DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MEDITERRA

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this _____ day of _____, 2000, by Long Bay Partners LLC, a Florida limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Long Bay Partners, LLC, as the Declarant of Mediterra, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance and preservation of Mediterra as a master planned community.

Article I Creation of the Community

1.1. Purpose and Intent.

The Declarant, as the owner of the real property described on Exhibit "A" intends by the recording of this Declaration to create a general plan of development for the planned community known as Mediterra. Mediterra will be developed in phases. The initial phases of Mediterra will be located within Collier County, Florida. Subsequent phases of Mediterra may be developed on real property located within Lee County, Florida. This Declaration provides a flexible and reasonable procedure for the future expansion of Mediterra to include additional real property, as Declarant deems appropriate, and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Mediterra. An integral part of the development plan is the creation of Mediterra Community Association, Inc., an association comprised of all owners of real property in Mediterra, to own, operate and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration. It is the intent of Declarant that all phases of Mediterra shall be subject to this Declaration, the Governing Documents, and the Mediterra Community Association, Inc.

This document does not and is not intended to create a condominium within the meaning of The Florida Condominium Act, *Florida Statutes* Section 718.101, *et seq*,

1.2. Binding Effect.

All property described on Exhibit "A" and any additional property which is made a part of Mediterra in the future by the filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons

having any right, title, or interest in any portion of the Properties, their heirs, successor, successor-in-title, and assigns.

This Declaration shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 25 years from the date this Declaration is recorded in the Public Records. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by not less than 75% of the then Owners of Units (and not Neighborhood Representatives) has been recorded in the Public Records within the year preceding any extension, agreeing to amend, in whole or in part, or terminate this Declaration, in which case this Declaration shall be amended or terminated as specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of applicability of the rule against perpetuities, such provision shall expire 90 years after the date this Declaration is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents.

The Governing Documents create a general plan of development for, and operation of, Mediterra which may be supplemented by additional covenants, restrictions and easements applicable to particular Neighborhoods within Mediterra. In the event of a conflict between or among the Governing Documents and any such additional covenants or restrictions, and/or the provisions of any other articles of incorporation, by-laws, rules or policies governing any Neighborhood, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing additional restrictions, exceptions, modifications, or provisions which are more restrictive than the provisions of this Declaration. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood.

All provisions of the Governing Documents shall apply to all Owners and to all occupants of their Units, as well as their respective tenants, guests and invitees. Any lease on a Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of the Governing Documents.

If any provision of this Declaration is determined by judgment or court order to be invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

Article II Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. "Area of Common Responsibility": The Common Area, together with such other

areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or other applicable covenants, contracts, or agreements.

2.2. "Articles of Incorporation": The Articles of Incorporation of Mediterra Community Association, Inc., as filed with the Secretary of State of the State of Florida.

2.3 "Association": The Mediterra Community Association, Inc., a Florida not-for-profit corporation, its successors or assigns.

2.4. "Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefits of all Units, as determined in accordance with Sections 8.1.

2.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Florida corporate law.

2.6. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business, provided that the Declarant shall designate the status of "Builder" and assign the rights of such Builder in written instrument.

2.7. "By-Laws": The By-Laws of the Mediterra Community Association, Inc., attached hereto as Exhibit "D" and incorporated herein by reference, as they may be amended from time to time.

2.8. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term Common Area may include as a part of the Common Area the Conservation Areas and Surface Water Management System if such are transferred to the Association. The term shall include the Exclusive Common Area, as defined below.

2.9. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents, including obligations arising under a Covenant to Share Costs.

2.10. "Community Development District(s)": One or more special service, utility, and taxing district(s) created as a special purpose unit of local government with jurisdiction within, adjacent to, and in the vicinity of the Properties established in accordance with Chapter 190, Florida Statutes, 1980, which is/are vested with certain governmental powers and responsibilities within or adjacent to the Properties. In the event that more than one such district is created, the districts may share certain responsibilities within their jurisdiction.

2.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall be established initially by the Declarant and may be more specifically defined in the Design Review Guidelines, the Use Restrictions, and Rules and Regulations adopted by Board resolutions.

2.12. "Conservation Areas": The real property and any improvements which are now or are hereinafter made a part of the Properties and designated as Conservation Areas on the recorded plats or other instruments recorded in the Public Records for Mediterra.

2.13. "Covenant to Share Costs": A Declaration of Easements and Covenant to Share Costs, filed in the Public Records, which creates certain easements for the benefit of the Association and the present and future owners of the subject property. It obligates the Association and such owners to share the costs of maintaining property described in the Covenant to Share Costs.

2.14. "Declarant": Long Bay Partners, LLC, a Florida limited liability company, or any successor or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. The Declarant shall be the "developer" of Mediterra as defined in Chapter 617.301. *et seq.*, Florida Statutes (1997).

2.15. "Design Review Guidelines": The architectural, design and construction guidelines and review procedures adopted pursuant to Article IV, as they may he amended.

2.16. "Environmental Permits": Those permits, casements and other forms of approval granted by local, state or federal governmental entities for activities on or benefitting Mediterra (and/or others who may or may not be Members), and identified as such by the Declarant, and which may include, but shall not be limited to the following:

(a) permits issued by the State of Florida, Department of Environmental Protection,
(b) permits issued by the U.S. Army Corps of Engineers,
(c) plans approved by the Florida Fish and Wildlife Commission, and
(d) permits issued by the South Florida Water Management District.

2.17. "Exclusive Common Area": A portion of the Common Area primarily benefitting one or more, but less than all, Neighborhoods, as more particularly described in Section 13.1.

2.18 "Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, the Design Review Guidelines, the Use Restrictions, any Covenant to Share Costs, and the Rules and Regulations, as they may be amended.

2.18.5 “Good Standing”. Good Standing means being in compliance with the Governing Documents. A Member who is delinquent in the payment of any assessment or other charge imposed pursuant to the Governing Documents or, who has been determined to have violated other

provisions of the Governing Documents after Notice of and an opportunity to either cure the violation or appeal the determination, is a Member who is not in Good Standing.

2.19. "Master Plan": The land use plan for the development of Mediterra prepared by Wilson Miller, Inc., and approved by Lee County and Collier County, Florida, as it may be amended, which includes, but is not limited to, all of the property described on Exhibit "A" and all or a portion of the property described on Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described on Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article IX.

2.20. "Mediterra": The master planned community known as Mediterra as shown on the Master Plan and approved by Lee County and Collier County, Florida, as it may be amended from time to time.

2.21. "Member": A Person subject to membership in the Association pursuant to Section 6.2.

2.22. "Mortgage ": A mortgage, a deed of trust, a deed. to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgage" shall refer to a beneficiary or holder of a Mortgage.

2.23. "Neighborhood": A group of Units designated as a separate Neighborhood for purposes of sharing Exclusive Common Area, Neighborhood Common Area and/or receiving other benefits or services from the Association which are not provided to all Units within the Properties, and/or for the purpose of electing Neighborhood Representatives as provided in Section 6.4. A Neighborhood may be comprised of more than one housing type and may include noncontiguous parcels of property.

Where 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, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

2.24. "Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Section 8.2.

2.25. "Neighborhood Association": A condominium association or homeowners association having concurrent jurisdiction with the Association over any Neighborhood.

2.26. "Neighborhood Common Area": All real and personal property, including easements, owned, leased or otherwise possessed by a Neighborhood Association for the common use and enjoyment of the Owners within such Neighborhood. Neighborhood Common Area may include Conservation Areas or components of the Surface Water Management System if assigned by the Declarant as provided herein.

2.27. "Neighborhood Expenses": The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Units within a particular Neighborhood or Neighborhoods, if any, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may specifically be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

2.28. "Neighborhood Representative": The representative selected by the Class "A" Members within each Neighborhood pursuant to Section 6.4(b) to cast the Class "A" votes attributable to their Units on all matters requiring a vote of the membership (except as otherwise specifically provided in the Governing Documents). Where the context permits or requires, the term "Neighborhood Representative" shall also refer to alternate Neighborhood Representatives acting in the absence of the Neighborhood Representative and any Owners authorized personally to cast the votes for their respective Units pursuant to Section 6.4(b) or elsewhere in the Governing Documents.

