b) to amend this Declaration; and/or (c) to impose additional protective covenants, conditions and restrictions not set forth in this Declaration on such additional portions of property; and

WHEREAS, Declarant has the right, as set forth in this Declaration, to divide the residential portions of the Properties into different “Neighborhoods”; and

WHEREAS, Declarant may impose additional protective covenants, conditions and restrictions, in conjunction with this Declaration, as may be necessary and appropriate on each Neighborhood; and

WHEREAS Declarant desires to provide for the preservation of property values, amenities and opportunities in Pelican Landing (and such additional properties which may be added to the Properties and which may hereafter be subjected to this Declaration) and for the maintenance of the land and improvements thereon, and to this end desires to subject the Properties, together with such additional portions of properties which may become part of the Properties in accordance with the provisions hereof, to the protective covenants, conditions, restrictions, and other provisions hereinafter set forth, each and all of which is and are for the benefit of the Properties and each Owner thereof; and

WHEREAS, Declarant has caused Pelican Landing Community Association, Inc., a Florida corporation not for profit, to be formed, formerly known as Pelican's Nest Community Association, Inc., which Association has joined in this Declaration and to which there has been and will be delegated and assigned certain powers and duties of operation, administration, maintenance and repair of portions of the Properties; and the collection and disbursement of the Common Expenses, all as more particularly set forth herein; and

WHEREAS, a uniform community development district (“UCDD”) may be created pursuant to Chapter 190, Florida Statutes, to administer all or portions of the Properties, to the extent permitted by Florida law, as further described in Article II, Section 8 hereof; and

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license, easement or other use right to lands within or without Pelican Landing by deed, easement or otherwise to the Association (which must accept the same), or Declarant may in its sole discretion cause additional parties to do so, for the purpose of access, maintenance, landscaping, drainage, recreation or other purposes that will be for the use and benefit of its Members and their families, tenants and guests; and

WHEREAS, this Amended and Restated Declaration and General Protective for Pelican Landing contains extensive amendments to the provisions of the Prior Declaration, which amendments have been duly adopted as provided in Article 10.6 of the Prior Declaration and in provision 3 of that Amendment to Declaration and General Protective Covenants for Pelican's Nest dated December 6, 1989 and recorded in Official Records Book 2113, Page 2958 of the Public Records of Lee County, Florida; and

WHEREAS, this Declaration restates and integrates the provisions of the Prior Declaration and the amendments thereto, and no discrepancy exists between the Prior

Declaration as heretofore amended and the provisions of this Declaration other than the inclusion of the properly adopted amendments.

NOW, THEREFORE, Declarant, Westinghouse Bayside Communities Inc., declares that the Properties, together with such additional portions of property, if any, as may hereafter be added to the Properties in accordance with this Declaration, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens, liens, and all other provisions of this Declaration, all as hereinafter set forth, which shall run with the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner.

ARTICLE I
DEFINITIONS

Section 1. "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Pelican Landing Community Association, Inc., as filed with the Secretary of State of the State, of Florida and attached hereto as Exhibit "C," as they may be amended from time to time.

Section 2. "Area(s) of Common Responsibility" shall mean and refer to the General Common Area, Exclusive Common Area, and any personal property located thereon, together with those areas, if any, which by the terms of this Declaration, a Supplemental Declaration, or by contract or agreement with any Neighborhood, or any other Person become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Properties, or any public rights-of-way within or adjacent to the Properties, may be part of the Area of Common Responsibility.

Section 3. "Association" shall mean and refer to Pelican Landing Community Association, Inc., a Florida corporation not for profit, its successors or assigns, formerly known as Pelican's Nest Community Association, Inc. The "Board of Directors" or "Board" shall be the elected body having its normal meaning under Florida corporate law. The use of the term "association" or "associations" in lower case shall refer to any condominium association or other owners' association having jurisdiction over any part of the Properties. The Association is not a condominium association and therefore shall not be governed by the provisions of Chapter 718, Florida Statutes.

Section 4. "Benefitted Assessment" shall mean and refer to assessments levied against Unit(s) or any of the Business Properties, which receives benefits, items, or services not provided to all Units within a Neighborhood or all of the Properties as more particularly described in Article X, Section 5 of this Declaration.

Section 5. "Benefitted Expenses" shall mean and include the actual and estimated expenses of the Association that are to be incurred by the Association for specific items or

services relating to a Unit(s)or any of the Business Properties, or that are incurred by the Association pursuant to this Declaration or the By-Laws for providing specific items or services relating to or benefitting a Unit or portion of the Business Properties, if any. Benefitted Expenses shall be assessed against the applicable owners as a Benefitted Assessment.

Section 6. "Business Properties" shall mean, collectively, the Commercial Property, Hotel/Conference Center Property, Marina Property and Recreational Property.

Section 7. "By-Laws" shall mean, and refer to the By-Laws of Pelican Landing Community Association, Inc., attached hereto as Exhibit "D" and incorporated by reference, as they may be amended from time to time.

Section 8. "Class "B" Control Period" shall mean and refer to the period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors, as provided in Article III, Section 2(b) of this Declaration.

Section 9. "Commercial Property" shall mean any portion of the Properties, other than Recreational Property, Marina Property or Hotel/Conference Center Property, which is designated as Commercial Property and developed or to be developed for commercial purposes, as designated solely by Declarant in its discretion.

Section 10. "Common Assessment" shall mean and refer to assessments levied against all Units and all Business Properties to fund Common Expenses; provided, however, that the Common Assessment for Hotel/Conference Center Property may be limited by Declarant to only specific items or amounts, as set forth in a Supplemental Declaration.

Section. 11 "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association as described in this Declaration or incurred in carrying out the duties and responsibilities of the Association under this Declaration for which Owners are liable to the Association, including expenses relating to the surface water management system and any reasonable reserve, all as are required by this Declaration or as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association, but shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction or installation of infrastructure, original capital improvements, or other original construction costs unless approved by Voting Members representing a majority of the total Class "A" vote of the Association. The foregoing exclusions from common expenses relate to the permissible use of funds collected or to be collected from members pursuant to duly adopted budgets and special assessments and does not relate to use of capital contributions collected from purchasers pursuant to Article X, Section 10 of this Declaration and Article 8.10 of the Bylaws, nor to reserves established by the Board for those purposes. Notwithstanding anything provided herein, Common Expenses pertaining to specifically designated items, or in excess of particular amounts, shall not be levied against any Hotel/Conference Center Property if so specified by

Declarant in a Supplemental Declaration. Common Expenses may also include, without limitation:

(a) taxes and special assessments levied or assessed upon the General Common Area;

(b) charges levied by utilities or districts providing services for the General Common Area;

(c) premiums on the policies of insurance which the Association obtains pursuant to the terms of this Declaration;

(d) sums necessary to repair, replace, construct or reconstruct any structure or improvements upon the General Common Area damaged by any casualty not covered in whole or in part by insurance;

(e) expenses necessary to maintain, repair, operate, protect and replace the General Common Area; and

(f) costs of administration of the Association in the performance of its functions and duties under the Declaration, Articles and By-Laws.

Section 12. "Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the DRC, but such determination must be consistent with the Community-Wide Standard originally established by Declarant.

Section 13. "Declarant" shall mean and refer to Westinghouse Bayside Communities, Inc., a Florida corporation, its successors and assigns of any or all of its rights under the Declaration as specified by Declarant in a written instrument. Any of Declarant's rights set forth herein may be assigned by Declarant whether or not such right contains a specific statement that it is assignable.

Section 14. "DRC" shall mean and refer to the Design Review Committee, as further described in Article IX, Section 1 hereof.

Section 15. "Exclusive Common Area(s)" shall mean and refer to certain portions of the Properties which are for the primary use and benefit of one or more, but less than all, Neighborhoods and Business Properties, as more particularly described in Article II of this Declaration.

Section 16. "General Common Area(s)" shall mean all real and personal property which the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Members; provided that Declarant shall have the right to provide in a Supplemental Declaration that certain portions of the General Common Area shall not be

available for use by Owners of any or all of the Business Properties, or for use by the designees of such Owners of Business Properties.

Section 17. "Hotel/Conference Center Property" shall mean and refer to any portions of the Properties which are designated as Hotel/Conference Center Property and operated for purposes of a hotel, as designated solely by Declarant in its discretion.

Section 18. "Marina Property" shall mean and refer to any portions of the Properties which are designated as Marina Property and operated for purposes of a marina, as designated solely by Declarant in its discretion. Marina Property may include, without limitation, such ancillary uses as restaurants and retail shops.

Section 19. "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein.

Section 20. "Mortgage" shall mean and refer to a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed, which is held by a Mortgagee.

Section 21. "Mortgagee" shall mean and refer to (a) any generally recognized lending institution having a first mortgage lien upon a Unit or any of the Business Properties, including, but not limited to, any of the following institutions: a federal or state savings and loan or building and loan association; a national, state, or other bank or real estate investment trust; or mortgage banking company doing business in the State of Florida; or a life insurance company; or a subsidiary of a holding company owning any of the foregoing; or (b) any "Secondary Mortgage Market Institution" including the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Housing Administration (FHA) and Veterans Administration(VA) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Unit or any of the Business Properties; or (c) any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Declarant to acquire or to construct improvements upon the Properties and who have a mortgage lien of any priority on all or a portion of the Properties securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage lien upon a Unit or any of the Business Properties.

Section 22. "Mortgagor" shall mean and refer to any Person who gives a Mortgage.

Section 23. "Neighborhood" shall mean and refer to each separately developed and denominated residential area comprised of one or more housing types subject to this Declaration created by being designated as a Neighborhood on Exhibit "A" to this Declaration or in a Supplemental Declaration. For example, and by way of illustration and not limitation, each condominium, cooperative or townhome development, patio home development, or single-

family detached housing development may constitute a separate Neighborhood. Neighborhoods shall not be comprised of any portion of the Business Properties.

When the context permits or requires, the term "Neighborhood" shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association (as defined in Article III, Section 3 hereof) having jurisdiction over the property within the Neighborhood. It shall not be necessary that any Neighborhood be governed by a Neighborhood Association except in the case of a condominium or cooperative, or as otherwise required by law. On the other hand, the Neighborhood Covenants, Supplemental Declaration or other recorded documents establishing any Neighborhood after December 1, 1993, shall provide, and if they do not so provide shall be deemed to provide, that the Class "A" Members in such a Neighborhood may, by a seventy-five percent (75%) vote, establish a Neighborhood Association in which membership by all Unit Owners shall be mandatory. Neighborhoods may be divided or combined in accordance with Article III, Section 3 of this Declaration to the extent not inconsistent with law.

Section 24. "Neighborhood Assessments" shall mean assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as more particularly described in Article X, Section 1 of this Declaration.

Section 25. "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein.

Section 26. "Owner" shall mean and refer to one (1) or more Persons who hold the record title to any Unit or portion of the Business Properties, but excluding the Association, the UCDD, any Neighborhood Association, or any party holding an interest merely as security for the performance of an obligation. If a Unit or portion of the Business Properties is sold under a recorded agreement for deed, and the agreement for deed specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner.

Section 27. "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity, or the personal representative of a natural person or other legal representative of an entity or natural person.

Section 28. "Preservation Areas" means those portions of the Properties comprised of mangrove forests, wetlands, cypress domes, resource protection areas and other environmentally- sensitive areas, as determined by Declarant. Preservation Areas may be General Common Area, Exclusive Common Area and/or UCDD Property, as determined by Declarant. Preservation Areas may be passive areas, or may, subject to any requisite governmental approval, be used for educational programs and be equipped with such facilities as boardwalks and/or nature trails.

Section 29. "Properties" shall mean and refer to the real property described in Exhibit "B" attached hereto, together with such additional real property as is hereafter subjected to this Declaration by Supplemental Declaration, unless otherwise specified herein. The Properties, as they are comprised from time to time, are also sometimes referred to herein as APelican Landing@.

Article I, Section 29, is hereby amended to delete the real property described in Exhibit "A" attached hereto ("Golf Course Parcel") from the legal description attached as Exhibit "B" to the Declaration, thereby removing the Golf Course Parcel from the provisions of the Declaration, and from the jurisdiction of the Pelican Landing Community Association, Inc.

Declarant hereby prohibits the Golf Course Parcel from ever being annexed into and becoming subject to the provisions of the Declaration in the future without the written consent of the owner of the Golf Course Parcel.

Section 30. "Recreational Property" shall mean and refer to any portions of the Properties which is designated as Recreational Property and operated for recreational purposes as designated solely by Declarant, and which is not General Common Area, Exclusive Common Area or UCDD Property.

Section 31. "SFWMD" shall mean the South Florida Water Management District.

Section 32. "Special Assessment" shall mean and refer to assessments levied in accordance with Article X, Section 4 of this Declaration.

Section 33. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein, or specifies additional Exclusive Common Area, or designates Voting Groups as specified in Article III, Section 3(b) hereof, or for any other purpose set forth in this Declaration. The term shall also refer to the instrument recorded by the Association pursuant to Article VIII, Section 2 of this Declaration to subject additional property to this Declaration. The following Supplemental Declarations are currently of record and shall remain to be in full force and effect unless subsequently amended in accordance with the amendment provisions of such Supplemental Declarations: Declaration of Restrictions and Protective Covenants for Pelican's Nest Unit One, dated November 17, 1988 and recorded in Official Records Book 2030, Page 3158; Supplement to the Declaration and General Protective Covenants for Pelican's Nest (Unit Two), dated November 9, 1989 and recorded in Official Records Book 2113, Page 2964; Supplement to the Declaration and General Protective Covenants, dated December 27, 1989 and recorded in Official Records Book 2117, Page 2957; Supplement to the Declaration and General Protective Covenants for Pelican Landing (Unit Three) dated August 15, 1990 and recorded in Official Records Book 2174, Page 2234; and Fourth Supplement to the Declaration and General Protective Covenants dated September 28,

1990 and recorded in Official Records Book 2178, Page 3974, all of the Public records of Lee County, Florida.

Section 34. "Unit" shall mean a portion of the Properties, whether developed or undeveloped, intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) condominium units, apartment units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted or described lots, as well as vacant land (homesites) intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. In the case of a structure which contains multiple dwellings, each dwelling shall be deemed a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the site plan approved by Declarant, until such time as a subdivision plat or other instrument subdividing the land, including without limitation a declaration of condominium, has been recorded in the Public Records of Lee County, Florida on all or a portion thereof and after the recordation of the plat or other such instrument, the number of Units for such portion of the Properties shall be determined based upon the number of Units shown on the plat or other such instrument. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this paragraph. When the term "residence" is used herein, it shall refer to a Unit for which a certificate of occupancy or like certificate has been issued.

Section 35. "UCDD" shall mean and refer to a Uniform Community Development District which may be created pursuant to Chapter 190, Florida Statutes to administer all or portions of the Properties to the extent permitted by Florida law.

Section 36. "UCDD Property" shall mean all real and personal property which the UCDD now or hereafter owns, holds or otherwise administers pursuant to its responsibilities under Chapter 190, Florida Statutes.

Section 37. "Voting Group" shall mean the group of Class "A" Members whose Units are represented by one (1) or more Voting Members, who have the right to elect at least one (1) Director to the Board of Directors of the Association to represent their interests, as more particularly described in Article III, Section 3(b), of this Declaration. All Owners of Commercial Property and Marina Property may constitute one (1) Voting Group; all owners of Recreational Property may constitute one (1) Voting Group; and all Owners of Hotel/Conference Center Property may constitute one (1) Voting Group; or all owners of the Business Properties may together constitute one (1) Voting Group, as determined by Declarant.

Section 38. "Voting Member" or "Voting Representative" shall mean and refer to the representative selected by the Members of each Neighborhood to be responsible for casting all votes attributable to Units in the Neighborhood in matters provided for in this Declaration and in the By-Laws. Each Owner of any portion of the Business Properties may be a Voting Member. If any Commercial Property or Recreational Property is administered by a condominium association or other property owners' association, then such person as may be designated by such association shall be the Voting Member for such Commercial Property or Recreational Property. Declarant shall have the right to require that particular groups of the Business Properties designate one Voting Member each. Each Neighborhood or other group which designates a Voting Representative may also designate an Alternate Voting Representative to act in the absence or disability of the Voting Representative.

Section 39. "Resale Capital Assessment" shall mean and refer to the assessments levied in accordance with Article X, Section 5B of this Declaration.

ARTICLE II
PROPERTY RIGHTS

Section 1. General Plan of Development. Declarant and Joined Owners are the primary owners of certain real property, described on attached Exhibit "A," which may become part of Pelican Landing, subject to the terms of this Declaration. Declarant presently plans to develop all or a portion of Pelican Landing as a multi-phased, planned community comprising residential, recreational, commercial and mixed uses. Declarant intends that certain Units constructed on the Properties be grouped together in residential Neighborhoods which will generally be administered by the Association, but in some instances may be administered by Neighborhood Associations. Neighborhood Associations, if created, shall assess their members for their association expenses and shall also be responsible for collecting their share of Common Expenses under this Declaration, unless the Association determines otherwise. When Neighborhoods are administered by the Association, the cost of managing a Neighborhood shall be borne by the Owners in such Neighborhood as part of the Neighborhood Expenses. When there is Exclusive Common Area, the Owners of all Units in the Neighborhood or Neighborhoods may, but generally will not be members of a Neighborhood Association formed by or with the consent of Declarant to operate and administer such Exclusive Common Area. When there are Exclusive Common Area with no Neighborhood Association to operate and administer such Exclusive Common Area, the Association shall operate and administer such Exclusive Common Area and collect any Neighborhood Assessments arising therefrom, in accordance with the provisions of this Declaration.