2.29. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

2.30. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

2.31. "Private Amenities": Certain real property and any improvements and facilities thereon located within, or adjacent to, or in the vicinity of Mediterra, which are privately owned and operated by Persons other than the Association for recreational and related purposes, on a club membership basis or otherwise, and may include, without limitation, a golf course and all related and supporting facilities and improvements, tennis facilities, swim facilities, beach area, fitness facilities, and an enrichment center. The Private Amenities are not a portion of the Association's Common Area.

2.32. "Properties" or "Property": The real property described on Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.33. "Public Records": The place designated as the official location for recording deeds, plats and similar documents affecting title to the Property including but not limited to the Official Records of Lee County and Collier County, Florida.

2.34. "Rules and Regulations": Board-adopted Rules and Regulations which establish administrative procedures for internal Association governance and operating procedures for use of the Common Area and property included within the Area of Common Responsibility.

2.35. "Special Assessment": Assessments levied in accordance with Section 8.4.

2.36. "Specific Assessment": Assessments levied in accordance with Section 8.5.

2.37. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article IX which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument filed by the Declarant pursuant to Section 6.4(c) which designates Voting Groups.

2.38. "Surface Water Management System": Any portion of real property, improvement, work or feature such as swales, ditches, canals, impoundments, berms, ponds, lakes, retention/detention areas, conservation areas, culverts and pumps required or described in any permits issued by South Florida Water Management District and any other applicable governmental agency for the management and storage of surface waters, drainage and flood protection for Mediterra and adjacent areas and identified as an element or component of the Surface Water Management System by the Declarant at the time such is conveyed or transferred to the Association. The Surface Water Management System may be divided into one or more categories, including without limitation the following:

(a) The "Primary Surface Water Management System" will generally include those features of the Surface Water Management System which benefit the Properties as a whole rather than any single Unit or Neighborhood, as determined by the Declarant and may be added to or deleted from by the Declarant at any time prior to the termination of the Class "B" Membership; and

(b) The "Secondary Surface Water Management System" will generally include that portion of the Surface Water Management System not designated by Declarant as Primary Surface Water Management System and may benefit a portion of the Properties, a Unit or Neighborhood, as determined by the Declarant and may be added to or deleted from by the Declarant at any time prior to the termination of the Class "B" Membership.

2.39. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be 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 be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

2.40. "Use Restrictions": The initial Use Restrictions set forth on Exhibit "C" as they may be supplemented, modified and repealed pursuant to Article III.

2.41. "Voting Group": One or more Neighborhood Representatives who vote on a common slate for election of directors to the Board, as more particularly described in Section 6.4(c) or, if the context so indicates, the group of Members whose Units are represented thereby.

2.42 "Participating Builder": The term "Participating Builder" refers to a member of the "Participating Builder Program." Only "Participating Builders" may construct homes in Mediterranean. A "Participating Builder" is not necessarily a "Builder" as defined in Section 2.6. All Participating Builders shall be selected by the Declarant, in the Declarant's sole and absolute discretion. Declarant shall have the right to charge and collect fees to Participating Builders as consideration for allowing Participating Builders to take part in the Participating Builder Program. Notwithstanding, Tract C, Mediterra Phase Three East Unit One, Plat Book 40, Page 59, ("Parcel 132"), is exempt from the requirements of this paragraph and the requirements listed herein may be, at Long Bay Partners, LLC's, or its successors and assigns (hereinafter referred to as "LBP") sole option, be imposed by LBP if Parcel 132 is conveyed by LBP, or may continue to be exempted from the requirements of this paragraph.

2.43 "Participating Builder Program": The "Participating Builder Program" is a Program designed to protect the quality, theme and character of Mediterra by compliance with the Design Review Guidelines.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, architecture, and maintenance and repair within Mediterra are what give the community its identity and make it a place that people want to call "home." Yet those standards must be more than a static recitation of "thou shalt nots." This Declaration establishes procedures for enacting Use Restrictions as a dynamic process which allows the community standards to evolve as the community changes and grows and as technology and public perception change.

Article III Use and Conduct

3.1. Framework for Regulation.

Declarant has established a general plan of development for the Properties as a planned community in order to enhance all Owners' quality of life and collective interests and the aesthetics and environment within Mediterra and the surrounding communities. To accomplish this objective, the Properties are subject to the Design Review Guidelines enacted in accordance with Article IV, other Rules and Regulations adopted by the Board, and individual restrictions on conduct and use of or actions upon the Properties promulgated pursuant to this Article which establish affirmative and negative covenants, easements, and restrictions on Properties. With respect to the Use Restrictions promulgated pursuant to this Article, the Board and the Members shall have the ability, in the manner set forth below, to respond to changes in circumstances and needs within Mediterra.

All provisions of the Governing Documents and supplements shall apply to all Persons on the Properties. The lessee and all occupants of leased Units shall be bound by the terms of the Governing Documents and supplements, whether or not the lease so provides. All Owners shall be responsible for inserting a provision in any lease informing the lessee and all occupants of the Unit of all applicable Use Restrictions and Rules and Regulations affecting the Unit and the Common Area.

3.2. Authority to Enact Use Restrictions.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. The Board shall send notice by mail to all Owners or broadcast or publish via a medium readily available throughout the Properties concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Neighborhood Representatives shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Neighborhood Representatives to consider disapproval except upon receipt of a petition of the Neighborhood Representatives as required for special meetings in the By-Laws. Upon such petition of the Neighborhood Representatives prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, the Neighborhood Representatives, at an Association meeting duly called for such purpose, may adopt Use Restrictions which modify, cancel, limit, create exceptions to, or expand the Use Restrictions by a vote of Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall publish, broadcast, or send a copy of the new Use Restriction or explanation of any changes to the Use Restrictions to each Owner, specifying the effective date. The Association shall provide, without cost, a copy of the Use Restrictions then in effect to any requesting Member or Mortgagee.

(d) Nothing in this Article shall authorize the Board or the Neighborhood Representatives to modify, repeal or expand the Design Review Guidelines. In the event of a conflict between the Design Review Guidelines and the Use Restrictions, the Design Review Guidelines shall control.

(e) Procedures required under this Section shall not apply to enactment and enforcement of Rules and Regulations unless the Board chooses in its discretion to submit to such procedures. Examples of such Rules and Regulations shall include, but not be limited to,

administrative procedures, traffic regulations, and parking rules on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such Rules and Regulations.

(f) Notwithstanding any of the foregoing, no change to the Use Restrictions shall be effective if same prevents or unreasonably interferes with the development, construction, marketing or sale of Units by Declarant or a Builder or by LBP as to Parcel 132, without the written consent of Declarant and/or such Builder and/or LBP as to Parcel 132.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Use Restrictions as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Use Restrictions may be obtained from the Association.

3.4. Protection of Owners and Others.

No Use Restriction shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the Initial Use restrictions set forth on Exhibit "C":

(a) Equal Treatment: Similarly situated Owners shall be treated similarly; provided, the Use Restrictions may vary by Neighborhood.

(b) Displays. The rights of Owners to display inside structures on their Units religious and holiday symbols, and decorations of the kinds normally displayed in dwellings located in residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions which respect to displays visible from outside the dwellings.

(c) Household Composition. No Use Restrictions shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) Activities Within Dwellings. No Use Restriction shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) Alienation. No Use Restriction shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 30 days and may limit the number of leases an Owner may enter into within a 12 month period. The Association may require that Owners use lease forms approved by the Association and may impose administrative fees, transfer fees, and reserve assessments on the lease or transfer of any Unit in such amount as may be reasonably determined by the Board and which may be graduated in rates based on length of the lease, type of occupancy, or other factors deemed appropriate by the Board. Additionally, the Association may require the prior payment of a lease deposit to ensure compliance with the Association's Use Restrictions and to constitute liquidated damages in the event of non-compliance or damage to the Common Area. Any Owner which leases his or her Unit shall be presumed to have delegated his or her easements and rights to use the Common Area to his or her tenant or occupant, and such Owner's easements and rights to use shall be suspended during the term of the lease. The use rights and privileges delegated to a guest or tenant may be limited to a greater extent than the use rights and privileges of an Owner occupying his or her Unit. Such limitations may be enacted by the sole discretion of the Board and may include, without limitation, imposing additional or higher fees and periods of use being reserved or restricted.

(f) Abridging Existing Rights. If any Use Restriction would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such Use Restriction, or to vacate a Unit in which they resided prior to the effective date of such Use Restriction, and such property was maintained or such occupancy was in compliance with this Declaration and all Use Restrictions previously in force, such Use Restriction shall not apply to any such Owners without their written consent.

(g) Reasonable Rights to Develop. No Use Restriction or action by the Association or Board shall unreasonably impede the Declarant's right to develop the Properties.

(h) Interference With Private Amenities. No rule or action by the Association shall interfere with the use or operation of any Private Amenity.

The limitations in subsections (a) through (g) of this Section 3.4 shall only limit the promulgation of Use Restrictions under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XIX.

Article IV Architecture and Landscaping

4.1. General.

No structure or thing shall be placed, erected, installed or posted on the Properties and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Properties, except in compliance with this Article and the Design Review Guidelines. No signage shall be placed, erected, installed, or displayed on any portion of the Properties except for signage installed by the Declarant or a Builder unless such signage has been approved in writing by the Reviewer, as described in Section 4.2 below. Provided, however, no “for sale” signs, general real estate signs, “open house” signs, “available” signs or any similar

signs designed to offer property or dwelling units for sale or designed to solicit buyers of property or dwelling units, are permitted on any of the Properties. Provided further, Model Homes signs, approved pursuant to the Design Review Guidelines, are permitted.

No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a Florida licensed architect unless otherwise approved by the Declarant or its designee in its sole discretion.

This Article shall not apply to the activities of the Declarant, nor to activities of the Association during the Class "B" membership.

4.2. Architectural Review.

(a) By Declarant. Until 100% of the property described on Exhibit "A" and "B" has been developed and conveyed to Owners other than Builders, the Declarant shall have the exclusive right to exercise design review under this Article. The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed by Declarant and recorded in the Public Records.

The Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Each Owner and Builder, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties preserve its reputation and do not impair the Declarant's ability to market its property. Therefore, each Owner and Builder covenants and agrees that no activity within the scope of this Article ("Work") shall be commenced on such Owner's Unit unless and until the Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant and its designee shall owe no duty to any other Person.

The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) an design review committee appointed by the Association's Board of Directors (the "DRC"); or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction

over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Declarant.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of the Declarant's rights under this Article; the Association, acting through the DRC, shall assume jurisdiction over architectural matters hereunder. The DRC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRC or the Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees: Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.3. Guidelines and Procedures.

(a) Design Review Guidelines. The Declarant has prepared the initial Design Review Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions which may vary from Neighborhood to Neighborhood. The Design Review Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications hereunder. The Design Review Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Review Guidelines does not guarantee approval of any application.

The Declarant shall have sole and full authority to amend the Design Review Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the DRC, unless the Declarant also delegates the power to amend to the DRC. Upon termination or delegation of the Declarant's right to amend, the DRC shall have the authority to amend the Design Review Guidelines with the consent of the Board. Any amendments to the Design Review Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the

scope of amendments to the Design Review Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Review Guidelines less restrictive.

The Reviewer shall make the Design Review Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties. In the Declarant's discretion, such Design Review Guidelines may be recorded in the Public Records, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Review Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this Article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Review Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Review Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters arc purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall, within 15 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within 15 days, approval shall be deemed to have been given, subject to the Declarant's right to veto approval by the DRC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Review Guidelines unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U.S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within 18 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to

do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Review Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer 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, but only in accordance with duly adopted Rules and Regulations. 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 this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages, nor loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the DRC and all persons

comprising the DRC shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that on such Owner's Unit there are no known violations of this Article or the Design Review Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

4.8 Participating Builder Program. Homes in Mediterra may be constructed only by a member of the Mediterra Participating Builder Program, i.e. a Participating Builder. The Participating Builder Program is designed to protect the quality, theme and character of Mediterra by compliance with the Design Review Guidelines ("Guidelines"). Owners must submit the name of their proposed contractor to the Reviewer not more than ninety (90) days, and not less than thirty (30) days prior to the start of construction of the home. Only Participating Builders will be approved by the Reviewer. The Participating Builder Program shall be administered by the Declarant, its successor or assignee, until 100% of the property described on Exhibit "A" and "B, and any additional property added under Section 9.1, if applicable, has been developed and conveyed to Owners other than Builders. The Declarant may designate the right to administer the Participating Builder Program, including the right to collect and retain any fees associated therewith. Notwithstanding, Parcel 132 is exempt from the requirements of this paragraph and the requirements listed herein may be, at LBP's sole option, be imposed by LBP if Parcel 132 is conveyed by LBP, or may continue to be exempted from the requirements of this paragraph.

Article V Maintenance and Repair

5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community- Wide Standard, and all applicable covenants unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

Each Owner shall also be responsible for maintaining and irrigating the landscaping on the Common Area adjacent to the Unit to the edge of any (a) pavement of the adjacent paved roadway, (b) water's edge, or (c) Conservation Area; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV. Owners are prohibited from trimming, pruning, or removing trees, shrubs or similar vegetation on any portion of the Private Amenities. Any Owner desiring to trim, prune, or alter the vegetation on the Private Amenities shall make a written request to the Association to request appropriate action of the

Private Amenity owner, who shall have sole and final decision making authority on what, if any, vegetation shall he removed or altered.

5.2. Maintenance of Neighborhood Common Area.

A Neighborhood Association shall maintain its Neighborhood Common Area and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

Any Neighborhood Association shall also be responsible for maintaining and irrigating the landscaping on the Common Area adjacent to the Neighborhood Association to the edge of any pavement, water's edge, or Conservation Area; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article IV. The Neighborhood Association shall be responsible for maintaining any portion of the Surface Water Management System located within such Neighborhood which is designated by the Declarant as a Secondary Surface Water Management System.

Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessment, the costs of operating, maintaining and insuring certain portions of the Areas of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, gates, landscaping, entry features, lighting, right-of-way and green space between the Neighborhood and adjacent public roads, private streets 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; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, 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. 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. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary, to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Neighborhood

Association in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to, do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as arc approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for Neighborhood Common Area in the same manner as if the Neighborhood Association were an Owner and the Neighborhood Common Area were a Unit. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependent upon the support and participation of every Owner in its governance and administration. The Declaration establishes the Mediterra Community Association, Inc. as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the owners of property in the community.

Article VI The Association and its Members

6.1. Function of Association

The Association shall be the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also shall be responsible for enforcement of the Governing Documents, subject to the delegation of certain obligations and enforcement responsibilities to Neighborhood Association in certain Neighborhoods. Where established, Neighborhood Associations shall be primarily responsible for enforcement of the Governing Documents and any governing documents of the Neighborhood Association within its jurisdiction. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Florida.

6.2. Membership.

Every Owner shall be a Member of the Association and may also be a member of a Neighborhood Association. There shall be only one membership in the Association per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in

Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. All Class "A" votes shall be cast as provided in Section 6.3(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. Until the Class "B" membership expires or is terminated, the Class "B" Member may appoint a majority of the members of the Board of Directors as specified in the By-Laws. Additional rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.

The Class "B" member shall terminate upon the earlier of:

(i) three months after 90% of the maximum number of Units which may be created and developed as part of the Properties under the resolutions of the Lee County Board of County Commissioners and the Collier County Board of County Commissioners, as amended from time to time, have been conveyed to Class "A" Members. Currently, the maximum number of Units is 950, however, the maximum number of Units may increase if the zoned density for the property described on Exhibits "A" and "B" approved by Lee and Collier County increases or if additional property other than the property described on Exhibits "A" and "B" is subjected to this Declaration as provided in Article IX; or

(ii) when, in its discretion, the Declarant so determines and declares in a written instrument recorded in the Public Records.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Unit which it owns.

(c) Exercise of Voting Rights. Except as otherwise specified in this Declaration or the By-Laws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Neighborhood Representative representing the Neighborhood, as provided in Section 6.4(b). The Neighborhood Representative may cast all such votes as it, in its discretion, deems appropriate.

In any situation where a Member is entitled personally to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person attempts to exercise it.