Portions of Pelican Landing may be developed as Recreational Property, Commercial Property, Marina Property or Hotel/Conference Center Property. Declarant is not obligated by this Declaration to cause any portion of the Properties to be developed for any such use. If any portion of the Properties is developed as Recreational Property, Commercial Property, Marina Property or Hotel/Conference Center Property, the rights and obligations of these property owners as well as any additional restrictions, conditions and covenants running with these Properties may be set forth by Declarant herein or in a Supplemental Declaration.

The Association is not a condominium association and therefore shall not be governed by the provisions of Chapter 718, Florida Statutes. This Declaration is not a declaration of condominium. No portion of the Properties is submitted by this Declaration to the condominium form of ownership. Declarant does not intend that any portion of the Properties be submitted to the condominium form of ownership except that property legally described in a declaration of condominium specifically prepared in accordance with Chapter 718, Florida Statutes, executed by or with the consent of Declarant. Further, the expressed intent of the Declaration is that the substantive rights hereunder shall not retroactively be affected by legislation subsequent to the date of the execution of the Declaration.

Portions of Pelican Landing will contain Preservation Areas, which may be General Common Area, Exclusive Common Area or UCDD Property, as determined by Declarant. Subject to any government requirements, Preservation Areas may be open for use to the general public, as determined by Declarant, regardless of the characterization of such Preservation Areas as General Common Area, Exclusive Common Area or UCDD Property.

Declarant anticipates providing, or entering into contracts with third parties to provide, a water taxi transportation system between various mainland portions of the Properties and various beachfront portions of the Properties. The Association shall have the right to enter into an agreement with Declarant or such other third parties to provide such transportation services to the Owners, their guests, tenants, and invitees. The costs of the Association pertaining to such an agreement shall be a Common Expense. The Association, however, shall have the right to charge user fees to offset the costs of operating such transportation services. Subject to Declarant's payment of a share of the costs of the transportation system, any transportation system may be used by Declarant to further its sales and marketing efforts within Pelican Landing. Under any agreement with the Association, Declarant reserves the right to terminate the transportation system at any time. If Declarant determines to terminate the transportation system, the Association may determine to provide its own water taxi transportation system. The costs of operating such transportation system shall be a Common Expense, provided that the Association shall continue to have the right to charge user fees to offset the costs of providing and maintaining such system. Declarant also reserves the right in its favor and the Association’s favor to establish land transportation systems within the Properties, and the cost of operating and maintaining such systems may be Common Expenses which may be offset by user fees established by the Association. Any of Declarant’s rights set forth above for the water taxi transportation system shall likewise apply to any land transportation system.

Portions of the Properties may be maintained as canoe parks for use by the Members and their guests, tenants, and invitees. Such canoe parks may be General Common Areas. The use of the canoe parks is subject to such rules and regulations as are promulgated. from time to time by the Association, and is further subject to the provisions of Article XII, Section 2(v) of this Declaration.

The Properties may be developed around and in conjunction with various recreational-type clubs or country clubs, as may be further described herein as Recreational Property. Any such club(s) may be public, private, equity, or non-equity clubs which may own and operate golf, tennis, swimming and social facilities. Such property may be part of the Properties and will therefore be subject to this Declaration, as further set forth herein. Some of the effects of establishing such recreational-type clubs or country clubs may be to increase the number of Persons using the General Common Area. Declarant reserves the right to unilaterally impose upon the General Common Area any easements which may be required for the use and enjoyment of these facilities. NOTWITHSTANDING ANYTHING IN THIS DECLARATION, THE OWNERSHIP OF A UNIT OR PORTION OF THE BUSINESS PROPERTIES, OR MEMBERSHIP IN THE ASSOCIATION, DOES NOT CONFER ANY OWNERSHIP INTEREST IN OR RIGHT TO USE ANY OF THESE FACILITIES IN ANY MANNER.

Section 2. General Common Area. The initial General Common Area is described on attached Exhibit “E.” Any other General Common. Area may be designated as such in the deed conveying same to the Association or on a plat relating to such General Common Area or in a Supplemental Declaration. There is hereby created in favor of every Owner (other than Owners of the Business Properties) a nonexclusive easement of use, access and enjoyment in and to the General Common Area, subject to the provisions of this Declaration and any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner may delegate his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to reasonable regulations by the Board and in accordance with procedures it may adopt. The Board shall have the right to limit the number of social invitees to which an Owner may delegate his or her right of use and enjoyment of the General Common Area. The Board shall also have the right to promulgate and charge use fees against any Persons, including Owners, for use of the General Common Area.

This Declaration is subject to any other easement currently of record which affects any of the property described in Exhibit "A" or Exhibit “B” hereof. Any easements in favor of the Association shall be deemed Area of Common Responsibility to the extent of such easements. Additionally, Declarant reserves on behalf of the Association the right to accept any easements in favor of the Association over, under, across or through any portion of real property which abuts or is adjacent to any of the property described in Exhibit “A” or Exhibit “B” hereof, and such easements shall be deemed Area of Common Responsibility to the extent of such easements created. Any real property shall be considered adjacent to or abutting any of the property described in Exhibit “A” or Exhibit “B” even though a street, lake or canal may lie between any of such properties.

There is hereby created in favor of the Owners of the Business Properties a nonexclusive easement of ingress and egress over the street and walkway portions of the General Common Area for access, but only to the extent necessary for such access to the Business Properties. The Owners of the Business Properties may delegate this easement to their guests, invitees, tenants, customers, and employees to the extent access is needed to any such Business Properties.

If the UCDD is established, or if Declarant determines to establish the UCDD described in Article II, Section 8 hereof, and Declarant determines subject to any governmental requirements that it is in the best interests of Pelican Landing for any portion(s) of the General Common Area to be administered by the UCDD rather than the Association, then such portion(s)of the General Common Area shall cease to be General Common Area, even if such General Common Area has been conveyed to the Association pursuant to Article II, Section 7 hereof, and shall thereafter be UCDD Property. Upon such portions of the Properties becoming UCDD Property, the expenses pertaining to administering and maintaining such portions of the Properties shall cease to be Common Expenses. If required by law, or if deemed by Declarant to be in the best interests of Pelican Landing, the Association shall convey to the UCDD any General Common Area which is to become UCDD Property.

All General Common Areas and recreational facilities shall be available to the Members served thereby and their invited guests for the uses intended for such General Common Areas and recreational facilities, subject to the right of the Association to suspend such rights as provided in the By-Laws. The Association may adopt reasonable Rules and Regulations governing the use of such areas and facilities and may impose reasonable use fees.

Section 3. Exclusive Common Area. Certain portions of the Properties may be designated as Exclusive Common Area and reserved for the exclusive use of Owners and occupants of Units within a particular Neighborhood or Neighborhoods, and/or any of the Business Properties. There is hereby created in favor of every Owner in a particular Neighborhood, and in favor of any of the Business Properties, to which particular Exclusive Common Area has been designated, a nonexclusive easement of use, access and enjoyment in and to such Exclusive Common Area. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Area shall be assessed against the Owners of Units in only those Neighborhoods which are benefitted thereby as a Neighborhood Assessment, as defined herein, and against the Owner whose portion of the Business Properties is benefitted thereby, as applicable. By way of illustration and not limitation, Exclusive Common Area may include recreational facilities intended for the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments, Initially, any Exclusive Common Area shall be designated as such and the exclusive use thereof shall be assigned in the deed conveying the Exclusive Common area to the Association or on the plat relating to such Exclusive Common Area or in a Supplemental Declaration. Exclusive Common Area may be reassigned upon the vote of a majority of the total Association vote, including a majority of the votes within the Neighborhood(s) and the vote of the Owner of the portion of the Business Properties, as applicable, to which the Exclusive Common Area are assigned, and those to which the Exclusive Common Area are to be assigned.

If the UCDD is established, or if Declarant determines to establish the UCDD described in Article II, Section 8 hereof, and Declarant determines, subject to any governmental requirements, that it is in the best interests of Pelican Landing for any portion(s) of the Exclusive Common Area to be administered by the UCDD rather than the Association, then such

portion(s) of the Exclusive Common Area shall cease to be Exclusive Common Area, even if such Exclusive Common Area has been conveyed to the Association pursuant to Article II, Section 7 hereof, and shall thereafter be UCDD Property. Upon such portions of the Properties becoming UCDD Property, the expenses pertaining to administering and maintaining such portions of the Properties shall cease to be Neighborhood Common Expenses. If required by law, or if deemed by Declarant to be in the best interests of Pelican Landing, the Association shall convey to the UCDD any Exclusive Common Area which is to become UCDD Property.

Section 4. Recreational Property. ACCESS TO ANY RECREATIONAL PROPERTY WITHIN THE PROPERTIES IS STRICTLY SUBJECT TO THE TERMS, CONDITIONS, RULES AND PROCEDURES ESTABLISHED BY THE OWNERS OF SUCH RECREATIONAL PROPERTY. NO OWNER OR OCCUPANT GAINS ANY RIGHT TO ENTER OR TO USE RECREATIONAL PROPERTY OR FACILITIES THAT MAY BE CONSTRUCTED THEREON BY VIRTUE OF OWNERSHIP OR OCCUPANCY OF A UNIT OR OWNERSHIP OF ANY OF THE BUSINESS PROPERTIES.

Section 5. Business Properties. Portions of the real property which are described in Exhibit "A" to this Declaration will be developed and used for commercial purposes, and such portions may be added to the Properties by a Supplemental Declaration.

Section 6. Area of Common Responsibility. In addition to any Area of Common Responsibility specifically set forth in this Declaration, the Area of Common Responsibility may include without limitation any landscaping on public roadways in the vicinity of the Properties and any lakes or canals located within or adjacent to the Properties. The surface water management system of the Properties may be an Area of Common Responsibility. If a UCDD is created, it shall have the right to administer, without limitation, the surface water management system, roadways, bridges, landscaping street lighting and park areas.

Section 7. Conveyance of General Common Area and Exclusive Common Area. Declarant agrees that it shall convey by quitclaim deed to the Association, and the Association agrees that it shall accept, fee simple title to those portions of the General Common Area and Exclusive Common Area it owns in an "As Is" condition subject only to: this Declaration, Supplemental Declarations, and all other Association documents; real estate taxes for the year of such conveyance and subsequent years; all applicable zoning ordinances and other land use regulations; such facts as an accurate survey would show; all covenants, agreements, easements, restrictions and reservations now or hereafter placed of record; and the right of Declarant to subsequently determine that such General Common Area or Exclusive Common Area shall be administered by the UCDD. Declarant shall convey to the Association by quitclaim deed all such portions of the General Common Area and Exclusive Common Area within the Properties not previously conveyed to the Association on or before the termination of the Class "B" Control Period; provided, however, that any property owned by Declarant which is designated as General Common Area or Exclusive Common Area after the termination of the Class "B" Control Period shall be conveyed to the Association at the time of such designation. Notwithstanding anything provided herein, Declarant may convey all or portions of the General

Common Area and Exclusive Common Area to the Association at such time prior to the termination of the Class “B” Control Period as Declarant may determine. THE ASSOCIATION AGREES TO ACCEPT "AS IS" THE CONVEYANCE OF THE GENERAL COMMON AREA, EXCLUSIVE COMMON AREA AND THE PERSONAL PROPERTY AND IMPROVEMENTS APPURTENANT THERETO, WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION OR FITNESS OF THE GENERAL COMMON AREA, EXCLUSIVE COMMON AREA, OR PORTIONS THEREOF AND THE PERSONAL PROPERTY AND IMPROVEMENTS THEREON. All costs and expenses of such conveyance shall be paid for by the Association.

Section 8. Uniform Community Development District. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT DECLARANT MAY, BUT IS NOT OBLIGATED TO, ESTABLISH OR CAUSE TO BE ESTABLISHED A UNIFORM COMMUNITY DEVELOPMENT DISTRICT, AS SUCH DISTRICT IS DEFINED IN CHAPTER 190, FLORIDA STATUTES(1989) (“UCDD”), WHICH MAY INCLUDE ALL OR A PORTION OF PELICAN LANDING, AND MAY ALSO INCLUDE PROPERTY IN ADDITION TO PELICAN LANDING. If established, it is anticipated that the UCDD will provide certain urban infrastructure facilities and services and that the UCDD will have the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance and provide said services. The UCDD would be empowered to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for the following basic infrastructures which may include without limitation: (1) water management and control lands within the UCDD and the connection of some or any of such facilities with roads and bridges; (2) roads and bridges; (3) potable water distribution; (4) sewage collection; and (5) waste water management. The UCDD may also be empowered to provide and maintain parks and facilities for indoor and outdoor recreational, cultural and educational uses; fire prevention and control; school buildings and related structures; limited access assurance services; mosquito control services; and waste collection and disposal.

If created, THE COMMUNITY DEVELOPMENT DISTRICT WILL IMPOSE TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON PELICAN LANDING THROUGH A SPECIAL TAXING DISTRICT. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES OF THE DISTRICT AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW. These fees, rates, charges, taxes and assessments will likely appear on the annual real estate tax bill for each owner as a separate and distinct tax and will be payable directly to the Lee County Tax Collector. The annual real estate tax bill for each Owner will likely increase if a UCDD is created. All taxes of the UCDD shall constitute a lien upon those portions of Pelican Landing owned by any Owner. The UCDD shall have the power to issue general obligation bonds, revenue bonds, refunding bonds, and any other type of bond permitted by Chapter 190, Florida Statutes (1989). The repayment of the bonds shall be funded through the imposition of ad valorem taxes on all the taxable property within the UCDD or by the imposition of rates, fees, special assessments, or other charges. The UCDD is empowered to pledge the full

faith and credit of the UCDD for the purpose of securing the repayment of the bonds. In addition, the UCDD may secure reserve bonds by pledging the rates, fees or charges collected or to be collected by any revenue producing project. Bonds may be issued forthe purpose of financing or refinancing capital improvements to pay off existing bonds or any other permitted use. Any such tax levied against the Association as an owner of any portions of the Properties shall be a Common Expense, Neighborhood Expense or Benefitted Expense of the Association, as appropriate. The functions, duties and powers of the UCDD shall be managed and exercised by a board of supervisors consisting of five (5) members. The initial board of supervisors shall be designated within the petition submitted for the purposes of creating the UCDD. Thereafter, the board of supervisors shall be elected as provided in Chapter 190, Florida Statutes (1989).

Declarant is not obligated to establish or cause to establish the UCDD and Declarant's decision in this regard is solely within the discretion of Declarant. If Declarant determines to establish the UCDD, the Association and each Owner agrees, by acceptance of a deed or other instrument conveying title to any portion of the Properties, for itself, its successors or assigns and grantees, to without reservation or objection take all steps and join in and execute all documents necessary and make such other written joinder or consent to any petition or request for establishment of such UCDD at Declarant's request to enable Declarant to establish the UCDD, and if established each Owner will pay for all fees, rates, charges, taxes and assessments imposed by the UCDD and will abide by its applicable regulations. Declarant shall have the right to enforce these provisions by an action for specific performance.

If Declarant determines that it is in the best interests of Pelican Landing for any of the UCDD Property to become General Common Area or Exclusive Common Area, and Declarant, the Association and the UCDD determine that such property should be conveyed to the Association to effectuate such determination, then the UCDD shall convey to the Association fee simple title to those portions of such General Common Area or Exclusive Common Area which are to become UCDD Property.

Declarant shall have the right in its sole discretion to convey property owned by Declarant to the UCDD with the joinder of no other Person being required, subject to the approval of the UCDD and any applicable governmental requirements.

Section 9. Governmental Interests. For so long as Declarant owns any of the Properties, Declarant shall have the right to designate sites within the Properties for fire, police, water and sewer facilities, libraries, governmental offices, public schools and parks, and other public facilities.

Section 10. Development of Regional Impact Order and Other Governmental Orders. Declarant may present applications for various development orders, including those pertaining to a development of regional impact, pertaining to the development of the Properties. If such applications are approved Declarant intends that the portions of the Properties affected by such development order shall be developed in accordance with all applicable terms and provisions set forth in such development order. Declarant shall have the right to seek changes to such

development orders after they have been approved, with the joinder or consent of no other Person, including the Association, being required. Additionally, under any development order, Declarant retains the right to amend or add to any of the terms and provisions of this Declaration, Articles or By-Laws for the purpose of fulfilling the requirements of any such development order, with the joinder or consent of no other Person, including the Association, being required.

By way of illustration only and not limitation, any order pertaining to a development of regional impact may set forth requirements or standards pertaining to such matters as wetland areas, flora, water management and exotic species. The effects of any such development orders may include increasing the responsibilities and obligations of the Association, as well as increasing the amount of assessments due from Owners.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner shall be deemed to have a membership in the Association and shall be entitled to vote except as specifically provided herein or in the By-Laws.

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. If the Owner of a Unit is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. The membership rights of a Unit or any portion of the Business Properties owned by a corporation or partnership shall be exercised by the individual designated from time to time by the applicable Owner in a written instrument provided to the Secretary, subject to the provisions of this Declaration and the By-Laws.

Section 2. Voting. The Association shall have two (2) classes of membership, Class "A" and Class "B," as follows:

(a) Class "A". Class "A" Members shall be all Members with the exception of the Class "B" Member, if any. Unless otherwise specified in this Declaration or the By-Laws, the vote for each Unit shall be cast with the Association by the Voting Member representing the Neighborhood of which the Unit is a part, or the Voting Member representing a designated portion of the Business Properties.