6.4. Neighborhoods. Neighborhood Representatives and Voting Groups.

(a) Neighborhoods. Every Unit shall be a part of a Neighborhood. Exhibit "A" to this Declaration, and each Supplemental Declaration submitting additional property to this Declaration shall initially assign the property submitted thereby to a specific Neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. So long as it has the right to subject additional property to this Declaration pursuant to Section 9.1, the Declarant may unilaterally amend this Declaration or any Supplemental Declaration to redesignate Neighborhood boundaries for any purpose.

Any Neighborhood, acting either through a Neighborhood Committee elected as provided in the By-Laws or through a Neighborhood Association, may request that the Association provide a higher level of service than that which the Association generally provides to all Neighborhoods, or may request that the Association provide special services for the benefit of Units in such Neighborhood. Upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of the Units within the Neighborhood, the Association may, but shall not be obligated to, provide such services to the Neighborhoods (e.g., landscaping, maintenance, administrative services) under such terms and conditions as the Association and such Neighborhood may agree from time to time. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Neighborhoods receiving the same service), shall be assessed as a Neighborhood Assessment.

(b) Neighborhood Representatives. The Class "A" Members in each Neighborhood shall be represented by a Neighborhood Representative who shall be responsible for casting all votes attributable to Units owned by Class "A" Members in the Neighborhood on all Association matters requiring a membership vote, except as otherwise specified in this Declaration or the By- Laws. The senior elected officer of each Neighborhood Association, or other duly elected representative of a Neighborhood elected as provided in the By-Laws, shall serve as the Neighborhood Representative. The next highest officer within the Neighborhood, or such other person as determined pursuant to the By-laws, shall serve as the alternate. The Neighborhood Representative shall cast all the votes of the Class "A" Members in his or her Neighborhood as he or she deems appropriate in his or her discretion.

The Board shall call for the designation of a Neighborhood Representative for each Neighborhood not later than the date upon which the Owners, other than Declarant or Builders, hold record title to 75% of the Units in such Neighborhood. Until such time as Neighborhood Representatives are designated for the Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents. Each Class "A" Member owning a Unit

within the Neighborhood shall be entitled to cast one equal vote per Unit owned in Neighborhood elections, and the presence, in person or by proxy, of Class "A" Members representing at least 30% of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Neighborhood Representatives and alternates shall serve a term of one year and until their successors are elected. Any Neighborhood Representative or alternate may be removed, with or without cause, upon the vote or written petition of a majority of the total number of Class "A" votes in the Neighborhood. Only Members in Good Standing are eligible to serve as Neighborhood Representatives or alternates.

(c) Voting Groups. Anytime prior to the expiration or termination of the Class "B" membership, Declarant may designate or redesignate Voting Groups consisting of one or more Neighborhoods for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid allowing Neighborhood Representatives representing similar Neighborhoods to elect the entire Board, due to the number of Units in such Neighborhoods, excluding representation of others. The number of Voting Groups within the Properties shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. The Neighborhood Representatives representing the Neighborhoods within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of directors specified in the By-Laws.

Voting Groups shall be established, if at all, by filing with the Association and recording in the Public Records, a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the expiration of the Class "B" membership. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been recorded, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) The Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described on Exhibits "A" or "B". The conveyances of real and personal property may include portions of the Storm Water Management and Conservation Areas. Common Area conveyed to the Association may be subject to governmental obligations and other encumbrances. The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request by Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no

consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

7.2. Maintenance of Area of Common Responsibility.

(a) The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which may include, but need not be limited to:

(i) all portions of the Common Area and all structures situated upon the Common Area;

(ii) landscaping and buffers within public rights-of-way within or abutting the Properties to the extent such obligations are not delegated to a Community Development District(s) or another entity pursuant to a Covenant to Share Costs;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or a Covenant to Share Costs;

(iv) such portions of the Conservation Areas, Surface Water Management System, signage, landscaping, or other areas assigned to or transferred by agreement between the Association and a Community Development District(s); and

(v) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such item as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless at least 75% of the Class "A" votes in the Association and the Declarant, so long as Declarant owns any property described on Exhibits "A" or "B," regardless of whether such property is subjected to this Declaration, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the

Declarant as long as the Declarant owns any property described on Exhibits "A" or "B" of this Declaration.

(c) The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, other recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed to the Neighborhood(s) such to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3. Insurance.

(a) Association Insurance. Duty and Authority to Obtain. The Board of Directors shall use its best efforts to obtain and keep in force any insurance coverage which it is required to carry by law, and may obtain and keep in force any additional insurance coverage as it deems necessary. The name of the insured shall be the Association. To the extent permitted by law, the Association may self-insure.

(b) Required Coverage: The Association shall use its best efforts to obtain and maintain adequate insurance covering all of the insurable property improvements on the common area and within the area of common responsibility to the extent that the Association has assumed responsibility for repair or replacement in the event of a casualty, in amounts determined annually by the Board of Directors, including but not limited to:

(i) Property. Loss or damage by fire, extended coverage including windstorm where available, vandalism and malicious mischief, and other hazards as deemed advisable and in its best business judgment, by the Board of Directors.

(ii) General Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors.

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

(iv) Workers' Compensation. The Association shall maintain Workers' Compensation insurance and employer’s liability insurance to the extent required by law.

(v) Directors and Officers Liability coverage in such limits and coverage as may be determined by the Board of Directors.

(vi) Crime insurance, including fidelity insurance covering all persons responsible for handling association funds, including all non-compensated persons.

(vii) Such additional insurance as the Board, in its best business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Exclusive Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Exclusive Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(c) Policy Requirements. The policies may contain a reasonable deductible as determined by the Board of Directors. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall be written with a company authorized to do business in the State of Florida and shall:

(i) be written in the name of the Association;

(ii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iii) endeavor to include an agreed amount endorsement, if the policy contains a co-insurance clause;

(iv) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(v) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

(vi) include an endorsement precluding cancellation, invalidation, suspension or non-renewal by the insurer on account of any one or more individual Owners, or on Account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and an allowance of a reasonable time to cure.

7.4. Compliance and Enforcement.

Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Document (including, without limitation, the Design Review Guidelines, Use Restrictions, and Rules and Regulations) after

notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator, provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(b) suspending any Person's right to use any portion of the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(c) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(d) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(e) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition. Upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the structure or improvement that is in violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass. The cost of such removal and restoration may be assessed against the Unit, and the Owner of such Unit, as a Specific Assessment;

(f) precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Review Guidelines from continuing or performing any further activities in the Properties, without incurring liability to any Person therefore; and

(g) levying specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

(h) Taking the following enforcement sanctions to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation including, but not limited to, removing dangerous pets and towing of vehicles that are in violation of Use Restrictions or Rules and Regulations with regard to parking, and

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or

her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Neighborhood Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to entering a dwelling.

All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. The Association shall also have the authority, but not the obligation, to enforce any provision contained in the governing documents of any Neighborhood Association. The Neighborhood Association shall have the primary responsibility to enforce its governing documents, and the Association's right hereunder shall be exercised only after the Neighborhood Association has failed or refused to fulfill its obligations. In any action to enforce the Governing Documents or the governing documents of a Neighborhood Association, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) that although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources, or (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

The Association, by contract or other agreement, may enforce applicable city and county ordinances, if applicable, and permit Lee County and Collier County to enforce ordinances within the Properties for the benefit of the Association and its Members.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Indemnification of Officers, Directors and Others.

The Association shall indemnify every officer, director, and committee member against

all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding including settlement of any suit or 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, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Florida law.

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 or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present 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.

Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.25 of the By-Laws.

In addition to any other rights:

(i) Volunteer officers or directors of the Association shall not he personally liable in excess of the coverage of insurance specified in subparagraph (D), below, to any Person who suffers injury, including but not limited to, bodily injury, emotional distress, wrongful death, or property damage or loss as a result of his or her tortious act or omission as long as the following requirements are met by the volunteer officer, director and Association:

(A) the director's or officer's act or omission was performed within the scope of their duties;

(B) the director's or officer's act or omission was performed in good faith;

(C) the director's or officer's act or omission was not willful, wanton, or grossly negligent; and

(D) the Association maintained and had in effect, at the time the act or omission of the director or officer occurred and at the time a claim was made, one or more insurance policies which included coverage for general liability of the Association and individual liability of officers and directors for negligent acts or omissions in that capacity, both in the amount of at least $1,000,000,00.

(ii) The payment for actual expenses incurred in the execution of his or her

duties shall not affect the status of an officer or director as a volunteer.

7.7. Community Activities.

The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warrant is made that any systems or measures, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board and committees, and the Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Powers of the Association Relating to Neighborhoods.

The Association shall have the power, but not the obligation, to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy a Neighborhood Assessment or Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

7.9. Provision of Services.

The Association shall be authorized but not obligated to enter into, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association and their guests, lessees, and invitees and to charge use and service fees for such services and facilities. By way of example, some services and facilities which might be offered include landscape maintenance, pest control service, cable television and communication service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The cost of such services and facilities may be included as a Common Expense if offered in bulk to all members or as a Neighborhood Assessment or Specific Assessment if offered to Neighborhoods or individuals, as appropriate.

7.10. Cooperation with Community Development District(s).

The Association shall have the power, and is hereby authorized, to contract with and to cooperate with any Community Development District(s) in order to ensure that their respective responsibilities are discharged. The Association is authorized to enter into agreements with any Community Development District(s) to construct, maintain, improve, replace, insure and perform other responsibilities as may be set forth in such agreement(s) with respect to signage, landscaping, or other functions which may be performed, in whole or in part, by such Community Development District(s). The expense of such activities may be allocated pursuant to a Covenant to Share Costs, or as a Common Expense, as set forth in the agreement with the Community Development District(s). The Association is further authorized to act on behalf of its Members to ensure that the level of services provided by any Community Development District, if created, is consistent with the Community-Wide Standard. Each Owner or Builder, by owning or accepting a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and consent to the creation of one or more Community Development District(s) and to the execution of a separate document so consenting to its creation if requested to do so by the Declarant.

7.11. Relationships With Other Properties.

The Association may enter into contractual agreements or a Covenant to Share Costs with any neighboring property, Community Development District(s), or Private Amenity to contribute funds for and maintain, among other things, shared or mutually beneficial property or services and/or provide a higher level of maintenance within Mediterra.

7.12. Relations with Other Entities.

The Association may enter into agreements with tax exempt organizations and other entities for the benefit of the Property and its residents, as well as the larger community surrounding the Properties. Funding for such activities may be supported through the transfer fees collected in accordance with Article VIII. The purposes for such agreements may include, without limitation:

(a) preservation and maintenance of natural areas, wildlife preserves, or similar Conservation Areas and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation, and preservation of the natural environment within the Properties or the surrounding community;

(b) programs and activities which serve to promote a sense of community, such as recreational leagues, cultural programs, educational programs, festivals, holiday celebrations and activities, a community computer network, and recycling programs; and

(c) social services, community outreach programs, and other charitable causes.

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.3 and payments to be made or to be received pursuant to any Covenant to Share Costs. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years or sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.6.

The Association is hereby authorized to levy Base Assessments against all Units subject to assessment under Section 8.6 to fund the Common Expenses. The Board, in its discretion, may establish the rate of assessment equally against all Units within Mediterra, or the Board may establish different rates based on the type of Unit within a Neighborhood (e.g., estate home, single family detached, patio home, condominium unit, etc.), provided that such rate shall be equal for all Neighborhoods of similar product type. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

The Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, in addition to any amounts paid by Declarant under Section 8.7(b), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget adopted by the Board shall automatically become effective. After the expiration of the Class "B" membership, the budget adopted by the Board shall automatically become effective unless disapproved at a meeting by Neighborhood Representatives representing at least 75% of the total Class "A" votes in the Association. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Neighborhood Representatives as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2. Budgeting and Allocating Neighborhood Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses, if any, for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year as authorized by this Declaration or any Supplemental Declaration applicable to such Neighborhood. The budget of Neighborhood Expenses shall also include any costs for additional services or a higher level of services which the Association and the Neighborhood have agreed upon pursuant to Section 6.4(a). The budget shall also reflect the sources and estimated amounts of funds to cover such expenses.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under Section 8.6 to fund Neighborhood Expenses incurred by the Association to perform an activity or function which should have, pursuant to the Governing Documents or the governing documents of the Neighborhood Association, been performed by the Neighborhood Association.

The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner in the Neighborhood at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved at a meeting of the Neighborhood by Owners of a majority of the Units in the Neighborhood to which the Neighborhood Assessment applies. However, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least 10% of the Units in such Neighborhood. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the Owners of Units in the affected Neighborhood to disapprove the revised budget as set forth above.

8.3. Budgeting for Reserves.

The Board shall periodically prepare a reserve budget for the Area of Common Responsibility. The reserve budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. Funding for reserves shall be funded primarily through the capitalization assessments specified in Section 8.10; provided, however, the Board may, but shall not be obligated to, include a capital contribution in the Common Expense budget adopted pursuant to Section 8.1 to fund reserves.

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special

Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, after the termination of the Class "B" membership any Special Assessment shall require the affirmative vote or written consent of Neighborhood Representatives (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments 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.

8.5. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association which might include, but not be limited to, the items identified in Section 7.9. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Units in, or the Neighborhood Representative representing, the Neighborhood and an opportunity for such Owners or Neighborhood Representative to be heard before levying any such assessment.

8.6. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay Base Assessments, Special Assessments, and Neighborhood Assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, assessments shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

The Association may, but shall not be obligated to, provide the Association's budgets and notices of assessment for the Base Assessments, Special Assessments, and any Neighborhood Assessments of all Owners within a Neighborhood to its governing Neighborhood Association. If so directed by the Association, the Neighborhood Association shall be responsible for billing, collecting, and remitting all amounts due from all Owners in such Neighborhood to the Association in accordance with such procedures as may be established by the Board. Notwithstanding the Association's delegation of billing and collection to the Neighborhood Association, in the event of delinquency, the Association shall reserve all rights and powers of collection as set forth in this Article.

8.7. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Florida law, late charges as determined by Board resolution, costs, lien fees, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments, if any, on the same basis as during the last year for which an assessment was made, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment which may be relied upon by

any Person other than the Owner of the Unit requesting such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" membership, Declarant may satisfy its obligation for assessments on Units which it owns and are subject to assessment or for which it is contractually obligated to fund a Builder's assessment obligation either by: (i) paying such assessments in the same manner as any other Owner, or (ii) by paying the difference between (A) the amount of assessments levied on all other Units subject to assessment plus other income of the Association and (B) the amount of actual expenditures by the Association (excluding any amounts in the budget of Common Expenses for capital and contingency reserves) during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of the Declarant's election, the Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except the liens of all taxes, bonds, assessments, and other levies which by law would be superior. As to any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) the lien is effective from and after recording of a claim of lien in the Public Records. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the holder of a first mortgage, or its successor or assignee as a subsequent holder of the first mortgage, who acquires title to a Unit by foreclosure or by deed in lieu of foreclosure, is liable for unpaid assessments that became due before the mortgagee’s acquisition of title to the Unit, subject to the limitations as to amount and requirements for joinder of the Association contained in F.S. 720.3085 (2) (c) , as the same may be amended or replaced from time to time. The balance of any unpaid assessments resulting from the application of F.S. section 720.3085(2)(c) shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

8.9. Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 7.2;

(b) Any property dedicated to and accepted by any governmental authority or public utility; and

(c) Neighborhood Common Area.

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.10. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than a Builder or Declarant and upon each subsequent transfer or conveyance of any type whatsoever, a contribution shall be made by or on behalf of the purchaser to the reserves of the Association and, at the discretion of the Board of Directors, to the reserves of the Neighborhood which serves the conveyed or transferred parcel, in amounts established by resolution of the Board of Directors (the "Capitalization Assessment"). This amount shall be an assessment in addition to, but not in lieu of, the annual Base Assessment and shall not be considered an advance payment of any other assessment. This amount shall be paid to the Association by separate check upon the closing or other settlement of the transfer or conveyance of the Unit. Any unpaid Capitalization Assessment shall be secured by the Association's lien in the manner provided for all other Association assessments.

The Board of Directors shall have the authority to utilize a portion of the Capitalization Assessment to supplement the capital reserves of any Neighborhood or Neighborhood Association which serves the Unit conveyed or transferred.