In any situation when a Member is entitled personally to exercise the vote for his Unit or portion of the Business Properties, and the legal title to the Unit or portion of the Business Properties is owned by more than one Person or by an entity which is not a natural person, as provided in Section 3.10(C) of the Bylaws, the Unit's vote or the vote of the portion of the Business Properties shall not be counted if more than one (1) Person seeks to exercise it.

Notwithstanding anything provided herein, there shall be no vote(s) for any Unit(s) owned by the Association.

Votes of Class "A" Members are assigned as follows:

(i) Units. Class "A" Members owning Units shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 1 hereof; there shall be only one (1) vote per Unit.

(ii) Commercial Property. There is hereby attributed to each designated portion of Commercial Property the number of votes for each specified portion of land or fraction thereof comprising such Commercial Property as is set forth below or in a Supplemental Declaration. Such vote shall be cast by the Voting Member as set forth herein. Notwithstanding anything provided herein, if a commercial condominium is created on Commercial Property, the votes attributed to such Commercial Property shall not be determined based on the number of condominium units in such condominium. Additionally, if any property owners= association other than the Association is created to administer any portion of Commercial Property, the votes attributed to such Commercial Property shall not be determined based on the number of lots or parcels in such portion of the Commercial Property.

(1) If the Commercial Property consists of a shopping center or any other retail sales establishment, the Owner thereof shall be entitled to one (1) vote for every 15,000 square feet of net occupiable area or fraction thereof in such establishment.

(2) If the Commercial Property consists of office space, the Owner thereof shall be entitled to one (1) vote for every 5,000 feet of net occupiable area or fraction thereof in such building.

If the Commercial Property consists of both retail sales and office space, the number of votes shall be determined separately under the above formulas. For instance, and by way of illustration only, if a building consists of a total of 50,000 square feet of net rentable area, with 40,000 square feet consisting of retail sales space and 10,000 square feet consisting of office space, the Owner thereof shall be entitled to a total of five (5) votes: three (3) votes attributable to the retail sale space and two (2) votes attributable to the office space.

If any dispute arises as to the number of net rentable square feet in a portion of the Commercial Property or as to the type of use of a particular portion of Commercial Property, the decision of Declarant shall be final.

Declarant shall have the right in its sole discretion to modify the square feet thresholds by setting forth such new thresholds in a Supplemental Declaration. Declarant shall also have the right in its sole discretion to create or designate new categories of Commercial Property if such types of Commercial Property are to become part of Pelican Landing.

(iii) Marina Property. There is hereby attributed to each designated portion of Marina Property one (1) vote for every 500 square feet or fraction thereof in such portion of Marina Property, or as otherwise set forth by Declarant in a Supplemental Declaration. In calculating the number of square feet of the portion of Marina Property, the surface water area shall not be included; rather such calculation shall include all land in the portion of Marina Property above the mean high water line, as well as all parking, docks, piers, bulkheads and such other related features of Marina Property. Such vote shall be cast by the Voting Member as set forth herein. If any dispute arises as to the number of square feet of any portion of Marina Property, the decision of Declarant shall be final.

(iv) Recreational Property. There is hereby attributed to each designated portion of Recreational Property the number of votes for each specified portion of Recreational Property as is set forth below or as set forth in a Supplemental Declaration. Such vote shall be cast by the Voting Member as set forth herein.

(1) If the Recreational Property consists of a golf facility, the Owner thereof shall be entitled to one (1) vote for every fifteen (15) gross acres or fraction thereof in such portion of the Recreational Property.

(2) If the Recreational Property consists of a tennis and/or swimming facility, the Owner thereof shall be entitled to one (1) vote for every two (2) gross acres or fraction thereof in such portion of the Recreational Property.

If the Recreational Property consists of both golf and tennis and/or swimming facilities, the number of votes shall be determined separately under the above formula.

If any dispute arises as to the number of gross acres in a portion of the Recreational Property, or as to the type of use of a particular portion of Recreational Property, the decision of Declarant shall be final.

Declarant shall have the right in its sole discretion to modify the gross acre thresholds by setting forth such new thresholds in a Supplemental Declaration. Declarant shall also have the right in its sole discretion to create or designate new categories of Recreational Property if such types of Recreational Property are to become part of Pelican Landing.

(v) Hotel/Conference Center Property. There is hereby attributed to each designated portion of Hotel/Conference Center Property one (1) vote for each specified portion of Hotel/Conference Center Property as is set forth below or as set forth in a Supplemental Declaration. Such vote shall be cast by the Voting Member as set forth herein:

(1) The Owner of the Hotel/Conference Center Property shall be entitled to one (1) vote for every ten (10) hotel rooms or fractions thereof in such portion of Hotel/Conference Center Property.

(2) If the Hotel/Conference Center Property also consists of convention or meeting facilities, the Owner thereof shall also be entitled to one (1) vote for every 500 feet of net square foot area in the convention or meeting rooms of such portions of the Hotel/Conference Center Property.

(b) Class "B". The Class "B" Member shall be Declarant. The rights of the Class "B" member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. In addition to any other rights Declarant has by virtue of its status as the Class "B" Member, after the termination of the Class "B" Control Period, to the extent not prohibited by law, Declarant shall be entitled (but not required) to appoint one Director to the Board of Directors, until the end of the "Original Class B Control Period" (as such term is subsequently defined. The term "Original Class B Control Period" means the first to occur of: (a) when at least eighty-five percent (85%) of the Units permitted to be built on the property identified on Exhibit A to this Declaration, as amended, have certificates of occupancy issued thereon and have been conveyed to persons other than the Declarant or builders holding title solely for purposes of development and sale: (b)December 31, 2020; or (c) when, in its discretion, the Class "B" Member so determines. The Class "B" Member shall be entitled to elect a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Section 4.2 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board of Directors and any committee as provided in Section 3 of the By-Laws. The Class "B" membership shall terminate and become converted to Class "A" membership upon the earlier of:

(i) three (3) years after expiration of the "Original Class B Control Period" pursuant to Section 10 of the By-Laws; or

(ii) at an earlier time when, in its discretion, Declarant so determines.

Section 3. Neighborhoods and Voting Groups.

(a) Neighborhoods. Each Unit shall be located within a Neighborhood as designated by Declarant. The Units within a particular Neighborhood may be subject to additional covenants ("Neighborhood Covenants") and/or Declarant shall have the right to require that the Unit Owners shall all be members of another owners' association ("Neighborhood Association") in addition to the Association, or to allow the Owners within the Neighborhood to make the decision to do so. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee, as described in Section 6 of the By-Laws, to represent the interests of Owners of Units in such Neighborhood.

Each Neighborhood, upon the affirmative vote, written consent, or a combination thereof, of the Owners representing a majority of Units within the Neighborhood, may request

that the Association provide a higher level of service or special services for the benefit of the Units in such Neighborhood. The Association shall provide such services and the cost of such services shall be assessed against the Units in such Neighborhood as a Neighborhood Assessment or Benefitted Assessment pursuant to Article X hereof. If so requested, the Owners of all Units in the Neighborhood shall be obligated to pay such Neighborhood Assessment.

After the expiration of the Class "B" Control Period, upon a petition signed by the Owners representing a majority of the Units in the Neighborhood, any Neighborhood may also apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods or to consolidate two (2) or more Neighborhoods into one (1) Neighborhood. Any such application shall be in writing and shall include a survey of the Neighborhood or Neighborhoods involved, which indicates the boundaries of the proposed Neighborhood(s) or otherwise identifies the Units included within the proposed Neighborhood(s). A Neighborhood consolidation or division shall be deemed denied unless the Board of Directors, in its sole discretion, grants such application in writing within thirty (30) days after its receipt. All applications and copies of any denials shall be filed with the books and records of the Association and shall be maintained as long as this Declaration is in effect.

(b) Voting Group. In order to guarantee representation on the Board of Directors for various groups having dissimilar interests and to avoid a situation in which the Voting Members representing similar Neighborhoods are able, due to the number of Units in such Neighborhoods, to elect the entire Board of Directors, excluding representation of others, Declarant shall establish Voting Groups for election of directors to the Board. Voting Groups shall be established by Declarant at least ninety (90) days prior to the expiration of the Class "B" Control Period by the recording of a Supplemental Declaration in the Public Records of Lee County, Florida establishing the Voting Groups. Voting Groups may generally be composed of Neighborhood(s) of similar housing types.

Subject to Declarant's right to re-designate Voting Groups, it is currently contemplated that the Units will comprise six (6) separate Voting Groups based on the following densities: all Neighborhoods with 0 to 2.0 Units per net acre; all Neighborhoods with 2.1 to 4.0 Units per net acre; all Neighborhoods with 4.1 to 5.5 Units per net acre; all Neighborhoods with 5.6 to 8.0 Units per net acre; all Neighborhoods with 8.1 to 12.0 Units per net acre; and all Neighborhoods with greater than 12.0 Units per net acre.

Additionally, it is currently contemplated that all Commercial Property and Marina Property will constitute one (1) Voting Group; all Recreational Property will constitute one (1) Voting Group and the Hotel/Conference Center Property will constitute one (1) Voting Group. Each Voting Group shall be entitled to elect one (1) director. After expiration of the Class "B" Control Period, and until Declarant no longer has a right to annex property in accordance with Article VIII hereof, Declarant reserves the right to re-designate Voting Groups. This subsection (b) may not be amended without the written approval of all Voting Members and the written consent of Declarant.

ARTICLE IV
MAINTENANCE

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. This maintenance shall include, but is not limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all Area of Common Responsibility which may include, without limitation, Preservation Areas, landscaping and other flora, structures, and improvements,. including all private streets, medians, street lights, entry features and signage, entry gates and gate houses, if any, lakes, canals, recreational nodes, picnic areas, beach areas, boat dockage facilities, sidewalks, boardwalks and bicycle/jogging paths situated upon the General Common Area and Exclusive Common Area, if any; except for such portions thereof as are maintained by others as permitted by the SFWMD or the UCDD; of all areas not within the General Common Area and Exclusive Common Area originally maintained by Declarant; and of such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract, easement or agreement for maintenance thereof by Declarant or the Association. However, the Association by contract or agreement, may assign its maintenance responsibility for any part of the Area of Common Responsibility to the UCDD or any other Person.

If not maintained by the UCDD, Declarant reserves the right to require that the Association maintain, repair and replace street lighting (the term "street lighting" shall include light poles and appurtenances thereto and the light bulbs and wiring therefor) located within the Properties and the cost of electricity therefor, and the cost and expense for the foregoing in such a case shall be a Common Expense, notwithstanding that such street lighting may be located on portions of the Properties which are not owned by the Association or are not General Common Area or Exclusive Common Area. Any reimbursement from any utility company for the installation of street lighting shall accrue to the party who installs such street lighting.

Declarant shall have the right to provide for monitoring of the use of pesticides, herbicides and fertilizers within the General Common Area or Exclusive Common Area. Declarant shall have the right to prohibit or limit the use of particular pesticides, herbicides, chemicals and fertilizers within particular General Common Area and Exclusive Common Area, which may include Preservation Areas.

Declarant shall have the right to assign to the Association any of Declarant's obligations required pursuant to any development order, including without limitation, those pertaining to a development of regional impact. If Declarant determines to assign any such obligations, the Association shall accept such obligations. The costs of fulfilling any obligation so assigned shall be a Common Expense, unless the obligation pertains to an Exclusive Common Area, in which event such costs shall be a Neighborhood Common Expense.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of General Common Area shall be a Common Expense to be allocated among all Units and all of the Business Properties as part of the Common Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be in the case of Neighborhoods a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Units within the Neighborhood(s) to which the Exclusive Common Area are assigned, or a Benefitted Assessment assessed against the portion of the Business Properties to which the Exclusive Common Area is assigned, or a combination of the above, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

If the UCDD is established, it is currently intended that the UCDD maintain the surface water management system within the Properties. If, however, the Association is required to maintain the surface water management system, it shall be maintained by the Association, together with any adjacent shoreline, except as may be otherwise provided for herein or in a Supplemental Declaration, in an ecologically sound condition in compliance with all applicable governmental requirements. If the Association maintains the surface water management system, the costs associated therewith shall be a Common Expense. The Association shall not, however, be required to maintain any portion of the surface water management system adjoining the Properties if such portions of the surface water management system is being maintained by the UCDD or SFWMD.

If permitted by Declarant, the Association may act as a water provider with respect to providing irrigation services to the Properties at rates to be set by the Association. The Association reserves the right to determine that the costs of providing and maintaining such services shall not be a Common Expense, but shall be billed on an individual basis as a Benefitted Assessment to the Owners of such portions of the Properties which are provided the irrigation service. If determined by the Association to be in the best interests of Pelican Landing, the costs shall not be billed as a Benefitted Assessment, but rather, the costs of providing and maintaining such services shall instead be a Common Expense. EACH OWNER ACKNOWLEDGES THAT ANY WATER PROVIDED FOR IRRIGATION PURPOSES MAY BE UNTREATED WATER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE RESPONSIBLE FOR THE QUALITY OF WATER PROVIDED FOR SUCH IRRIGATION PURPOSES. Any use of such water shall be at the user's own risk. Subject to any applicable governmental requirements, the responsibility to provide and maintain such irrigation services may be assumed by the UCDD, in which instance the costs shall not be Common Expenses or Benefitted Assessments.

The Association shall also be responsible for maintenance, repair and replacement of property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those that may be designated by any Supplemental Declaration. This assumption of responsibility may take place either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality

of service then being provided is not consistent with the Community-Wide Standard of the Properties. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided, unless specifically provided otherwise in a Supplemental Declaration. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, UCDD Property or property dedicated to the public, (a) if such maintenance is required by this Declaration or any governmental order, (b) if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard or to cause compliance with this Declaration, or (c) if the maintenance is requested by an Owner, the costs of which are to be charged to such Owner as a Benefitted Assessment.

Section 2. Responsibility of Owners. Each Owner shall maintain his Unit or applicable portion of the Business Properties, and all structures, sidewalks, parking areas and other improvements comprising the Unit or portion of the Business Properties in a manner consistent with the Community-Wide Standard and all applicable covenants, unless, in the case of a Unit, such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit. If a Unit or portion of the Business Properties abuts a lake, each Owner thereof shall also maintain those areas from such Unit or. portion of the Business Properties boundary to a lake bank (water's edge) or landscaped portion of the golf course, where bounded by a lake or golf course. If any Owner fails properly to perform his or her maintenance responsibility, the Association or Declarant may perform such maintenance responsibilities and assess all costs incurred against the Unit or portion of the Business Properties and the Owner thereof in accordance with Article X, Section 4 of this Declaration; provided, however, except when entry is required due to an emergency situation, the Association or Declarant shall afford the Owner reasonable notice .and an opportunity to cure the problem prior to entry.

Section 3. Neighborhood's Responsibility. Upon resolution of the Board of Directors, each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of maintenance of certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood, which may include, without limitation, the costs of maintenance of any signage, entry features, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets and parking areas within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association.

Any Neighborhood having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to additional covenants affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the

Community-Wide Standard. If any such Neighborhood fails to perform its maintenance responsibility as required herein and in any additional covenants, the Association may perform it and assess the costs against all Units within such Neighborhood as provided in Article X, Section 4 of this Declaration.

ARTICLE V
INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain property and casualty insurance, if reasonably available at the Board's sole determination, for all insurable improvements owned or maintained by the Association on the Area of Common Responsibility, as applicable; provided, however, that at no time shall there be less than fire and extended coverage. The face amount of such insurance shall be sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

In addition to casualty insurance on the Area of Common Responsibility, as applicable, the Association may, upon request of a Neighborhood, and shall, if so specified in a Supplemental Declaration affecting the Neighborhood, obtain and continue in effect adequate property and casualty insurance, if reasonably available at the Board's sole determination, on properties within the Neighborhood; provided, however, that at no time shall there be less than fire and extended coverage. Such coverage may be in such form as the Board of Directors deems appropriate and the face amount of the policy shall be sufficient to cover the full replacement cost of all structures to be insured. The costs thereof shall be charged to the Owners of Units within the benefitted Neighborhood as a Neighborhood Assessment.

The Association shall have no insurance responsibility for any part of any of the Business Properties.

Insurance obtained on the properties within any Neighborhood, whether obtained by such Neighborhood or the Association, shall at a minimum comply with the applicable provisions of this Section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Area of Common Responsibility. All such insurance shall be in a face amount sufficient to cover the full replacement cost of all insured structures. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the. Association, and to the Neighborhood Association, if any.

The Board shall also obtain a public liability policy covering the Association and its Members with respect to the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members or agents or any other person who has a right to occupy a Unit. The public liability

policies shall have at least a Three Million ($3,000,000.00) Dollar per occurrence limit, and any part thereof insured as umbrella liability shall be acceptable, and a minimum of Two Hundred Fifty Thousand ($250,000.00) Dollar limit on property damage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses of .the Association and shall be included in the Common Assessment, as more particularly described in Article X, Section 1; provided, in the discretion of the Board of Directors, premiums for insurance on Exclusive Common Area may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted thereby, and assessed as a Benefitted Assessment against the Business Properties benefitted, as applicable, unless the Board of Directors reasonably determines that other treatment of the premiums is more appropriate. The policies may contain a reasonable deductible, and, in the case of casualty insurance, the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be liable for the loss or repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

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

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

(b) All policies on the Area of Common Responsibility, as applicable, shall be for the benefit of the Association and its Members; all policies secured at the request of a Neighborhood shall be for the benefit of the Neighborhood Association, if any, the Owners of Units within the Neighborhood, and their Mortgagees, as their interests may appear.