Notwithstanding the foregoing, a capitalization assessment shall not be levied in the following instances:

(a) Conveyance of a Unit by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the capitalization assessment;

(b) Conveyance of a Unit by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the capitalization assessment pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the capitalization assessment; and

(c) Conveyance of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit.

8.11. Transfer Fees.

(a) Authority. In addition to the assessment obligations set forth in this Article, the Association is hereby authorized to establish and collect a transfer fee upon each transfer of title to a Unit, unless such transfer is exempt as provided in Section 8.11(d). The fee shall be payable to the Association, at the closing of the transfer, by the Person taking title to the Unit being transferred. Such transfer fee shall constitute an assessment against the Unit and shall be secured by the Association's lien as set forth in Section 8.8.

(b) Fee Limit. The Board shall have the sole discretion to determine the amount and method of determining any such transfer fee, which may, but is not required to, be determined based upon a sliding scale which varies in accordance with the "Gross Selling Price" of the property or another factor as determined by the Board; provided, however, any such transfer fee shall be equal to an amount not greater than one percent of the Gross Selling Price of the property. The transfer fee shall be initially set by the Board at one-quarter of one percent of the Gross Selling Price of the property. For the purpose of determining the amount of the transfer fee, the Gross Selling Price shall be the total cost to the purchaser of the property, excluding taxes and title transfer fees as shown by the amount of tax imposed on transfers of real property by the State of Florida, Lee County and Collier County.

(c) Purpose. All transfer fees which the Association collects shall be deposited in a segregated account to be used for such proposes as the Board deems beneficial to the general good and welfare of the Mediterra master planned community or to the Neighborhood in which the transferred Unit is located. By way of example and not limitation, such transfer fees may be used to assist the Association or one or more tax-exempt entities in funding:

(i) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment at the Mediterra master planned community and Lee County and Collier County, Florida;

(ii) programs and activities which serve to promote a sense of community within Lee County and Collier County, Florida, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(iii) social services, community outreach programs, and other charitable causes.

(iv) Association, Neighborhood or Neighborhood Association reserves.

(d) Exempt Transfers. Notwithstanding the above, no transfer fee shall be levied upon transfer of title to a Unit:

(i) by Declarant or Builder to the initial Owner;

(ii) by a Builder who held title solely for purposes of development and resale;

(iii) by an Owner to a trust, partnership, corporation, or other entity so long as such entity is and remains wholly- owned by the Owner or by such Owner and the Owner's spouse and/or children; provided, however, if the immediately preceding transfer of the Unit was exempted from payment of the transfer fee pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the transfer fee;

(iv) by an Owner or such Owner's estate to the Owner's spouse and/or children; provided, however, if the immediately preceding conveyance of the Unit was exempted from payment of the transfer fee pursuant to this subsection, then this subsection shall not apply and the Unit shall be subject to the transfer fee; and

(v) of an undivided interest in a Unit by the Owner thereof to any then existing co-Owner(s) of such Unit; or

(vi) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage.

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of Mediterra and to accommodate changes in the Master Plan that inevitably occur as a community this size grows and matures.

Article IX Expansion of the Community

9.1. Expansion by the Declarant.

(a) Expansion by Recording Declaration in Lee County. Declarant shall initially record this Declaration in the Public Records of Collier County, Florida. As Mediterra is developed, Declarant may submit real property located within Lee County, Florida to this Declaration. In the event Declarant elects to subject real property in Lee County, Florida to this Declaration, Declarant shall record a copy of the then current Declaration, and all amendments thereto, in the Public Records of Lee County, Florida with a description of the real property to be subjected to the provisions of this Declaration. Thereafter, Declarant may subject additional real property in Lee County, Florida by Supplemental Declaration as provided in Section 9.1(b) below. Recording the Declaration in the Public Records of Lee County pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

(b) Expansion by Supplemental Declaration. Declarant may from time to time subject all or any portion of the property described in Exhibit "B" to the provisions of this Declaration by

recording a Supplemental Declaration in the Public Records describing the additional property to be subjected to the Declaration. In addition to the property described in Exhibit "B," Declarant may also from time to time subject other contiguous and noncontiguous property to this Declaration by recording a Supplemental Declaration in the Public Records describing the additional property to be subjected to the Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

The Declarant's right to expand the community pursuant to this Section shall expire when all property described on Exhibit "B" has been subjected to this Declaration or 40 years after the recording of this Declaration in the Public Records, whichever is earlier. Until then, the Declarant may transfer or assign this right to any Person who is the Builder of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

Nothing in this Declaration shall be construed to require the Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

9.2. Expansion by the Association.

The Association may also subject additional property to the provisions of this Declaration by recording a Supplemental Declaration in the Public Records describing the additional property. Any such Supplemental Declaration shall require the affirmative vote of Neighborhood Representatives representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, the consent of the Declarant shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

The Declarant may subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to provide services and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration.

Any Supplemental Declaration recorded pursuant to this Article shall be effective upon recording in the Public Records unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X Additional Rights Reserved to Declarant

10.1 Withdrawal of Property [*Deleted by Amendment12/16/09*]

10.2. Marketing and Sales Activities.

The Declarant and Builders authorized by Declarant and LBP as to Parcel 132 may without fee or charge maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of the Declarant or LBP as to Parcel 132, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Such activities may include, without limitation, holding special events and promotional activities on portions at the Common Area. The Declarant and authorized Builders and LBP as to Parcel 132 shall have easements for access to and use of the Common Area for such purposes. The marketing and sales activities of the Declarant and/or authorized Builders and LBP as to Parcel 132 shall not unreasonably prohibit use of the Common Areas for their intended purposes. Upon cessation of all marketing and sales activities by the Declarant and/or authorized Builders and/or LBP as to Parcel 132, any repairs necessary to restore the Common Areas to the condition and function contemplated under the Governing Documents, with the exception of general and reasonable wear and weathering, shall be made by the Declarant and/or authorized Builders and/or LBP as to Parcel 132, as applicable. It is understood that the Declarant and its authorized Builders, successors and assigns, and LBP as to Parcel 132, shall not be subject to any gate access restrictions that would limit the rights set forth in this Section. Further, any amendments to the policy regarding gate access must be approved in writing by the Declarant, or its assigns and by LBP as to Parcel 132.

10.3. Right to Develop.

The Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion. In making any improvements as aforesaid, Declarant, and any other aforesaid party and LBP as to Parcel 132 shall not change the use to which the affected Common Areas were being made prior to making such improvements.

Every Person that acquires any interest in the Properties acknowledges that Mediterra is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Master Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4. Right to Approve Additional Covenants.

No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument (i) affecting any portion of the Properties owned by Builders or Declarant or (ii) which, in the sole judgment of Declarant would impair rights of the Declarant or Builders arising from the Declaration and pertaining to the development, construction and sale of the properties they own without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. Notwithstanding the forgoing, an individual Builder's rights under this Article, if any, shall terminate when the individual Builder no longer owns any Units in the community and Declarant's rights under this Article, if any, shall terminate when Declarant no longer owns any Units in Parcel 132.

10.5. Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions, Design Review Guidelines, or Rules and Regulations shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

10.6. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.7. Exclusive Rights to Use Name of Development.

No Person shall use the name "Mediterra," or any derivative of such name in any printed or promotional material without the Declarant's prior written consent. However, Owners and Builders may use such names in printed or promotional matter where such term is used solely to specify that particular property is located within Mediterra, and the Association shall be entitled to use the words "Mediterra" in its name.

10.8. Changes in Surface Water Management System.

So long as Declarant owns land within the Properties or which may be annexed to become a part of the Properties, Declarant shall have the right and the power, but neither the duty nor the obligation to amend the designation of the Primary Surface Water Management System and

Secondary Surface Water Management System, to add or delete features of the Surface Water Management System and to modify any permits issued for the Surface Water Management System as it deems necessary to reflect changes in development plans, changed conditions, governmental requirements or for any other reason it deems appropriate.

The Declarant may transfer all or a portion of the Surface Water Management System to or from one or more Community Development Districts upon written agreement of such districts and acceptance of such districts by the South Florida Water Management District. Additionally, Declarant may transfer all or a portion of the Surface Water Management System to one or more Association Entities and allocate maintenance responsibilities and financial obligations of the Association and other Persons through a covenant to share costs.