(c) Exclusive authority to adjust losses, under policies obtained by the Association on the Properties shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Members, occupants, or their Mortgagees.

(e) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available at the Board's sole determination, and an agreed amount endorsement

with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Southwest Florida area.

(f) The Association's Board of Directors shall be required to use reasonable efforts to secure insurance policies that will provide the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Members, and their respective tenants, servants, agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of any one or more individual Members;

(iv) a statement that no policy may be cancelled, invalidated, suspended, or subject to nonrenewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Member, or Mortgagee;

(v) a statement that any "other insurance" clause in any policy exclude individual Members' policies from consideration; and

(vi) a statement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, workers' compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, if reasonably available, and flood insurance, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than one-sixth (1/6) of the annual Common Assessments on all Units and Business Properties, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 2. Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry casualty insurance with fire and extended coverage on the Unit(s) and structures constructed thereon, meeting the same requirements as set forth in Section 1 of this Article V for insurance on the Area of Common Responsibility, unless either the

Neighborhood in which the Unit is located or the Association carries such insurance (which they are not obligated to do. hereunder). Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration. The owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. Unless otherwise provided in a Supplemental Declaration, if a structure is totally destroyed, the Owner may, subject to the approval of the DRC as hereinafter defined, decide not to rebuild or to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction, and thereafter the Owner shall continue to maintain the Unit in a neat and attractive condition consistent with the Community-Wide Standard.

A Neighborhood may have more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Units within the Neighborhood and the standard for returning the Units to their natural state if the structures are not rebuilt or reconstructed.

Section 3. Damage and Destruction.

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

(b) Any damage or destruction to the General Common Area, Exclusive Common Area or to the common property of any Neighborhood Association shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total Class "A" vote of the Association, if General Common Area, or the Unit Owners representing at least seventy-five (75%) percent of the total vote of the Neighborhood whose Exclusive Common Area is damaged, or the Unit Owners representing at least seventy-five (75%) percent of the total vote of the Neighborhood Association whose common property is damaged, if common property of a Neighborhood Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or

destruction to General Common Area, Exclusive Common Area or common property of a Neighborhood shall be repaired or reconstructed.

(c) If it should be determined in the manner described above that the damage or destruction to the General Common Area, Exclusive Common Area or to the common property of any Neighborhood Association shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, or the Neighborhood Association, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard.

Section 4. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. If no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

Section 5. Repair and Reconstruction. If the damage or destruction to the General Common Area, Exclusive Common Area or to the common property of a Neighborhood Association for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a Special Assessment against all Owners on the same basis as provided for Common. Assessments; provided, if the damage or destruction involves the common property of a Neighborhood Association, only the Owners of Units .in the affected .Neighborhood shall be subject to assessment therefor. Additional assessments may be made in like manner at. any time during or following the completion of any repair or reconstruction.

ARTICLE VI
NO PARTITION

Except as is permitted in the Declaration or amendments thereto, there shall be no judicial partition of the General Common Area, Exclusive Common Area, or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing

of tangible personal property nor from acquiring title .to real property which may or may not be subject to this Declaration.

ARTICLE VII
CONDEMNATION

Whenever all or any part of the General Common Area or Exclusive Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members collectively representing at least seventy-five (75%) percent of the total Class AA" vote in the Association and of Declarant, as long as Declarant owns any property described on Exhibits “A” or “B”) by any authority having the power of condemnation or eminent domain, each Member shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the General Common Area or Exclusive Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, Declarant, so long as Declarant owns any property described in Exhibits “A” or “B” of this Declaration, and Voting Members collectively representing at least seventy-five (75%) percent of the total Class “A” vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the General Common Area or Exclusive Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article V hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the General Common Area or Exclusive Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

ARTICLE VIII
ANNEXATION OF ADDITIONAL PROPERTY

Section 1. Annexation Without Approval of Class "A" Membership. Declarant shall have the unilateral right, privilege and option, from time to time at any time until all property described on Exhibit "A" has been subjected to this Declaration or December 31, 2020, whichever is earlier, to subject to the provisions of this Declaration and the jurisdiction of the Association any portion of real property, including without limitation that described in Exhibit "A" attached hereto. Declarant shall have the right to amend Exhibit "A" from time to time, with the consent of no other Person being required, to add real property to such Exhibit. Such annexation shall be accomplished by filing in the Public Records of Lee County, Florida, a Supplemental Declaration annexing such property. Such Supplemental Declaration shall not require the consent of Members, Voting Members or any other Person, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such. Supplemental Declaration unless provided therein. Declarant shall have the unilateral right, privilege and option to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant.

Some of the effects of annexing such real property into Pelican Landing may be to increase the size of Pelican Landing, the number of Units, the number of Members, the size of the General Common Area, the number of Persons using the General Common Area, the size of the Association Budget, and the total number of votes which may be cast by members.

Section 2. Annexation With Approval of Class "A" Membership. Subject to the consent of the owner thereof, the Association may annex real property other than that described on Exhibit "A", and following the expiration of the right in Section 1, the Association may annex any property described on Exhibit "A", to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members representing a majority of the Class "A" votes of the Association present at a meeting duly called for such purpose and of Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto in accordance with Section 1 of this Article.

Annexation shall be accomplished by filing of record in the Public Records of Lee County, Florida, a Supplemental Declaration describing the property being annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering

annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

Section 3. Acquisition of Additional General Common Areas or Exclusive Common Area. Declarant may convey to the Association additional property, improved or unimproved, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members. Additionally, Declarant shall have the right, in its sole and absolute discretion, to alter the boundaries of the General Common Area or the Exclusive Common Area, and to construct, develop or modify the General Common Area or the Exclusive Common Area, and any improvements, easements and use rights thereon or appurtenant thereto in a manner determined appropriate by Declarant to be in the best interest of the Properties, without the consent or joinder of any Person, including, without limitation, the Association, any Neighborhood Association, the Members, any Voting Member or any Mortgagee, or any other Person, for so long as Declarant shall have any interest in any portion of the property described in Exhibit "A" hereof.

Section 4. Withdrawal of Property. Declarant reserves the right to amend this Declaration at any time, and with the approval of no other Person being required, so long as it holds an unexpired option to expand the community pursuant to this Article VIII, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Properties then owned by Declarant or its affiliates or the Association from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Properties desired to be effected by Declarant, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties, as determined by Declarant.

Section 5. Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as Declarant owns any property described in Exhibits "A" or "B" hereof.

Section 6. UCDD Approval. Notwithstanding anything provided in this Article VIII, if the UCDD is created to administer portions of Pelican Landing, the UCDD has the right to require that any property to be annexed must become part of the UCDD. If the property to be annexed fails to become part of the UCDD, then the UCDD has the right to disapprove the annexation of the property as part of Pelican Landing.

ARTICLE IX
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Area of Common Responsibility. The Association, subject to the rights of the Members set forth in this Declaration, shall be responsible for the exclusive management and control of the Area of Common Responsibility and all improvements thereon (including, without limitation, furnishings and equipment related thereto and common

landscaped areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions of this Declaration and consistent with the Community-Wide Standard; provided, however, as set forth in Article IV, Section 1 hereof, the Association may assign its maintenance responsibilities for any part of the Area of Common Responsibility to the UCDD or any other Person.

Section 2. Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within or outside of the Properties conveyed or assigned to it by Declarant.

Section 3. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, other than the Business Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use any recreational facilities on the General Common Area or Exclusive Common Area. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the By-Laws of the Association.

The Association, through the Board, by contract or other agreement, shall have the right to enforce county or municipal ordinances and to permit Lee County to enforce ordinances on the Properties for the benefit of the Association and its Members.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and, every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

ARTICLE X
ASSESSMENTS

Section 1. Creation of Assessments. There are hereby created assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors, to be commenced at the time and in the manner set forth in Section 8 of this Article. There shall be five (5) types of assessments: (a) Common Assessments to fund Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Units within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in Section 4 below; (d) Benefitted Assessments as described in Section 5A below; and (e) Resale Capital Assessments as described in Section 5B below. Each Owner, by acceptance of a deed or recorded contract of sale for any

portion of the Properties, is deemed to covenant and agree to pay these assessments, as applicable.

Common Assessments shall be levied on all Units and all Business Properties as provided in Section 2 below. Neighborhood Assessments shall be levied equally against all Units in the Neighborhood benefitting from the services supported thereby, provided that in the event of assessments for exterior maintenance of structures, or insurance on structures, or replacement reserves which pertain to particular structures, such assessments for the use of particular Units shall be levied on each of the Units in proportion to the benefit received, if so directed by the Neighborhood in writing to the Board of Directors. Special Assessments and Benefitted Assessments shall be levied as provided in Sections 4 and 5A, below, respectively. Resale Capital Assessments shall be levied by the Association as provided in Section 5B below.

The Association shall have the right to retain a management company or companies or contractors (any of which management companies or contractors may be, but are not required to be, a subsidiary, affiliate, or an otherwise related entity of Declarant) to assist in the operation of the Properties. At the discretion of the Board of Directors, the costs for management fees may be assessed as part of either the Common Assessment or a Neighborhood Assessment or both.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of assessment a certificate in writing signed by an officer or agent of the Association setting forth whether such assessment has been paid as to any particular Unit or portion of the Business Properties. Such Certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require a nonrefundable processing fee for the issuance of such certificate. The amount and manner of payment shall be as determined by resolution of the Board from time to time.

Assessments shall be paid in such manner and on such dates, and with such frequency that may be fixed by the Board of Directors. Each Owner, by acceptance of a deed to his or her Unit or portion of the Business Properties, acknowledges that all Common Assessments and Neighborhood Assessments levied hereunder are annual assessments due and payable in advance on the first day of the fiscal year; provided, the Board may permit any assessment to be paid in installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit or portion of the Business Properties, the Board may revoke the privilege of paying in installments and require annual assessments to be paid in full immediately.

No Owner may waive or otherwise exempt itself from liability for the assessments provided for herein, including, by way of illustration and not limitation, by non-use of the General Common Area or Exclusive Common Area, or abandonment of the Unit or portion of the Business Properties. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board

under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Subject to the provisions of Article X, Declarant "shall pay assessments as any other Member pays for Units and portions of the Business Properties it owns. Notwithstanding the foregoing provisions to the contrary, it is the intent of the Declarant and the Association that the provisions of the Seventy-Third Supplement to the Declaration and General Protective Covenants for Pelican Landing (the Seventy-Third Supplement) govern the obligations of Declarant, its affiliates and Owner(s) with respect to the property and improvements (the "Excepted Property") described in the Excepted Property Legal Description attached hereto and incorporated herein. Therefore, notwithstanding the foregoing, the provisions of this paragraph shall not apply to the Excepted Property and the Owner(s) (including, without limitation, Declarant and its affiliates) thereof. Instead, as to such subject matter, the Excepted Property and the Owners thereof shall be governed by the provisions of the Seventy-Third Supplement.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

Section 2. Computation of Common Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a reserve contribution in accordance with a reserve budget separately prepared as provided in Section 7 of this Article. Each Owner of any portion of the Business Properties shall pay as a Common Assessment a sum equal to the Common Assessment charged each Unit, times the number of votes attributable to the portion of the Business Properties held by such Owner as set forth in Article III, Section 2 above. If a commercial condominium is created on Commercial Property, the assessments attributed to such Commercial Property shall not be determined based on the number of condominium units in such condominium. The assessments attributed to such commercial condominium shall be a common expense of the unit owners by the condominium association administering such condominium in the manner provided in Chapter 718, Florida Statutes. If any property owners' association is created to administer solely any portion of Commercial Property, the assessments attributed to such Commercial Property shall not be determined based on the number of lots or parcels in such portion of the Commercial Property. The assessments attributed to such portion of Commercial Property shall be a common expense of the owners of such portion of the Commercial Property, and shall be assessed against such owners by the property owners' association administering such portion of the Commercial Property.

The Common Assessment to be levied for the coming year shall be set at a level which is reasonably expected to produce total income to the Association equal to the total budgeted

Common Expenses, including reserves. In determining the amount of the Common assessment, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Units obligated to pay assessments on the first day of the fiscal year for which the budget is prepared and the number of Units reasonably anticipated to be obligated to pay assessments during the fiscal year.

In addition, the following provisions shall apply for building permits issued to Declarant and plats recorded subsequent to the Board's formal adoption of the Association's budget:

(a) If a building permit is issued to Declarant or a plat is recorded after adoption of the Association's budget, but before the Association has mailed or delivered Common Assessment invoices to the Owners, then the assessments for all Units and Business Properties subject to assessment shall be recalculated based upon those additional, permitted or platted Units or Business Properties owned by Declarant.

(b) If a building permit is issued to Declarant or a plat is recorded after adoption of the Association's budget, and after the Association has mailed or delivered Common Assessment invoices to the Owners, then Declarant's Common Assessment obligation will be increased by multiplying the assessment amount adopted by the Board by the number of those additional, permitted or platted Units or Business Properties owned by Declarant.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Common Assessment to be levied against each Unit and portion of the Business Properties for the following year, to be delivered to each Owner at least thirty (30) days prior to the beginning of the fiscal year. Prior to the termination of the Class "B" Control Period, the Budget as set by the Board shall be effective upon its being adopted by the Board of Directors; provided, however, after the Class "B" Control Period, such budget and assessment shall become effective unless disapproved at a meeting of the Voting Members representing collectively at least0 a majority of the total Class "A" votes in the Association, and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition as provided for special meetings in Section 3 of the By-Laws, which petition must be presented to the Board within ten (10) days after delivery of the notice of Common Assessments.

Notwithstanding the foregoing, however, if the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year, with a ten (10%) percent increase, shall be the budget for the current year.

Section 3. Computation of Neighborhood Assessments. It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a

separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. The Board shall be entitled to set such budget only to the extent that this Declaration, Supplemental Declaration or By-Laws specifically authorizes the Board to assess certain costs as a Neighborhood Assessment. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Unit in the Neighborhood for the coming year to be delivered to each Owner of a Unit in the Neighborhood at least thirty (30) days prior to the beginning of the fiscal year. Such budget and Neighborhood Assessment shall become effective unless disapproved by a majority of the Owners of Units in the Neighborhood to which the Neighborhood Assessment applies; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least ten (10%) percent of the Units in such Neighborhood; and provided, further, the right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year, with a ten (10%) percent increase, shall be the budget for the current year.

Neighborhood Assessments are in addition to any assessments for common expenses levied by a Neighborhood Association for those Neighborhoods which are administered by a Neighborhood Association, if any. The Association reserves the right to review and approve or disapprove the budgets promulgated by Neighborhood Associations to ensure that the Neighborhood is in conformance with the Community-Wide Standards.

Section 4. Special Assessments.

(a) Entire Membership. Special Assessments in the aggregate amount of less than Fifty Thousand and No/100 ($50,000.00) Dollars may be levied by the Board. The Association may levy Special Assessments from time to time in the aggregate amount of Fifty Thousand and No/100 ($50,000.00) Dollars or greater, provided such assessment receives the affirmative vote or written consent of Voting Members collectively representing a majority of the total Class “A” votes in the Association and the affirmative vote or written consent of the Class “Be” Member, if such then exists. The obligation of the Owners to pay Special Assessments shall be computed on the same basis as Common Assessments; provided, however, the Owners of the Business Properties shall be exempt from Special Assessments levied against all Members of the Association which do not have a reasonable benefit for such Business Properties as determined

by the Board of Directors. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines. DECLARANT SHALL NEVER BE OBLIGATED TO PAY SPECIAL ASSESSMENTS, AND PROPERTY OWNED BY DECLARANT SHALL NEVER BE ASSESSED FOR SAME.

(b) Less Than All Members. Subject only to Board approval, the Association or Declarant may levy a Special Assessment solely against any Unit, group of Unit(s), or portions of the Business Properties to reimburse the Association or Declarant, as applicable, for costs incurred in bringing a Member or his Unit(s) or portion of the Business Properties, as applicable, into compliance with the provisions of this Declaration, any amendments thereto, the Articles, the By-Laws, or the Association rules, or for any other purposes permitted by this Declaration or any Supplemental Declaration, which Special Assessment may be levied upon the vote of the Board after notice to the Member. The Association or Declarant may also levy a Special Assessment against the Units in any Neighborhood to reimburse the Association or Declarant, as applicable, for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Association rules and regulations, which Special Assessment may be levied upon the vote of the Board after notice to the Voting Member of the Neighborhood. Fines levied by the Association or any committee in accordance with this Declaration or the By-Laws shall also be a Special Assessment.

Section 5A. Benefitted Assessments.

(a) General. The Board of Directors shall have the power specifically to assess Units or portions of the Business Properties receiving benefits, items, or services not provided to all Units within a Neighborhood or all of the Properties. Expenses of the Association (1) that are incurred upon the request of the Owner(s) for specific items or services relating to the Unit(s) or portions of the Business Properties, as applicable; (2) that pertain to Exclusive Common Area which are designated for the use or benefit of any of the Business Properties; or (3) that are incurred by the Association pursuant to this Declaration, a Supplemental Declaration, or the By-Laws for providing specific items or services relating to or benefitting a Unit or Units or portions of the Business Properties shall be specifically assessed against the Unit or Units or portions of the Business Properties benefitted, in the amount of the cost of the benefit received or as set forth in a Supplemental Declaration.