10.9. Right to Transfer Developmental Density.

The Declarant reserves the unilateral right to amend Exhibit "B" to this Declaration, for so long as Declarant owns any property described on Exhibits "A" or "B," for the purpose of transferring any of the maximum number of Units which may be created and developed on the property described on Exhibits "A" and "B" to any other area within Mediterra. In the event that additional property described on Exhibit "B" which is not currently zoned for residential use is rezoned for residential use, the maximum number of developable Units shall automatically increase by the number of residential Units permitted on such property.

10.10 Additional Rights Reserved To Declarant. [*Deleted by Amendment 04/22/2010*]

10.11 Termination of Rights.

The rights contained in this Article shall ~~not~~ terminate on the earlier of (a) 40 years from the date this Declaration is recorded in the Public Records, or (b) the date when neither Declarant nor any Builders nor LBP as to Parcel 132 own any Units in the Community. Notwithstanding the foregoing, an individual Builder's rights under this Article, if any, shall terminate when the individual Builder no longer owns any Units in the Community and LBP's (which includes its successors and assigns) rights under this Article, if any, shall terminate when LBP no longer owns any Units in Parcel 132. Turnover of the Association to the Members shall not be deemed to terminate or modify any of the rights contained in this Article unless such termination or modification is expressly stated in a written instrument recorded in the Public Records by the Declarant or its assignee or LBP as to Parcel 132.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Declarant, the Association, and others within or adjacent to the community.

Article XI Easements

11.1. Easements in Common Area.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents, any Covenant to Share Costs, and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt Rules and Regulations governing the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use any recreational areas within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational areas situated upon the Common Area;

(g) The right of the Board to permit use of any recreational areas situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property, or pledge its stream of income, as security for money borrowed or debts;

(I) The right of the Board or its designee to establish Rules and Regulations for the use of any recreational areas; and

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XIII.

11.2. Easements of Encroachment.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, between adjacent Units, or between any Unit and any Private Amenity 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 feet, as measured from any point on the common boundary along a line perpendicular to such boundary. 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, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) The Declarant reserves, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the following easements throughout all of the Properties, on behalf of itself, and its nominees, successors and assigns:

(i) installing, operating, maintaining, repairing and replacing infrastructure to serve the Properties, including, without limitation, roads, walkways, pathways and trails, the Surface Water Management System, recreational facilities, areas to comply with Environmental Permit obligations, street lights, and signage, such easements shall be exclusive to the Declarant unless and until granted or conveyed to the Association or third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(ii) installing, operating, maintaining, repairing and replacing utilities to serve the Properties and each Unit, including, without limitation, gas, electricity, security and similar systems, such easements shall be exclusive to the Declarant unless and until granted or conveyed to a third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iii) installing, operating, maintaining, repairing and replacing pipes and systems to transport and distribute potable water, irrigation water, and treated effluent, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats; and

(iv) installing, operating, maintaining, repairing and replacing telephone, cable television, telecommunications, and other systems for sending and receiving data and/or other electronic signals, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats.

(b) Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of any of the items addressed in Section 11.3(a) and to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" and "B." Any such contract, agreement, or easement may, in the Declarant's sole discretion, grant the exclusive right to access or use of such system, including the portions of the systems installed on or in the Units, dwellings, and other structures constructed on Units and Common Areas within the Properties.

(c) Any such contract, agreement, or easement entered into by Declarant may require that the Board enter into a bulk rate service agreement for the provision of services offered to all Units within the Properties. In such case, the cost shall be a Common Expense of the Association and shall be assessed as a part of the Base Assessment regardless of whether the Owner of a Unit desires or uses such service. If the service provides additional services or benefits to certain Owners or Units at their request, such additional services or benefits shall be paid directly by the Owner to the service provider, or become a Neighborhood Assessment or Specific Assessment, as appropriate and specified in the agreement between the Association and the service provider.

(d) All work associated with the exercise of the easements described in Section 11.3(a) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, as well as for any private water company or public or private utility company, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, connecting and installing utilities, and connecting and installing cabling and telecommunications systems on such property. In making any improvements as aforesaid, Declarant and any other aforesaid party and LBP as to Parcel 132 shall not change the use to which the affected Common Areas were being made prior to making such improvements.

Declarant agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefitting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency and Enforcement.

The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcement of the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easements for Lake and Pond Maintenance and Flood Water.

The Declarant reserves for itself and its authorized designee, which may be a private water company, their successors, assigns, and designees, the exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps, equipment, and outfall structures to draw upon the surface water and to supply irrigation water both within and outside of the Properties; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant, any private water company, public or private utility company, the Association, Community Development District, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section and this Declaration.

The Declarant further reserves for itself, the Association, a Community Development District, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area adjacent to or within 20 feet of bodies of water and wetlands within the Properties, in order, at their option and sole discretion, to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.7 Easements for Golf Course.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such areas, and, unless restricted by the Association, for golfers at reasonable times and in a reasonable manner to come upon the Common Area, Neighborhood Common Area, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the

exercise of this easement: the Declarant; the Association or its Members (in their capacities as such); Long Bay Partners LLC, its successors, successors-in-title to the golf course, or assigns; any Builder, or a contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) Any portion of the Properties immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) The owner of any golf course within or adjacent to any portion of Mediterra, its successors and assigns, shall have a perpetual, exclusive easement of access over the Properties for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

11.8. Easement for Community Development Districts.

The Declarant hereby grants, and every Unit, the Common Area, and Neighborhood Common Area is hereby burdened with, perpetual, non-exclusive easements to the extent reasonably necessary for ingress, egress, and access to properties and facilities of one or more Community Development Districts which may be created and for the installation, maintenance, repair and replacement thereof. However, this easement shall not include a right to enter any enclosed structure on a Unit or to unreasonably interfere with the use of any Unit. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

Article XII Environmental Areas and Issues

12.1. Assignment of Responsibilities.

Within and adjacent to Mediterra there are various types of property such as wetlands, drainage areas, Conservation Areas, open spaces and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by local, state, federal or other governmental agencies. The Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association and/or a Community Development District(s), which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, the Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, tax-exempt organization, or similar type entity with which the Association shall cooperate, perform the responsibilities and obligations as set forth therein, and share in the costs pursuant to a Covenant to Share Costs or contributions from transfer fees collected by the Association as provided in Section 8.11.

Any of the properties and responsibilities within, adjacent to, or benefitting Mediterra such as wetlands, drainage areas, Conservation Areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of one or more Community Development District(s). If one or more Community Development District(s) are established, the Association shall cooperate with and perform the responsibilities delegated to it by such Community Development District(s).

12.2. Surface Water Management System.

(a) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the Surface Water Management System reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any permits therefor, or plat or instrument of record, without the specific written permission of the Association and the Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant, the Association or Community Development Districts to such Surface Water Management System and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Association, Community Development Districts, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established Surface Water Management System without the prior written consent of the Association and the Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall Surface Water Management System for the Properties. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall Surface Water Management System requirements and permits for the Properties and meet with the approval of the Declarant and the Community Development Districts.

(e) Lakes and spillways in any Neighborhood or Unit are part of a functioning water management system and any use by an Owner or Neighborhood Association shall be on a non-interfering basis only. Additional on-site stormwater treatment areas may be required and constructed in the future.

(f) The use of any lake or wetland within the boundary of a Neighborhood or Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) No boats or other watercraft powered by gasoline or diesel fuel shall be permitted on any body of water within Properties except as may be required by the Association, the Community Development Districts, or the Declarant.

(h) The use of pesticides in any lake or wetland is prohibited, excepting only any such use by the Association, the Community Development Districts, and the Declarant.

(i) No wells may be drilled, dug or installed within any Unit or Neighborhood except by the Declarant or with the Declarant's written consent.

(j) Monitoring and maintenance of the Surface Water Management System shall be done in accordance with Permit No. 11-01761-P issued by the South Florida Water Management District, attached hereto as Exhibit "A."

12.3. Conservation Areas.

Any portions of the Common Area designated as a Conservation Area shall be maintained and preserved by the Association in accordance with the rules and regulations of Lee County and Collier County, Florida as well as the South Florida Water Management District. The Association shall not, and it shall not allow any Person to, undertake or perform any activity or improvements to a Conservation Area, or remove any native vegetation, without the prior approval of the foregoing agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a Conservation Area.