(b) Mandatory Benefitted Assessments. At the time that the budget for Common Expenses is prepared by the Board as required by Section 2 above, the Board shall determine mandatory Benefitted Assessments, if any, that are applicable to Units and portions of the Business Properties for that fiscal year. Benefitted Assessments may differ depending on the type or location of a Unit or portion of the Business Properties. For example, and by way of illustration and not limitation, a mandatory Benefitted Assessment may be levied against all Units which do not contain a residence for cutting vegetation and cleaning up the unimproved

Unit, and a mandatory Benefitted Assessment may be levied upon Units which contain a residence for services such as garbage pick-up and limited access monitoring.

Section 5B. Resale Capital Assessments. The Association shall levy a Resale Capital Assessment upon the transferee of a conveyance of every Unit owned by a Class "A" Member. The amount of the Resale Capital Assessment and the manner of payment shall be as determined by resolution of the Board of Directors of the Association from time to time; provided, however, all Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. The Resale Capital Assessment shall, unless the transferor and transferee otherwise expressly agree, be the obligation of the transferee. For purposes of this Section 5B, the term "conveyance" shall mean the non-exempt transfer of record legal title to a Unit by deed or other authorized means of conveyance with or without consideration. Resale Capital Assessments shall not apply to Business Properties.

Section 6. Affirmative Covenant to Pay Assessments and Establishment of Liens.

(a) There is hereby imposed upon each Unit and each portion of the Business Properties the affirmative covenant and obligation to pay to the Association or Declarant, as applicable, all types of assessments set forth in this Declaration. Each Neighborhood Association shall have the obligation to collect the, Common Assessments, Neighborhood Assessments, Benefitted Assessments, and Special Assessments for the Units it administers or controls and pay same to the Association or Declarant, as applicable, when such assessment is due; provided, however, that the Association or Declarant, as applicable, may, in its sole discretion, elect to collect assessments from particular Neighborhood Associations or directly from Owners. The liability for assessments is personal to each Owner, and may not be avoided by waiver of the use or enjoyment of Area of Common Responsibility, or by abandonment of the Unit(s) or portion of the Business Properties for which the assessments are made. Neither liability for assessments nor the amount of assessments shall be reduced or avoided due to the fact that all or a portion of the Area of Common Responsibility or other portions of the Properties are not complete. UPON CONVEYANCE OF A UNIT OR PORTION OF THE BUSINESS PROPERTIES, THE OWNER CONVEYING SUCH PROPERTY MUST, WITHIN TEN (10) DAYS OF CLOSING, NOTIFY THE ASSOCIATION OF THE NAME AND MAILING ADDRESS OF THE SUCCESSOR GRANTEE OF SUCH UNIT OR PORTION OF THE BUSINESS PROPERTIES. Until the grantor or grantee provides the Association such information, the Owner conveying such property shall be jointly and severally liable with the successor grantee of such Unit or portion of the Business Properties for any Assessments which are levied against such Unit(s) or such portion of the Business Properties.

(b) Any and all types of assessments or other charges made by the Association or Declarant, as applicable, in accordance with the provisions of this Declaration, together with interest at the rate of eighteen (18%)percent per annum, or at any other rate which may from time to time be established by the Board, provided that the rate never exceeds the highest rate allowed by law, late fees and costs of collection, including, but not limited to, reasonable attorneys' fees at all trial and appellate levels, are hereby declared to be:

(i) a charge and continuing lien upon the Unit or portion of the Business Properties against which each such assessment or charge is made; and

(ii) the personal obligation of the Owner of each such Unit or portion of the Business Properties assessed.

Said lien shall be effective only from and after the time of the recordation in the Public Records of Lee County, Florida of a written, acknowledged claim of lien by the Association or Declarant, as applicable, setting forth the amount due to the Association or Declarant, as applicable, as of the date the claim of lien is signed. After being so recorded the lien shall relate back to January 18,1991, the date of the original recording in the Public Records on this Declaration and its priority shall be determined as if recorded on that date. Upon full payment of all sums secured by that lien, the person making payment shall be entitled to a satisfaction of the claim of lien in recordable form. The lien of the assessments or other charges and any late costs thereon provided for herein shall be subordinate to the lien of any first Mortgage of a Mortgagee now or hereafter placed upon the Unit or portion of the Business Properties by a Mortgagee of record and the payment in full of all obligations owed to any such Mortgagee pursuant to its first Mortgage. When a Mortgagee holding a first mortgage of record obtains title to a Unit or portion of the Business Properties as a result of foreclosure of its Mortgage, or by deed in lieu of foreclosure of its Mortgage, such acquirer of title, its successors or assigns, shall not be liable for the share of assessments pertaining to such Unit or portion of the Business Properties which became due prior to the acquisition of title, as a result of the foreclosure, or deed in lieu of foreclosure of its Mortgage, unless the assessment or other charge against the Unit or portion of the Business Properties in question is secured by a claim of lien for assessments that is recorded prior to the recordation of the Mortgage which was foreclosed or was the subject of the deed in lieu of foreclosure, or unless they are liable for any portion of such past due assessments pursuant to Florida law. The unpaid share of Common Expenses or assessments shall be collectible from all of the Owners including such acquirer of title (as a result of foreclosure or deed in lieu of foreclosure) and his successors and assigns.

(c) If any owner or Neighborhood Association shall fail to pay any assessments, or other charges, or any installments thereof charged to such Owner or Neighborhood Association, within fifteen (15) days after the same becomes due, then the Association or Declarant, as applicable, shall, in its sole discretion, have any and all of the following remedies, to the full extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association or Declarant, as applicable:

(i) To accelerate the entire amount of any assessments for twelve (12) months from the date of the last overdue assessment based on the then current particular assessment amount, notwithstanding any provisions for the payment thereof in installments; provided that in the event of an increase in the assessment amount in the next year's budget, such Owner or Neighborhood Association shall be liable for the increase at such time as the increased assessment becomes due.

(ii) To advance on behalf of the Owner or Neighborhood Association in default funds to accomplish the needs of the Association or Declarant up to and including the full amount for which such owner or Neighborhood Association is liable to the Association or Declarant, and the amount or amounts of monies so advanced together with interest at the highest rate allowed by law (and if there is no limit established by law, then as established by the Association or Declarant), late fees and all costs of collection thereof including, but not limited to, reasonable attorneys' fees at all trial and appellate levels, may thereupon be collected by the Association or Declarant and such advance by the Association or Declarant shall not be deemed a waiver of the default.

(iii) To file an action in equity to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association or Declarant in like manner as a foreclosure of a mortgage on real property.

(iv) To file an action against the Owner or Neighborhood Association at law to collect said assessment or other charge, plus late fees and collection costs, plus interest at the highest rate allowed by law, plus court costs and reasonable attorneys' fees at all trial and appellate levels without waiving any lien rights or rights of foreclosure in the Association or Declarant, as applicable.

(d) Until termination of the Class "B" Control Period, if for any reason the Association shall fail to collect any assessments, then in that event, Declarant shall at all times have the right, but not the obligation: (1) to advance such sums as the Association could have advanced as set forth above; and (2) to collect such assessments and, if applicable, any such sums advanced by Declarant, by using the remedies available to the Association as set forth above, which remedies (including, but not limited to, recovery of attorneys' fees) are hereby declared to be available to Declarant.

(e) Declarant and any Mortgagees shall have the right, but not the obligation, jointly or severally, and at their sole option, to pay any of the assessments which are in default and which may or have become a charge against any Unit or portion of the Business Properties. Further, Declarant, until the termination of the Class "B" Control Period, and any Mortgagees shall have the right, but not the obligation, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Common Expenses on behalf of the Association when the same are overdue and when lapses in policies or services may occur. Declarant or any Mortgagee, as applicable, shall be entitled to immediate reimbursement for such overdue Common Expenses so paid plus any costs of collection including, but not limited to, reasonable attorneys' fees.

(f) The Board of Directors shall have the right to establish late fees payable upon the failure of any Member or a Neighborhood Association to pay Assessments (including without limitation Common Assessments, Neighborhood Assessments, Benefitted Assessments and Special Assessments), or any installments thereof, charged to such Member and/or Neighborhood Association. The amount and terms of such late fees shall be determined and

may be modified by the Board of Directors as it may designate from time to time in its sole discretion. All late fees are a charge and continuing lien upon such portion of the Properties against which each such late fee is levied.

Section 7. Reserve Budget and Contribution. The Board of Directors shall annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required reserve contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual assessments over the period. of the budget. The reserve contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of Common Assessments, as provided in Sections 2 and 3 of this Article. UCDD PROPERTY AND PROPERTY OWNED BY DECLARANT SHALL NEVER BE ASSESSED FOR RESERVE CONTRIBUTIONS.

Section 8. Date of Commencement of Assessments.

(a) Declarant's obligations to pay Common Assessments shall not commence until:

(i) With respect to the property described in the attached Description of Excepted Property and any and all improvements now or hereafter existing thereon, and any Owner thereofo (including, without limitation, Declarant and its affiliates), the obligation to pay assessments thereon shall commence and be payable in accordance with the provisions of the Seventy-Third Supplement. If Declarant conveys any Unit or property located within the Excepted Property to a subsidiary or affiliate of Declarant, then assessments as to such portions of the Properties will not commence until such time as designated by Declarant in a Supplemental Declaration.

(ii) With respect to condominiums located upon other than the Excepted Property, Declarant's assessment obligation shall not commence until January 1st of the calendar year immediately following the calendar year in which a building permit for a condominium building is issued. For example, if a building permit is issued for a 100 unit condominium building in 2001, then Declarant shall pay Common Assessments for 100 Units on January 1, 2002.

(iii) With respect to single family detached homes, villas or other improvements constructed on individually platted lots (as opposed to condominium buildings) located upon other than the Excepted Property, Declarant's assessment obligation shall not commence until recordation of a plat for the applicable lots.

Notwithstanding the foregoing provisions to the contrary, it is the intent of the Declarant and the Association that the provisions of the Seventy-Third Supplement govern the obligations of Declarant, its affiliates and Owner(s) with respect to the Excepted Property. Therefore,

notwithstanding the foregoing, the provisions of subparagraphs "(ii)" and "(iii)" shall not apply to the Excepted Property and the Owner(s) (including, without limitation, Declarant and its affiliates) thereof. Instead, as to such subject matter, the Excepted Property and the Owners thereof shall be governed by the provisions of the Seventy-Third Supplement.

(b) Except for any Unit or portion of the Business Properties owned by Declarant or its subsidiaries or affiliates or except with respect to the Excepted Property, the obligation to pay Common Assessments shall commence upon conveyance of the Unit or portion of the Business Properties by Declarant to an Owner.

Section 9. Subordination of the Lien to First Mortgages. The lien for assessments, including interest, late fees and costs (including attorneys' fees) provided for herein, shall be subordinate to the lien of any first Mortgage upon any Unit or any portion of the Business Properties, which Mortgage is recorded prior to a recorded claim of lien for assessments and to the payment in full of all obligations owed to any such Mortgagee pursuant to its first Mortgage. The sale or transfer of any Unit or any portion of the Business Properties shall not affect the assessment lien. However, the sale or transfer of any Unit or any portion of the Business Properties, pursuant to foreclosure or deed in lieu of foreclosure of a first Mortgage shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, provided such first Mortgage was recorded prior to the lien for assessments. No sale or transfer shall relieve such Unit or portion of the Business Properties from the Association's lien rights for any assessments thereafter becoming due.

Section 10. Capitalization of Association. Upon acquisition of record title to a Unit or any portion of the Business Properties by the first purchaser thereof other than Declarant or a purchaser of a Unit or portion of the Business Properties at a judicial sale conducted pursuant to a foreclosure of a Mortgage under which the Declarant is a mortgagor, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in a uniform amount to be set by Declarant annually. This amount shall be in addition to, not in lieu of, the annual Common Assessment levied on the Unit or portion of the Business Properties, and shall not be considered an advance payment of any portion thereof. This amount shall be paid to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws. If the aforesaid capital contribution is not paid, then the Association may levy a Special Assessment for such contribution and shall be entitled to collect the Special Assessment as provided in this Declaration. No working capital payment shall be due from any Unit existing as of the date of recording this Declaration and which is not owned by Declarant.

Section 11. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Common Assessments, Neighborhood Assessments and Special Assessments:

(a) all General Common Area and Exclusive Common Area;

(b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any; and

(c) all UCDD Property.

ARTICLE XI
ARCHITECTURAL STANDARDS

No construction, which term shall include within its definition, but not be limited to, staking, clearing, excavation, grading, and other site work; no exterior alteration or modification of existing improvements; and no plantings or removal of plants, trees, or shrubs shall take place anywhere on the Properties except in strict compliance with this Article, until the requirements below have been fully met, and until the approval of the DRC has been obtained pursuant to Section 1. Notwithstanding anything provided herein, this Article XI shall not apply to any Business Properties even though the term "Properties" may be used herein. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

All residential structures constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect and/or certified residential designer. Declarant reserves the right to require that the windows and glass doors of any structure abutting any golf course portion of the Recreational Property be comprised of special glass designed to withstand the impact of errant golf balls.

This Article shall not apply to any of the activities of Declarant or the UCDD; (ii) construction, improvements or modifications to the Properties or the UCDD; or (iii) construction, improvements or modifications to the General Common Area or Exclusive Common Area by or on behalf of the Association.

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the DRC established in Section 1 of this Article XI. This Article may not be amended without Declarant's written consent so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration as provided in Article VIII of this Declaration.

Section 1. Design Review Committee. Declarant shall create a Design Review Committee (DRC). The DRC shall consist of at least three (3), but not more than five (5) persons and shall have exclusive jurisdiction over all original construction on any portion of the Properties and on all modifications, additions, or alterations made on or to any existing structures located on the Properties. Until one hundred (100%) percent of the Properties have been developed and conveyed to purchasers in the normal course of development and sale, and Declarant no longer has the right pursuant to Article VIII, Section 1 hereof to add any real property to the Properties, Declarant retains the right to appoint all members of the DRC who

shall serve at the discretion of Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the DRC, who shall serve and may be removed at the discretion of the Board of Directors. The members of the DRC may include architects, engineers and other persons who are not members of the Association.

The DRC shall prepare and, on behalf of the Board of Directors, shall promulgate design and development guidelines, performance criteria, and application and review procedures. Copies shall be available from the DRC for review. The guidelines and procedures shall be those of the Association, and the DRC shall have sole and full authority to prepare and to amend them. It shall make the guidelines and procedures available to Owners, Members, builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties. If the DRC fails to approve or disapprove plans submitted to it, or to request additional information reasonably required, within forty-five (45) days after submission thereof, the plans shall be deemed approved. If the DRC disapproves any plans submitted to it, the Owner, Member, builder or developer whose plans have been disapproved shall have the right to appeal the decision by written notice to the Board within fifteen (15) days after the DRC issues its disapproval. The DRC shall establish, subject to the Board's approval, a procedure for such appeals. The Board's decision on any appeal shall be final.

The DRC shall also promulgate detailed standards and procedures governing modifications, additions or alterations made on or to existing structures located on the Properties. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the DRC for approval, as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his Unit, or, to paint the interior of his Unit any color desired; provided, modifications or alterations to the interior of screened porches, patios and similar portions of a Unit visible from outside the Unit shall be subject to approval hereunder. Prior to the termination of the Class "B" Control Period, Declarant shall have the right to assign the responsibilities of the DRC to any other entity, including without limitation Declarant or the Association.

The PELICAN LANDING and THE COLONY AT PELICAN LANDING DESIGN/BUILD GUIDELINES, as more particularly described in Exhibit "F" to that certain Amendment recorded in OR Book 3272, Page 2120, Public Records of Lee County, Florida, are further amended by the addition of the following language:

The DRC may condition its approval for all new construction of residential structures, upon the owner/builder posting a cash deposit in the amount of $5,000.00 or surety bond in the amount of $5,000.00 in such form and with such surety that is acceptable to the Association, payable to the Association. The deposit or surety bond shall be returned or cancelled, as the

case may be, at such time as the construction has been completed in accordance with the DRC approval and the Association verifies that no damage associated with such construction has occurred to the General or Exclusive Common Areas, or any area the maintenance of which has been dedicated to the Association by covenant or plat. The cash deposit/surety bond requirement shall not apply to any of the activities of Declarant or the UCDD; construction, improvements or modifications to the Properties or the UCDD; or construction, improvements or modifications to the General Common Area or Exclusive Common Areas by or on behalf of the Association.

Section 2. Right to Inspect. Any member of the DRC or their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any of the Properties to inspect for the purposes of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating Owner.

Section 3. No Waiver of Future Approvals. The approval of the DRC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

Section 4. Variance. The DRC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or, (c) estop the committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain any financing shall not be considered a hardship warranting a variance.

Section 5. Compliance With Guidelines. Any contractor, subcontractor, agent, employee or other invitee of an Owner or Member who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the DRC is subject to any enforcement procedures, including fines, as set forth in this Declaration or the By-Laws.

Section 6. No Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the DRC shall not bear any responsibility of ensuring the marketability, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, any committee, nor member of any of the foregoing shall be held liable for any injury, damages or

loss arising out of the manner or quality of approved construction on or modifications to any Unit or other structure.

Section 7. Performance by Board. If the DRC fails to perform any of its functions as set forth above, these functions may instead be performed by the Board.

Section 8. Exculpation and Approvals. The Association, Board, Declarant, DRC or any of their agents may grant, withhold or deny their consent, permission or approval in any instance when their consent, permission or approval is permitted or required at their sole discretion and without any liability of any nature or kind to an Owner or any other Person for any reason whatsoever and shall be indemnified and held harmless by such Owner or other Person from any and all damages resulting therefrom, including, but not limited to, court costs and reasonable attorneys' fees. Every consent, permission or approval by the Association, Board, DRC or their agents under this Declaration shall be in writing and binding upon all Persons.

Section 9. Approval of Owner of Recreational Property. If DRC approval is required for any portion of the Properties which abuts or is adjacent to any portion of Recreational Property consisting of a golf facility, the Owner thereof shall have the right to review and disapprove any plans submitted to the DRC for any portion of the Properties within one block of such portion of the Recreational, Property.

ARTICLE XII
USE RESTRICTIONS

Section 1. General. The Properties shall be used only for residential, recreational, commercial and related purposes, which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant, the Association, or the Owners of any of the Business Properties, as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood or portion of the Business Properties may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have the standing and the power to enforce such standards.

The Association, acting through its Board of Directors, shall have the authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of General Common Area, or Exclusive Common Area facilities. Notwithstanding anything provided herein, the Association does not have the authority to make and enforce additional standards and restrictions governing the use of any of the Business Properties. Such regulations and use restrictions shall be binding upon all Owners, occupants, tenants, invitees, and licensees, if any, until and unless overruled, cancelled, or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and

by the Class "B" Member, so long as such membership shall exist. Additional restrictions of a uniform and non-discriminating character may be promulgated by the Board as to individual Neighborhoods in order to take into account special circumstances within such Neighborhoods.

Section 2. Restrictions for Other than the Business Properties. The following restrictions shall apply to all portions of the Properties other than the Business Properties. Notwithstanding anything provided in this Declaration, the use of the term "Properties" in this Section 2 shall be deemed not to include the Business Properties, UCDD Property or any of the Properties owned by Declarant.

(a) Occupancy of Units. No Units shall be occupied by more than a single family. Units owned by corporations, partnerships, trusts or some other form of multiple ownership shall designate one (1) person and his or her family to occupy the Unit prior to, or at the time of, conveyance of the Unit to the multiple ownership entity. The designation of such occupants may be changed only with the prior notice to the Board of Directors. For purposes of this Section, the term "family" shall mean (i) persons related to one another by blood, marriage, or adoption in the following degrees of kinship only: children, grandchildren, parents, brothers, sisters, aunts, uncles, nieces and nephews, or, (ii) two single unrelated persons and persons related to them in the degrees of kinship described in subsection (i) above.

(b) Signs. No sign, billboard or advertisement of any kind, including without limitation, those of realtors, politicians, contractors and subcontractors, shall be erected within the Properties without the written consent of the DRC or the Board of Directors, except signs used or erected by Declarant, entry and directional signs installed by Declarant, and signs required for legal proceedings. The DRC and the Board shall not grant permission to erect signs on any Unit after such Unit is sold by a builder unless their erection is reasonably necessary to avert serious hardship to the Owner of such Unit. If permission is granted to any Person to erect a sign within the Properties, the Board reserves the right to restrict the size, color, lettering and placement of such sign. The Board of Directors or Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the above, no signs, including, without limitation, "open house" signs, flags, banners, or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties. No signs shall be nailed or otherwise attached to trees.

(c) Parking and Vehicular Restrictions.

(i) Parking. Parking on the Properties shall be restricted to private automobiles and passenger-type vans. Vehicles shall be parked only in the garages or in the driveways serving the Units or in the designated spaces or areas in which parking may or may not be assigned and then subject to such reasonable rules and regulations adopted by the Board of Directors, or a Neighborhood Association, if any, having concurrent jurisdiction over parking areas within the Neighborhood. No Owner shall conduct or permit to be conducted repairs (except in an emergency) or restorations of any motor vehicle, or other vehicle upon any portion

of the Properties, except in an enclosed area with the doors thereto closed at all times. No parking on the main collector roads shall be permitted.

(ii) Vehicular Restrictions. Commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily used or designed for commercial purposes, tractors, mobile homes, motorhomes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, motorcycles, mopeds, horse trailers, golf carts, boats and other watercraft, and boat trailers shall be parked only in enclosed garages with the garage door kept closed (except for entering or exiting the garage) or areas designated elsewhere in this Declaration, or areas, if any, designated by the Board or by the Neighborhood Association, if any, having jurisdiction over parking areas within a particular Neighborhood. No Owner shall keep any vehicle on the General Common Area or Exclusive Common Area except for those areas designated by the Board for parking. For purposes of this section, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties except within enclosed garages. Notwithstanding the foregoing, construction vehicles and service and delivery vehicles may be parked in the Properties during daylight hours for such period of time as is reasonably necessary for construction purposes or, to provide service or to make a delivery to a Unit or the General Common Area or Exclusive Common Area. No mopeds or golf carts may be operated on the General Common Area or Exclusive Common Area except that golf carts owned and rented by Recreational Members may cross the General Common Area or the Exclusive Common Area at designated golf cart crossings. No on-street parking or parking on lawns or landscaped areas shall be permitted, provided that on-street parking shall be permitted from 6:00 a.m. until 12:00 midnight, subject to any local ordinances to the contrary.

(iii) Towing. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations promulgated by the Board may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. In the event an individual violates any parking/vehicular restriction subsequent to a previous twenty-four (24) hour notice, the Association shall not be required to supply any additional notice or time limitation, other than such notice as may be required by Florida law. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean boats, campers, mobile home, motor homes and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

(d) Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests and invitees of any Unit. Every Owner shall cause all occupants of such Owner's Unit to comply with the Declaration, By-Laws and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the General Common Area or Exclusive Common Area caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations adopted pursuant thereto.

(e) Animals and Pets.

(i) No animals, wildlife, livestock, reptiles or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats, or other usual and common domesticated household pets not to exceed a total of two (2) may be permitted in a Unit, subject to the provisions of subparagraph (ii) below. This limitation does not apply to fish. However, those pets which are permitted to roam free or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the owner of any portion of the Properties or the Business Properties, shall be removed upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall at all times whenever they are outside a Unit be carried or confined on a leash held by a responsible person. Pets shall only be permitted on the General Common Area or Exclusive Common Area if such portions thereof are so designated by the Association or Neighborhood Association, as applicable. All persons bringing a pet onto the General Common Area, Exclusive Common Area or UCDD Property shall be responsible for immediately removing any solid waste of such pet.

(ii) Notwithstanding anything provided in subparagraph (i) above, no pit bull dogs shall be raised, bred or kept on any portion of the Properties. The term "pit bull dog" as used within this subparagraph shall refer to any dog which exhibits those distinguishing characteristics which: (A) substantially conform to the standards established by the American Kennel Club for American Staffordshire Terriers or Staffordshire Bull Terriers; or (B) substantially conform to the standards established by the United Kennel Club for American Pit Bull Terriers.

(f) Quiet Enjoyment. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, comfort or serenity of the occupants of surrounding property.

No noxious, illegal or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort,

annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

No hazardous or toxic substances, chemicals, pesticides, fertilizers or any other matter shall be dumped on any portion of the Properties or into any lake or canal which is within or abuts the Properties or surface water management system of the Properties. Fertilizers and pesticides shall be used on Units only in a reasonable manner and only for the purpose for which such products are intended. Owners shall take strict precautions to prevent fertilizers and pesticides from entering any lake or canal which is within or abuts the Properties or surface water management system of the Properties.

(g) Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on his Unit. No rubbish, trash, garbage or other waste material shall be kept or permitted on the Properties except in containers located in appropriate areas, if any, and no odor shall be permitted to arise from any such containers so as to render the Properties or any portion thereof unsanitary, unsightly or offensive to any other property in the vicinity thereof or to its occupants. All trash containers must be put out for pick up either on the night before or the morning of pick up, and no earlier. All empty trash containers must be retrieved by the Owner on the same day as pick up. No clothing or household fabrics shall be hung, dried or aired, and no lumber, grass, shrub or tree clippings or trash shall be kept, stored or allowed to accumulate on any portion of the Properties, unless screened so as to be concealed from view of neighboring Units and the streets within the Properties. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Properties.

(h) Outside Installations. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Unit, without the prior written consent of the Board or its designee. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

No radio station or short wave operations of any kind shall operate from any of the Properties, except for communication equipment used by Declarant or the Association. Nothing herein shall be construed as permitting such outside installations if they are otherwise prohibited by local law.

(i) Basketball Equipment, Clotheslines, Garbage Cans, Tanks, Etc. All garbage cans, mechanical equipment, and other similar items on Units shall be located or screened so as to be concealed from view of neighboring Units, streets, and property located adjacent to the Unit. No above-ground storage tanks shall be permitted, except for the purposes specified in subparagraph (bb) below. Basketball hoops and backboards shall be permitted on a Unit if approved by the DRC prior to installation. All rubbish, trash and garbage shall be stored in appropriate containers approved pursuant to Article XI hereof and shall regularly be removed from the Properties and shall not be allowed to accumulate thereon. Clotheslines shall be permitted provided that they are either screened from view in a manner first approved in accordance with Article XI hereof or are situated on a Unit so that they cannot be seen from any other Unit. The hanging of laundry, clothing, rugs, or any other articles on any railing, fence, hedge, or wall shall be prohibited.

(j) Subdivision of Unit and Time Sharing. Except for Units owned by Declarant, no Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. The Board may permit a division in ownership of any Unit, but solely for the purpose of increasing the size of the adjacent Units. In the event of a division in ownership of any Unit, the Owners among whom the ownership is divided shall be treated as co-owners of the divided Unit for purposes of voting and shall be jointly and severally liable for all assessments against the Unit hereunder. Declarant, however, hereby expressly reserves the right, with the approval of no other Person being required, to replat any Unit or Units owned by Declarant or to combine or divide any Unit or Units owned by Declarant. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision and zoning regulations.

Except for Units owned by Declarant, no Unit shall be made subject to any type of timesharing, fraction-sharing, interval ownership or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule, unless otherwise consented to in writing by Declarant.

(k) Pools. No above-ground pools shall be erected, constructed or installed on any, Unit. All exterior in-ground pools and above-ground and in-ground spas and jacuzzis must be approved in accordance with Article XI of this Declaration. Any in-ground pool to be constructed on any Unit shall be subject to the requirements of the DRC which shall include, without limitation: (i) composition to be of material thoroughly tested and accepted by the industry for such construction; (ii) all screening material shall be of a color in harmony with the exterior of the Unit; and (iii) no raw aluminum color screen will be permitted.

(l) Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties or adjoining or abutting the Properties shall be installed, constructed or operated within the Properties by any Person, other than the Association, or to be used by any group of Units, unless written approval has been received from the DRC. Withdrawal of water from lakes shall not be permitted other than by Declarant or Association. All sprinkler and irrigation systems shall be subject to approval in accordance with applicable governmental requirements and Article XI of this Declaration. All irrigation systems shall be designed to be low volume systems for the purpose of water conservation. Except for Declarant, no private irrigation wells shall be permitted on the Properties, unless prior written approval has been received from the DRC. Drainage of water from swimming pools onto the portion of any golf course shall not be permitted. Provided, however, this Section shall not apply to Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property in accordance with Article VIII, Section 1.

(m) Tents, Trailers and Temporary Structures. Except as may be permitted by Declarant or the DRC during initial construction of improvements within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature shall be placed upon a Unit or any part of the Properties without the approval of the Association or the DRC.

(n) Drainage and Septic Systems. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant or the UCDD may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself, the Association and the UCDD a perpetual easement across the Properties for the purpose of altering drainage and water flow, provided that any alterations that affect the surface water management system must first be approved by the SFWMD. Septic tanks and drain fields are prohibited on the Properties. Declarant or the Association may require any Unit Owner or Neighborhood to treat any irrigation water which causes unsightly or unsanitary conditions.

(o) Tree Removal. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XI of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more trees of such size and number, and in such locations, as such committee may determine in its sole discretion.

(p) Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

(q) Utility Lines and Connections. The installation of all above-ground portions of utility lines and connections must be registered with and approved by the PLCA Design Review Committee. The PLCA shall be permitted in accordance with the law to store fuel for use with its vehicles, generators or similar equipment.

All above-ground utility lines, boxes, valves, back-flow devices, piping and any other such utility features or facilities must be screened from view by the addition of appropriate landscaping such that they are not visible from adjacent roads. Screening should be sufficient to block view of items from the road while providing necessary service access. Should service access be insufficient and plants damaged during service, replacement plants will be residents' responsibility. Plant materials should be compatible with existing landscape. Use of native plants or those within the Pelican Landing plant list is required. Utilities to which this provision applies include, but are not limited to electric, telephone, cable, gas, waste water, potable water and storm water. This provision is not applicable, however, to high rise (more than 3 story) buildings.

(r) Air Conditioners. Except as may be permitted by the DRC, no window or wall-mounted air conditioning units may be installed in or on any Unit.

(s) Lighting and Decorations. Except for seasonal decorations, which may be displayed between November 15 and January 15 only, all exterior lights and decorations must be approved in accordance with Article XI of this Declaration.

(t) Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, flags, and similar items must be approved in accordance with Article XI of this Declaration; provided, however, that nothing herein shall prohibit the appropriate display of the American flag.

(u) Energy Conservation Equipment. Solar energy collector panels or attendant hardware or energy conservation equipment shall be permitted provided they are constructed or installed as a harmonious part of the architectural design of a structure, and such panels, hardware or equipment are first approved by the appropriate committee pursuant to Article XI of this Declaration.

(v) Lakes and Wetlands. All lakes, ponds, estuaries, islands and canals within or adjacent to the Properties shall be subject to rules of use promulgated by the Board of Directors. ANY PERSONS WHO SWIM IN OR USE ANY LAKES, PONDS, CANALS OR CANOE PARK, OR USE ANY ISLAND LOCATED IN ANY LAKE OR WETLAND, SHALL DO SO AT THEIR OWN RISK AND SHALL HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY CLAIM OF LOSS ARISING THEREFROM. No use of the wetlands shall be permitted, except as specifically permitted elsewhere in this Declaration. Notwithstanding anything herein, no boats, sailboats, canoes, rowboats or watercraft of any kind shall be permitted on any lake abutting any portion of a golf course, except for watercraft used by Declarant, the Association or the UCDD. For all other

water bodies, only canoes shall be permitted. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within or adjacent to the Properties. No docks, boat davits, piers, or other structures shall be constructed on or over any wetlands or body of water within the Properties, except for those constructed by Declarant.

(w) Playground. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user, and the Association shall not be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

(x) Fences. No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit except as approved in accordance with Article XI of this Declaration.

(y) Driveways and Mailboxes. The style and design of all driveways and mailboxes located on the Properties must be approved by the DRC in accordance with Article XI of this Declaration. All driveways and mailboxes shall be maintained in the style originally established by or approved by Declarant. With respect to driveways, culverts installed therein shall be of a type and quality approved by Declarant.

(z) Garages. The doors of all garages located on Units within the Properties shall be closed at all times except when the garage is being entered or exited.

(aa) Business Use. No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Properties and all applicable county ordinances; (iii) the business activity does not involve persons coming onto the Properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms “business” and “trade”, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider’s family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activity conducted by Declarant or a builder or developer approved by Declarant with respect to its development and sale of the Properties or its use of any Units which

Declarant or a builder or developer owns within the Properties, or to property designated by Declarant as a sales or other office. As to this latter area, Declarant or any purchaser of such property shall have the right, subject to applicable governmental ordinances, to use same for office/professional business uses.

(bb) On-Site Fuel Storage. Above ground fuel storage by residents is limited to portable tanks of 5 gallon maximum size or anchored tanks of 24 gallons (100 pounds) maximum size and 48 inches maximum height. The portable tanks may be used in propane, gasoline or diesel fuel service. The 24 gallon tanks are limited to propane or LPG service, with a single tank per residence. The 24 gallon tanks must be properly permitted and installed according to law. Installation must include screening by wall or plants to make the tank invisible from the road and neighbors. All fuel tanks larger than 24 gallons must be properly permitted and installed underground in accordance with all laws. The installation of all tanks larger than 5 gallons must be registered with and approved by the PLCA Design Review Committee. The PLCA shall be permitted in accordance with the law to store fuel for use with its vehicles, generators or similar equipment.

(cc) Golf Carts. No golf carts shall be operated within the Properties. Golf carts used in conjunction with golf course play and operations shall only be operated on the golf course and designated golf cart paths within the Properties.

(dd) Leasing of Units. Every Owner shall cause all occupants of such Owner's Unit to comply with this Declaration, the By-Laws and any rules promulgated by the Board, and shall be responsible for all violations and losses to the Area of Common Responsibility caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any such violation. All leases of Units shall be automatically deemed to include a covenant on the part of the tenant to comply with, and be fully bound by, the provision of this Declaration, the By-Laws and any rules promulgated by the Board. Owners of units located in a community in which there is not a Neighborhood Association are permitted to lease their units one (1) time per year, with a minimum lease period of thirty (30) days. Owners of units located in a community in which there is a Neighborhood Association are permitted to lease their units four (4) times per year, with a minimum lease period of thirty (30) days. The Association shall count the year in which a lease term commences when determining in which year the lease occurs. These restrictions shall prevail over any less restrictive provisions of any Neighborhood covenants and restrictions (including a Supplemental Declaration), articles, bylaws, rules and regulations, policies or practices. These restrictions shall not prevail over any more restrictive provisions of any Neighborhood covenants and restrictions (including a Supplemental Declaration), articles, bylaws, rules and regulations, policies or practices. This Section shall also apply to subleases of Units and assignments of leases. The Association may charge the Owner a preset fee for the costs of administrative processing required by the Association in connection with leasing. This fee may not exceed the maximum amount allowed by law. No fee may be charged for renewal or extension of a lease with the same lessee. The Association may collect the fee in the same manner as assessments.

(ee) Laws and Ordinances. Every Owner and occupant of any Unit, their guests and invitees shall comply with all laws, statutes, ordinances and rules of federal, state and county governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

(ff) Golf Nuisance. No person shall, during a golf tournament on any Recreational Property, engage in any activity whatsoever which shall interfere with the players' performance during the golf tournament. Further, no obnoxious, unpleasant, unsightly or offensive activity shall be carried on which shall interfere with the play of such golf tournament. Declarant shall have, in its sole discretion, the absolute right to temporarily suspend as a distraction any and all construction activity on the Properties during golf tournaments. Declarant shall provide all Owners so affected with reasonable prior written notice of such golf tournaments and the dates the construction must be suspended, and such date shall be a reasonable duration. Declarant shall have no liability for any additional construction costs incurred by Owners or their contractors during such temporary suspension of construction.

(gg) Insurance Rates. Nothing shall be done or kept in the General Common Area or Exclusive Common Area which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept in any Units or on the General Common Area or Exclusive Common Area which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

(hh) Play Equipment, Strollers, Etc. All bicycles, tricycles, scooters, skateboards, and other play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to the Unit. No such items shall be allowed to remain on the General Common Area, Exclusive Common Area, or on Units so as to be visible from adjacent property when not in use. Swing set less than eight (8') feet in height shall be permitted so long as such swing set is located in the backyard portion of a Unit. Notwithstanding the above, the Board may, but shall not be obligated to, permit other types of swing sets and similar permanent playground equipment to be erected on Units provided it is approved in accordance with Article XI hereof.

(ii) Maintenance of Premises. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any Unit, and no refuse or unsightly objects shall be allowed to be placed or to remain upon any Unit. No structure of any kind shall be constructed or maintained on the easement area described in Article XIII, Section 7 hereof, unless otherwise permitted by this Declaration. No landscaping shall be permitted which breeds infectious plant diseases or noxious insects. All lawns, landscaping and sprinkler systems and any property, structure, improvement and appurtenance shall be kept in a good, safe, clean, neat and attractive condition. Upon the failure to maintain the premises as aforesaid to the satisfaction of Declarant and upon the Association, Neighborhood Association or Owner's failure to make

such correction within thirty (30) days of giving of written notice by Declarant (which written notice does not have to be given by Declarant in the case of emergency, in which event, Declarant may without any prior notice, directly remedy the problem), Declarant may enter upon such premises and make such improvements or corrections as may be necessary, the costs of which shall be paid by the Association, Neighborhood Association or Owner, as the case may be, or Declarant may bring an action at law or in equity. Such entry by Declarant or its agents shall not be a trespass, and by acceptance of a deed for a Unit, such party has expressly given Declarant continuing permission to do so, which permission may not be revoked. If any Owner, Association or Neighborhood Association fails to make payment within fifteen (15) days after request by Declarant, Declarant shall be entitled to collect and enforce the payment in accordance with the provisions of Article X hereof, and all rights in favor of the Association shall be deemed to also be in favor of Declarant. Each Owner undertakes or must designate a responsible Person to undertake the general maintenance responsibilities of the Unit, which responsibilities shall include, at a minimum, maintaining the exterior appearance of the Unit, safeguarding the Unit to prepare for hurricane or tropical storm watches and warnings, by, among other things, removing any unfixed items on balconies and lanais, and repairing the Unit in the event of any damage therefrom. An Owner designating a Person to perform such functions shall not relieve such Owner of any responsibility hereunder.

(jj) No Implied Waiver. The failure of Declarant or the Association to object to an Owner's or other Person's, including without limitation, a Neighborhood Association's, failure to comply with the covenants or restrictions contained herein, in the ByLaws, or in any rules now or hereafter promulgated shall in no event be deemed a waiver of the provisions of such documents.

(kk) Subdivision and Regulation of Land.

(i) No portion of the Properties shall be divided or subdivided without the prior written consent of Declarant, who may impose certain requirements on the Owner as a condition of its consent.

(ii) An Owner shall not inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to the Properties without the prior written approval of Declarant, until termination of the Class "B" Control Period, or until Declarant no longer has the right to annex property under Article VIII hereof, whichever is later, and thereafter of the Board.

(ll) Rules. The Association, through the Board, shall have the right to promulgate and impose rules and thereafter to modify, alter, amend, rescind and augment any of the same with respect to the use, operation and enjoyment of all or a portion of the Properties, other than the Business Properties, and any improvements located on the Properties (including, but not limited to, establishing reasonable fees for the use of facilities and establishing hours and manner of operation for General Common Area and Exclusive Common Area).

(mm) Preservation Areas. No plant or animal life shall be removed from the Preservation Areas by any Person other than those qualified Persons designated by Declarant, and after termination of the Class "B" Control Period, by the Association or the UCDD.

(nn) Window Coverings. Window tinting as a method of energy conservation is permitted provided that the type and method of tinting is first approved by the appropriate committee pursuant to Article XI of this Declaration. Reflective or foil window coverings are prohibited. No awnings, canopies or shutters shall be permanently installed on the exterior of any Unit or building unless first approved by the DRC pursuant to Article XI of this Declaration.

(oo) Storm Precautions. No hurricane or storm shutters shall be permanently installed on the exterior of any structure or Unit unless first approved by the DRC pursuant to Article XI of this Declaration. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect structures or Units, while the threat of a hurricane or similar storm is imminent; provided all temporary shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed.

From June 1st through November 30th, approved permanent storm shutters may be left in place on the rear and sides of a Unit provided they are not readily visible from the street. Transparent shutters of an approved design may be left in place during this period of all sides of a Unit even if they are visible from the street. From December 1st through May 31st, approved shutters may be left in place on the rear lanai of a Unit provided they are within the screened enclosure

Shutters approved prior to the adoption of this policy, if intended to be used for a length of time longer than the period immediately preceding and following the threat of an imminent storm, will have to be resubmitted to the DRC for approval.

Section 3. Restrictions for the Business Properties. When any portion of the Business Properties is made subject to this Declaration by means of a Supplemental Declaration, Declarant shall have the right to impose in such Supplemental Declaration restrictions and obligations upon such portion of the Business Properties. The Association shall not have the authority to make and enforce any additional standards or restrictions governing the use of any of the Business Properties. This Section 3 cannot be amended without the written consent of Declarant, as long as Declarant holds any interest in the property described in Exhibit "A," and the written consent of the Owner(s) of the Business Properties affected by such amendment. All of the Business Properties shall be held, used and enjoyed subject to the following limitations and restrictions:

(a) Hazardous materials. Any structure on the Business Properties where hazardous materials or hazardous wastes are to be used, displayed, handled, or stored shall be constructed with impervious floors, without drains, to ensure containment and facilitate cleanup of any spill or leakage. The outside storage of any hazardous materials or hazardous wastes shall be

prohibited. Any area used for loading and/or unloading of hazardous materials or hazardous wastes shall be covered and equipped with a collection system to contain accidental spills.

(b) Lakes and Wetlands. All lakes, ponds, wetlands, estuaries, islands and canals within or adjacent to any portion of the Business Properties shall be aesthetic amenities only, and no other use thereof shall be permitted without the prior approval of Declarant. No docks, boat davits, piers or other structures shall be constructed on or over the wetlands or body of water, except as may be permitted by the Board and the applicable governmental authorities. No plant or animal life shall be removed from the Preservation Areas by any Owner of any portion of the Business Properties or any of its agents. No hazardous or toxic substances, chemicals, pesticides, fertilizers or any other matter shall be dumped on any portion of the Properties or in the wetlands or in any lake or canal which is within or abuts the Properties or the surface water management system of the Properties. No structure of any kind shall be constructed or maintained on the easement area described in Article XIII, Section 7 hereof, unless otherwise permitted by this Declaration.

(c) Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations pursuant thereto which govern the conduct of Owners of the Business Properties shall also apply to all occupants, employees, guests, patrons, tenants and invitees of any portion of the Business Properties. Each Owner of any portion of the Business Properties shall cause all occupants of such portion of the Business Properties to comply with the Declaration, By-Laws and the rules and regulations adopted pursuant thereto which apply to the Business Properties, and shall be responsible for all violations and losses to the General Common Area or Exclusive Common Area caused by such occupants, guests, patrons, tenants or invitees, notwithstanding the fact that such occupants, guests, patrons, tenants or invitees may be fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

(d) Air Conditioners. Except as may be permitted by Declarant, no window or wall-mounted air conditioning units may be installed in or on any portion of the Business Properties.

(e) Maintenance Premises. It shall be the responsibility of each Owner of any portion of the Business Properties to prevent the development of any unclean, unhealthy, unsightly or unkempt condition. No rubbish, trash, garbage or other waste material shall be kept or permitted on the Business Properties except in containers located in appropriate areas, and no odor shall be permitted to arise from any such containers so as to render the Properties or any portion thereof unsanitary, unsightly or offensive to any other property in the vicinity thereof or its occupants. No weeds, underbrush, or other unsightly growth shall be permitted to grow or remain upon any of the Business Properties, and no refuse or unsightly objects shall be allowed to be placed or to remain upon any portion of the Business Properties. No landscaping shall be permitted which breeds infectious plant diseases or noxious insects. All lawns, landscaping and sprinkler systems and any property, structure, improvement and appurtenance shall be kept in a good, safe, clean, neat and attractive condition. Upon the failure

to maintain the premises as aforesaid to the satisfaction of Declarant, Declarant shall have the same rights as set forth in Article XII, Section 2(ii) hereof.

ARTICLE XIII
GENERAL PROVISIONS

Section 1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association, the Owners, and their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date the Declaration and General Protective Covenants for Pelican's Nest was originally recorded (November 17, 1988). At the expiration of the initial thirty (30) year period, the covenants and restrictions of this Declaration shall be automatically extended for an indefinite number of successive periods of ten (10) years each, unless an instrument in writing, signed by the Voting Members representing a majority of the then Class "A" Members, and the Class B Member, if it still exists, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate or revoke said covenants and restrictions, in which case this Declaration shall be terminated as specified therein.

Section 2. Amendment.

(a) In addition to any other right of amendment or modification provided for in this Declaration, the Articles or the Bylaws, in which case those provisions shall apply, Declarant shall have the right and the power, until the termination of the "Original Class B Control Period," in its sole discretion and by its sole act, to modify, enlarge, amend, delete, waive or add to provisions of this Declaration and of any recorded exhibits hereto by an instrument filed of record, without need for joinder or consent of any other Person unless otherwise expressly required in this Article.

(b) Except as set forth in subparagraph (a) above and in subparagraph (c) below, the process of amending this Declaration shall be as follows:

(1) Until the termination of the "Original Class B Control Period, no amendment shall be effective unless it is approved in writing by Declarant.

(2) The share of assessments and voting rights of Members shall not be amended unless the amendment is recorded with the joinder in writing of all affected Members.

(3) Amendments for correction of scrivener's errors or to conform this Declaration or its recorded exhibits to the requirements of law, may be made by Declarant alone until the termination of the "Original Class B Control Period," and thereafter by majority vote of the Board.

(4) All other amendments shall be adopted if approved by the Voting Members representing at least seventy-five (75%) percent of the total vote of the membership of the Association at any regular or special meeting of the Association, or by written ballots or other written indications of assent without a meeting, as provided for in the Bylaws.

(c) Further, Declarant may, in its sole discretion, with the approval of no other Person, including without limitation any mortgagees, being required, amend this Declaration if necessary to do so for purposes of fulfilling the requirements of any governmental entity or quasi-governmental entity, including, but not limited to, those matters set forth in Article II, Section 10 of this Declaration, and those requirements of the UCDD, the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the Department of Housing and Urban Development (HUD), the Veterans Administration (VA), and the Federal Housing Administration (FHA). Nothing contained herein, however, shall require Declarant to make an amendment to this Declaration for any purpose whatsoever.

(d) Supplemental Declarations are not amendments and need only be executed by Declarant alone.

(e) After the termination of the Class "B" Control Period, a true copy of any amendment to this Declaration shall be sent via certified mail by the Association to Declarant within five (5) days of its adoption.

(f) Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association, the Owner, of any portion of the Business Properties, or any Mortgagee under this Declaration, Articles or the By-Laws without specific written approval of such Declarant, Association or Mortgagee affected thereby.

(g) An amendment adopted after the effective date of this provision by any of the foregoing methods shall be attached to a certificate of the Association, executed by the President or Vice-President with the formalities of a deed, certifying as to the facts leading to the proper approval and adoption of the amendment. The certificate must state the O. R. Book and Page where the original Declaration was recorded. The amendment is effective when the certificate, together with a copy of the amendment, is recorded in the Public Records of Lee County, Florida. The certificate of amendment for amendments made unilaterally by the Declarant to the Declaration, Articles or By-Laws, as authorized in this Article, need not be executed by an officer of the Association, but may instead be executed by the Declarant.

Section 3. Indemnification. The Association shall indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit to

proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 4. Easements of Encroachment. Declarant hereby grants reciprocal appurtenant easements of encroachment, and easements for maintenance and use of any permitted encroachment, between each Unit and such portion or portions of the General Common Area or Exclusive Common Area as are adjacent thereto; and between adjacent Units or any Unit and any portion of the Business Properties; and between any portion, of the Business Properties and such portions of the General Common Area or Exclusive Common Area adjacent thereto due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the General Common Area of Exclusive Common Area, or as between said adjacent Units, or as between any portion of the Business Properties and adjacent Units or General Common Area or Exclusive Common Area, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant or the Association.

Section 5. Easements for Utilities, Etc. Declarant hereby reserves unto itself, so long as Declarant owns any, property described on Exhibits "A" or "B," and on behalf of the Association, the UCDD and the designees of each (which may include, without limitation, Lee County, Florida; and any utility), blanket easements upon, across, over, and under all of the Properties, including the Business Properties, for ingress, egress, installation, replacing, repairing, and maintaining, cable television systems, master television antenna systems, limited access and privacy assurance systems, monitoring systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit, any portion

of the Business Properties, or any structure constructed on any Unit or any portion of the Business Properties, and, except in an emergency, entry into any Unit or any portion of the Business Properties shall be made only after reasonable notice to the owner or occupant, thereof.

Without limiting the generality of the foregoing, Declarant hereby reserves for the Association and local water supplier across all Units, the General Common Area, Exclusive Common Area, any portion of the Business Properties easements for ingress, egress, installation, reading, replacing, repairing, and maintaining water meter boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by Declarant as long as Declarant owns any property described in Exhibit "A" or Exhibit "B," and thereafter the Association's Board of Directors.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant, as to all of the Properties, or the Association, as to all of the Properties other than the Business Properties, shall have the right to grant such easement over the Properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the Properties.

Except as may be provided otherwise in this Declaration, the Board shall have, by at least a seventy-five (75%) percent vote, the power to dedicate portions of the General Common Area or Exclusive Common Area to Lee County, Florida, or to any other local, state, or federal governmental entity, subject to such approval requirements as may be contained in this Declaration.

This Declaration is subject to any other easement currently of record which affects any of the property described in Exhibit "A" or Exhibit "B" hereof. Additionally, Declarant reserves on behalf of the Association the right to accept any easements in favor of the Association over, under, across or through any portion of real property which abuts any of the property described in Exhibit "A" or Exhibit "B" hereof.

A non-exclusive access easement is hereby reserved in favor of those entitled to use any portions of the Properties as set forth in this Declaration, including without limitation the Preservation Areas as provided in Article II, Section 1 hereof, over such portions of the Properties only to the extent as are reasonably necessary to provide pedestrian and vehicular access to such portions of the Properties. Declarant reserves the right to grant specific easements to further the purposes of this section, as well as reserves the right to modify any such easements. The Association shall have the right to promulgate and enforce reasonable rules and regulations concerning the use of the access easement provided herein.

Section 6. Easement for Golf Use. Every Unit, the General Common Area, the Exclusive Common Area, the UCDD Property, the common property of any Neighborhood,

and the Business Properties are burdened with a perpetual, nonexclusive easement hereby created by Declarant permitting golf balls unintentionally to come upon the Units, General Common Area, UCDD Property, common property of any Neighborhood, Exclusive Common Area, and the Business Properties immediately adjacent to any golf course portion of any Recreational Property, if any, and for golfers at reasonable times and in a reasonable manner to General Common Area, Exclusive Common Area, UCDD Property, common property of a Neighborhood, and Business Properties or the exterior portions of a Unit or Business Properties to retrieve errant golf balls; provided, however, if any Unit or portion of the Business Properties is fenced or walled, the golfer will seek the Owner's permission before entry. The location of a Unit, UCDD Property, common property of any Neighborhood, General Common Area, Exclusive Common Area or portion of the Business Properties within the Properties may result in nuisances or hazards to the Unit, UCDD Property, common property of any Neighborhood, General Common Area, Exclusive Common Area, Business Properties or to persons and property on the Unit, UCDD Property, General Common Area, Exclusive Common Area, Business Properties as a result of operations of Recreational Property. Each Owner, by acceptance of a deed to a Unit or any portion of the Business Properties, covenants for itself, its successors, successors in title, and assigns that it shall assume all risks associated with such location including, but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such Recreational Property activities and shall indemnify and hold harmless the Association, Declarant and the Owners of Recreational Property from any liability, claims or expenses, including attorneys' fees, arising from such property damage or personal injury. Declarant reserves the right to impose upon the Properties such other easements as are required for the enjoyment of any recreational or social facilities located on the Recreational Property. As provided in Article XVI, Section 4 of this Declaration, no amendment to this Section 6 may be made without the written approval of all Owners of Recreational Property used for golf purposes.

Any golf course or tennis facility built upon Recreational Property may be built with the intent that it be used for tournament play, although Declarant does not warrant that such tournaments will take place. The players in and spectators of such tournaments shall have a perpetual non-exclusive easement in their favor to use the Areas of Common Responsibility for all normal purposes of ingress, egress and parking, and for the furnishing of services and facilities and for such other purposes for which the same are reasonably intended Notwithstanding anything contained herein, the aforesaid easement as it relates to use of the Areas of Common Responsibility shall be only as to that portion of the Areas of Common Responsibility necessary for their use and those parking areas specifically designated by the Association for the use specified in this paragraph. Any disputes as to what constitutes a normal purpose or what portion of the Areas of Common Responsibility are necessary for their use shall be determined by Declarant in its sole and absolute discretion. Conditions concerning golf course play are set forth in Article XII, Section 2(ff) hereof.

Section 7. Easement for Lake Maintenance. Declarant hereby grants to the Association, the UCDD, and their successors and assigns, a perpetual, non-exclusive easement for maintenance purposes upon, across, over and under any Properties located, as shown on any plat of any portion of the Properties, from the top of the bank of a lake or canal for ingress, egress and access to such lake or canal located within or adjacent to the Properties; provided, however, the exercise of this easement shall not unreasonably interfere with the use of any Unit or portion of the Business Properties. If such easement is not shown on a plat, then such easement shall be deemed to extend from the top of the bank of a lake twenty (20') feet landward. No structure of any kind shall be constructed or maintained in this easement area unless approved by the DRC if such approval is required under Article VIII of this Declaration.

Section 8. Right of Entry. The Association shall have the right, but not the obligation, to enter into any Unit for emergency and safety reasons, and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws, and the Association rules, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. No such entry shall be deemed a trespass or other offense. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 9. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of the incorporators of the Association.

Section 10. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association, unless approved by a vote of the Voting Members holding seventy-five (75%) percent of the total votes of the Class "A" Members. In the case of such a vote, and notwithstanding anything contained in this Declaration, the Articles or By-Laws of the Association to the contrary, a Voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five (75%) percent of all Members represented by the Voting Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 11. Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood, and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Association.

Section 12. Use of the Words "Pelican Landing". No Person shall use the words "Pelican Landing," "Pelican's Nest," "Westinghouse," the name of any other Neighborhood within the Properties, or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the words "Pelican Landing" in printed or promotional matter when such term is used solely to specify that particular property is located within the Pelican Landing development, and the Association shall be entitled to use the words "Pelican Landing" in their business name.

Section 13. Compliance. Every Member and the occupant of any Unit shall comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners.

Section 14. Security. NEITHER DECLARANT NOR THE ASSOCIATION MAY MAKE ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL MEMBERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY UNIT, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD OF DIRECTORS, DECLARANT, OR ANY SUCCESSOR DECLARANT AND THE DRC DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, GATEHOUSE, OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE DRC MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION, BURGLAR ALARM SYSTEMS, GATEHOUSE OR OTHER SECURITY SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE, NOR THAT FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR GATEHOUSE, OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR

INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY UNIT, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY UNIT AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS OR BUSINESS PROPERTIES, AND TO THE CONTENTS OF UNITS AND BUSINESS PROPERTIES, AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, OR ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES, IF ANY.

Section 15. Cable and Telecommunications Systems.

(a) Declarant hereby reserves unto itself and its designees, successors, assignees and licensees the right, without obligation, to construct or install over, through, under, across and upon any portion of the Properties for the use of the Owners and their permitted or authorized guests, invitees, tenants, and family members one or more cable and/or telecommunications receiving and distribution systems and electronic surveillance systems, emergency, medical or surveillance monitoring or alarm systems (all or any part of which shall be referred to herein as the "System"), the exact description, location and nature of which may have not yet been fixed nor determined. Declarant shall have and hereby reserves to itself and its designees, successors, assignees and licensees a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent, size, and location of which over, across, upon and through the Properties shall be determined solely by Declarant, its successors, designees and assigns) together with a perpetual and exclusive right and privilege of: (i) unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System including, without limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection; and (ii) transmitting, the facilities and equipment of which shall be owned and exclusively controlled by Declarant, its successors and assigns or its designees.

(b) Declarant or the Association shall have the right to enter contracts for the exclusive provision of the System, as Declarant and the Association shall deem, in their sole respective discretion, to be in the best interests of the Properties. Should the Declarant enter into a contract or contracts pursuant to this subsection (b), the Association shall to the extent the Declarant assigns its rights and obligations under any such contract or contracts accept such

assignment, Association hereby agrees to be bound by all of the terms and provisions of the contract or contracts.

(c) The term "Contractual Designee" or "Designees" shall mean the company or companies with which Declarant or the Association has contracted for the furnishing of such System services.

(d) Every Unit subscribing to the services provided by any contract for the System may be subject to a charge, payable per Unit on the first day of each month or quarter in advance, for basic cable television programming services. The Association shall impose, along with Common Assessments, against each such Unit a Benefitted Assessment as it shall determine, in the amount of the basic fees due and payable for the System and shall collect same and forthwith remit the amount collected to the Contractual Designee providing the System services.

(e) Declarant may excuse portions of the Properties from the provisions of this Section which, in the determination of Declarant, have uses for System services inconsistent with the overall design of such services in the Properties as a whole.

Section 16. Enforcement.

(a) Declarant reserves unto itself and its designees the right and the power (i) to enforce the covenants, conditions, restrictions, and other provisions of this Declaration, and (ii) to delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Association, a Neighborhood Association, an Owner or to any other designee.

(b) If Declarant does not enforce the covenants, conditions, restrictions or other provisions of this Declaration, then the following parties may in the following priority enforce same as hereinafter set forth: (i) the Association; (ii) a Neighborhood Association; (iii) an Owner of any portion of the Business Properties or the Owner of twenty-five (25) Units. If a party with a lesser priority desires to enforce this Declaration, then that party must first give thirty (30) days' written notice to the parties with higher priority, starting first with Declarant, that the noticing party intends to initiate enforcement upon the expiration of such thirty (30) day period, and if during such period the parties with the higher priority do not initiate enforcement procedures, then the party of the lesser priority may so initiate such enforcement procedures. A party not initiating enforcement procedures shall incur no liability whatsoever for such non-enforcement.

(c) Declarant, its designees or any other party having the right to enforce this Declaration, if any, pursuant to subparagraph (b) above, shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any Person violating or attempting violation of such provisions, and to enforce any lien created by this Declaration. Failure by Declarant, or the

Association, or a Neighborhood Association, to enforce any of such provisions shall in no event be deemed a waiver of its right to do so thereafter.

(d) The costs and attorneys' fees, including those resulting from any appellate proceedings, incurred by Declarant or its designees or a party having the right to enforce this Declaration, if any, pursuant to subparagraph (b) above, who prevails in any such enforcement action, in any action against a Person to enforce any provision of this Declaration shall be a personal obligation of such Person which shall be paid by such Person.

Section 17. Severability. If any provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, then such holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect, and such holding shall be limited to its most narrow application.

Section 18. Dissolution. In the event of dissolution of the Association, each Unit and the Business Properties shall continue to be subject to any assessments specified in this Declaration, and each Member shall continue to be personally obligated to Declarant or the successors or assigns of the Association, as the case may be, for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Association to properly maintain, operate and preserve it. The provisions of this Article shall apply only with regard to the maintenance, operation and preservation of property which has been an Area of Common Responsibility and continues to be so used for the common use and enjoyment of the Members. Notwithstanding anything provided herein, in the event of a dissolution or termination of the Association, the administration and maintenance of the surface water management system of the Properties shall be transferred only to another not-for-profit corporation or dedicated to an appropriate governmental agency agreeing to accept such conveyance or dedication.

Section 19. Gender. Whenever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of one gender shall be deemed to include the other gender.

Section 20. Notices.

(a) To Declarant: Notice to Declarant shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records in the Department of State of the State of Florida, or at any other location designated by Declarant.

(b) To Association: Notice to the Association shall be in writing and delivered or mailed to the Association at its principal place of business as shown by the records in the Department of State of the State of Florida, or at any other location designated by the Association.

(c) To Member: Notice to any Member of a violation of any of these restrictions, or any other notice as may be required herein, shall be in writing and delivered or mailed to the

Member at the address shown on the tax rolls of Lee County or to the address of the Member, as shown on the deed recorded in the Public Records of Lee County, Florida, or to the address of the Member as filed with the Secretary of the Association, or if a Member is a corporation, to its principal place of business as shown by the records in the Department of State of the State of Florida or its state of incorporation.

Section 21. Other Documents; Priority of Documents. Declarant, the Association, any Neighborhood Association, or other entity provided for herein or in any applicable recorded instrument shall have such rights, powers, duties, and privileges as set forth herein or in the articles of incorporation, by-laws and other constituent documents of such entity; however, no such entity may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration, Articles or By-Laws, which documents shall prevail in all events of conflict. In the event of any conflict among the Declaration and amendments, the Articles, the By-Laws, and the rules promulgated by the Board, the documents shall control in the order listed in this sentence.

Section 22. Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with Declarant's general plan for development of the Properties and the purposes set forth herein, including the Preamble.

Section 23. Water Management System. Notwithstanding anything to the contrary in this Declaration, no amendment to this Declaration shall change or affect the surface water management system of the Properties without the prior written approval of the SFWMD, which approval, if granted, shall be attached as an exhibit to any amendment which would have the effect of changing or affecting the surface water management system of the Properties. If the surface water management system is administered by the UCDD, any such amendment shall likewise require the consent of the UCDD.

ARTICLE XIV
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on any portion of the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. A Mortgagee or the insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the legal description and address of the Unit or portion of the Business Properties therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit or portion of the Business Properties on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner for any Unit or portion of the Business Properties subject to the Mortgage of such eligible holder, where such delinquency has continued for a period, of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

The failure of the Association to send any such notice to any Mortgagee shall have no effect on any meeting, act or thing which was to have been the subject of such notice, nor affect the validity thereof, and the Association shall not be liable for any damages which may be caused by or arise from the failure to send such notice.

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

Section 3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Unit or Business Properties, as applicable.

Section 4. Failure of Mortgagee to Respond. Any Mortgagee who receives a. written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XV
DECLARANT'S RIGHTS

(a) Full Right: Declarant, its successors, designees and assigns shall have the right to make such use of the Properties as Declarant shall, from time to time, determine. In recognition of the fact that Declarant will have a continuing and substantial interest in the

development and administration of the Properties, Declarant hereby reserves for itself, its successors, designees and assigns, the nonexclusive right to use all Area of Common Responsibility and all other portions of the Properties in conjunction with and as part of its program of sale, leasing, construction, marketing, and development including, but not limited to, the right to carry on construction and to enter and transact business; maintain models and sales and rental offices; place signs; employ sales and rental personnel; show Units and portions of the Business Properties; use on-site transportation systems; and use portions of the Properties and Units and other improvements owned by Declarant or the Association for purposes set forth above and for storage of construction materials and for construction and assembling construction components without any cost to Declarant and its successors, nominees and assigns for such rights and privileges. In addition to its other rights to use the Area of Common Responsibility, Declarant, its successors, designees and assigns, shall have the nonexclusive right to use all or any portion of any building thereon as a sales, rental, or construction office. Any models, sales areas, sales or rental office(s), parking areas, construction office(s), signs and any other designated areas or property pertaining to the sale, construction, marketing, maintenance and repair efforts of Declarant shall not be part of the General Common Area or Exclusive Common Area, and shall remain the property of Declarant or its nominees, as the case may be. Declarant shall have the nonexclusive right to construct, maintain and repair structures and landscaping and other improvements to be located on the Properties as Declarant deems necessary or appropriate for the development of the Properties. Declarant's use of any portion of the Properties as provided in this subparagraph (a) shall not be a violation of this Declaration.

(b) Scope: The rights and privileges of Declarant, its successors, designees and assigns, as herein set forth in subparagraph (a) above are in addition to and in no way limit any other rights or privileges of Declarant, its successors, designees and assigns, under this Declaration, the Articles or the By-Laws. The provisions of subparagraph (a) above, like other provisions of this Declaration, grant or reserve rights to and for Declarant and may not be suspended, superseded or modified in any manner unless same is consented to by Declarant. This right of use and transaction of business as set forth in subparagraph (a) above or this subparagraph (b), like Declarant's other rights herein, may be assigned in writing by Declarant in whole or in part as Declarant deems appropriate.

ARTICLE XVI
RECREATIONAL PROPERTY;
MASTER DEVELOPMENT PLAN

Section 1. General. Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any of the Recreational Property. Rights to use the Recreational Property will be granted only to such Persons, and on such terms and conditions, as may be determined from time to time by the appropriate Owner of Recreational Property. The Owners of Recreational Property shall have the right, from time to time in their sole and absolute discretion and without notice, to amend

or waive the terms and conditions of use of their respective Recreational Property, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether. Recreational Property is subject to the obligations and conditions of this Declaration. Owners of Recreational Property and their guests and invitees shall have the perpetual non-exclusive easement set forth herein. Notwithstanding anything contained herein, the aforesaid easement as it relates to the use of the General Common Area or Exclusive Common Area by Owners of Recreational Property or their guests and invitees shall be only as to that portion of the General Common Area or Exclusive Common Area necessary for their use. Any disputes as to what constitutes a normal purpose or what portion of the General Common Area or Exclusive Common Area are necessary for their use shall, prior to the termination of the Class "B" Control Period, be determined by Declarant in its sole and absolute discretion. Declarant reserves the right, in its sole discretion, and with no other approval being required, to impose upon the General Common Area or Exclusive Common Area such other easements which are required for the use and enjoyment of the Recreational Property. Declarant makes no representations concerning the establishment or continued operation of any of the Recreational Property. Therefore, each Owner understands and acknowledges that once any portion of the Recreational Property commences operation, such operation may terminate.

Section 2. Conveyance of Recreational Property. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant or any other Person with regard to the continuing ownership or operation of any Recreational Property, if any, and no purported representation or warranty in such regard, either written or oral, shall ever be effective without an amendment hereto executed or joined into by Declarant. Further, the ownership or operational duties of and as to Recreational Property may change at any time and from time to time. No consent of the Association, any Neighborhood, any Owner, any Mortgagee or any other Person shall be required to effectuate such transfer.

Section 3. Rights of Access and Parking. Owners of Recreational Property and their guests, invitees, and the employees, agents, contractors, and designees of the Recreational Property shall at all times have the right and a non-exclusive easement of access and use over all roadways located within the Properties and Area of Common Responsibility reasonably necessary to travel from/to the entrance of the Properties to/from the property of the Recreational Property, respectively, and, further, over those portions of the Properties (whether General Common Area, Exclusive Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the property of the Recreational Property.

Section 4. Limitations on Amendments. In recognition of the fact that the above provisions of this Article are for the benefit of the Recreational Property, no amendment to Sections 1, 2, 3 or 4 of this Article, and no amendment in derogation hereof to any other

provisions of this Declaration, may be made without the written approval thereof by the applicable Owners of Recreational Property, if any. The foregoing shall not apply, however, to amendments made by Declarant.

Section 5. Master Development Plan.

(a) The proposed "Master Development Plan" is available from Declarant. The Master Development Plan is the design for the development of the Properties as a planned residential and commercial development which may be modified and amended by Declarant during the years required to develop the Properties. The Master Development Plan shall not bind Declarant to annex any additional real property pursuant to Article VIII hereof, or to improve any portion of such real property in accordance with the Master Development Plan unless and until a Supplemental Declaration is filed for such real property which subjects it to this Declaration. Thereupon, Declarant shall develop such real property so annexed in accordance with the Master Development Plan then in effect as the same may then or thereafter be amended from time to time as provided for herein.

(b) With respect to any portion of the Properties subjected to this Declaration and owned by Declarant, Declarant hereby reserves the unilateral right without the approval or consent of any Persons to amend the Master Development Plan in response to changes in technological, economic, environmental or social conditions related to the development or marketing of the Properties or to changes in requirements of governmental authorities or Mortgagees. By way of illustration and not limitation, such amendments may modify subdivision lines of individual Units, add or reduce open areas, relocate streets, roads, drives or easements and provide for alternate housing types.

(c) Provided that the Association has been given notice of proposed changes to the Master Development Plan, the Association shall not use its resources, nor take a public position in opposition to the proposed changes.

ARTICLE XVII

The Association may contract for cable television, satellite, telecommunications, broadband, surveillance, security and other similar services, on a "bulk" basis, on behalf of all Association members, or any portion thereof. The expenses related to any contract shall be deemed common expenses applicable to all Association members or benefitted assessments applicable only to certain Association members, as applicable. The Association shall further have the authority to execute and grant such easements and licenses throughout the Properties, as may be necessary to implement this article.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 3rd day of January, 1991.

SIGNATURE PAGES AND LEGAL DESCRIPTIONS NOT SCANNED.