12.4. Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or Conservation Area on any plat, permit, or other document recorded in the Public Records, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area or Conservation Areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

Any landscape buffer installed and maintained in the Common Area under requirements of Lee County or Collier County ordinances, or the requirements of any other governmental entity, and which is located in an easement area shall be permanently maintained by the Association. In the event that any portion of the landscaping consisting of trees and shrubs in such easement areas are removed, the Association shall replace the trees and shrubs with like size and species as a Common Expense of the Association and without expense to Lee County and Collier County, Florida or such other governmental entity with jurisdiction over the buffer.

12.5. Effluent Disposal and Water Supply.

By the act of purchasing or occupying a Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area and other areas within the Properties with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction.

All Units and Neighborhoods within the Properties shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all spigots on the exterior portion of a structure shall be connected to the potable water line. Each Owner and Neighborhood Association shall be required to connect the water lines on his Unit or Neighborhood Common Area to the lines of the utility provider(s) providing service within the Properties. The Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Properties for any legal purpose, including the distribution and use of such water beyond the Properties. The conveyance of any Unit to an Owner or parcel to a Builder by Declarant does not include the right to develop or utilize the ground or surface water resources within such Unit or parcel.

12.6. Environmental Permits and Reporting.

The Association may be responsible for monitoring, maintaining, repairing, reporting and performing obligations arising out of any Environmental Permits as may be designated by Declarant from time to time. Declarant may notify Association in writing of the applicable Environmental Permit along with a copy thereof or summary of the monitoring, maintenance, repair, reporting or other performance obligations. An Owner shall in no way deny or prevent ingress and egress by the Declarant, the Association, or Community Development District(s) to areas necessary for the performance of such obligations arising under such Environmental Permits. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Association, any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress for purposes related to any Environmental Permits, and Declarant for so long as Declarant owns any property described on Exhibits "A" or "B" for development and sale in the ordinary course of business.

12.7. Disaster Management.

The Properties are located in a hurricane vulnerability zone. The hurricane evacuation time in Lee County and Collier County, Florida, is high, and hurricane shelter space is limited. The Association shall have the authority to prepare disaster management plans and educational information regarding hurricane threats. The Association may, but shall not be obligated to take reasonable precautions to mitigate the hardship caused by foreseeable natural disasters through development of disaster management plans. The Board may establish preparations for the Association and its Members, budgeting, staffing, and coordination with local authorities and with contractors, suppliers, and insurers. The expense of developing, updating and implementing the disaster management plan, if any, shall be included as a Common Expense in the Association's budget.

Article XIII Exclusive Common Areas; Party Walls and Other Shared Structures

13.1. Designation and Use of Exclusive Common Area.

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

13.2. Rules Regarding Party Structures.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If the governing documents for any Neighborhood Association include any provisions regarding party walls or structures which differ or supplement these provisions, the governing documents of the Neighborhood Association shall govern.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner

who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Mediterra as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

Article XIV Dispute Resolution and Limitation on Litigation

14.1 Consensus for Association Litigation.

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval of at least a majority of the Neighborhood Representatives. For any suit against the Declarant, a Neighborhood Representative representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of a majority of the total number of Units in the Neighborhood represented by the Neighborhood Representative. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions that are exempt from this provision under Florida law. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.2 Alternative Method for Resolving Disputes.

The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that prior to filing suit in any court, it shall submit its claims, grievances or disputes as described in Section 14.3 ("Claims") to the procedures set forth in Section 720.311, Florida Statutes as the same may be amended from time.

14.3 Claims.

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, the rights, obligations and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.2 above.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.2:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other equitable remedies as only a court may deem necessary in order to maintain the status quo and to preserve the Association's ability to enforce the provisions of Article III (Use and Conduct), Article IV (Architecture and Landscaping), and Article XII (Environmental Areas and Issues);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, or which is between Declarant and a Builder arising out of the purchase and construction of one or more Units pursuant to a contractual agreement;

(d) any suit in which any indispensable party is not a Bound Party;

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving any Notice required by Section 720.311, as it may be amended from time to time, unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(f) any suit that is exempt from this provision under Florida law.

Article XV Private Amenities

15.1. General.

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. No Private Amenity is Common Area. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities 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 Private Amenities, 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, subject to the terms of any written agreements with their respective members.

15.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors. Consent of the Association, any Neighborhood Association, any Neighborhood Representative, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

15.3. View Impairment.

Declarant, the Association, or the owner of any Private Amenity, does not guarantee or represent that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenities, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.4. Rights of Access and Parking.

There is hereby established for the benefit of the Private Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Mediterra reasonably necessary to travel between the entrance to Mediterra and the Private Amenity and over those portions of Mediterra (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity shall have the right to park their vehicles on the roadways located within Mediterra at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

15.5. Architectural Control.

Declarant, the Association, any Neighborhood Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of Mediterra which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

15.6. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefitting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

15.7. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of Mediterra and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Review Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth in Exhibit "C" affecting activities on or use of the Private Amenity without the prior written consent of the owners of the Private Amenity affected thereby.

15.8. Assumption of Risk and Indemnification.

Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset); (b) noise caused by golfers; (c) use of pesticides, herbicides and fertilizers; (d) use of effluent in the irrigation or fertilization of any golf course; (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course; (f) errant golf balls and golf clubs; and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents shall be liable to Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or

entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Unit to any golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Unit.

15.9 **Membership Transfers**. All persons are notified that Owners who voluntarily become members of The New Club at Mediterra, Inc., a Florida not-for-profit corporation (the "Club"), the owner of the Private Amenities, have done so by agreeing that all successor owners of their Unit are required to likewise become at least a social member of the Club. Accordingly, all persons acquiring title to a Unit are advised to contact the Club to determine if such is the case as to the Unit being acquired.

BUYERS OF UNITS SHOULD DETERMINE IF THEY ARE REQUIRED TO BECOME A CLUB MEMBER AS A CONDITION OF OWNERSHIP

15.10 Amenity Preservation Fee. Membership in the Club requires, among other things, the payment of an Amenity Preservation Fee (the "APF"), including the costs of collection thereof (collectively, the "APF"). The APF is the annual fee payable by all Club members who are Owners of Units, regardless of the category of membership. The APF shall be determined by the Club and are subject to change as contemplated by its own governing documents (the "Club Documents"). The Club Documents require, among other things, that members of the Club who are also Owners hereunder consent to such Owner's Units being subject to a Specific Assessment for any unpaid APF and to the lien to secure and enforce same. The APF owned by any Owner which becomes delinquent under the terms and conditions set forth in the Club Documents ("Delinquent Charges") are deemed to constitute Specific Assessments of the Association per Section 8.5 of this Declaration, for which the Association shall have a lien against each Unit in accordance with the lien and foreclosure provisions set forth in Section 8.8.

If the Club provides notice to the Association that an Owner owes Delinquent Charges, the Association shall have the right and obligation to collect the Delinquent Charges from the applicable Owner and to enforce its lien for Specific Assessments, through and including foreclosure of the lien, as well as to exercise all other enforcement rights provided in this Declaration. The Association is entitled to collect its costs of enforcement, including but not limited to attorney's and paralegal's fees and court costs, and add such costs to the amount of the Specific Assessment. In the event that the Association does not enforce its rights hereunder with respect to a Specific Assessment resulting from Delinquent Charges, the Association hereby consents and authorizes the Club to enforce and foreclose the lien, and to take all other enforcement provisions of this Declaration and the Club shall be deemed an assignee of Association's rights to do so. All Delinquent Charges collected by the Association from Owners are the property of the Club and shall be immediately paid thereto.

FAILURE TO PAY THE AMENITY PRESERVATION FEE MAY RESULT IN A LIEN ON A UNIT, WHICH LIEN MAY BE FORECLOSED. BUYERS OF UNITS AND THEIR CLOSING AGENTS SHOULD DETERMINE

THAT NOT ONLY ASSOCIATION ASSESSMENTS, BUT ALSO THE AMENITY PRESERVATION FEE, ARE CURRENT.

Article XVI Mortgagee Provisions

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

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby 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 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 a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 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.

16.2. 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 in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. Notice to Association.

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

16.4. 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 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.

16.5. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Florida law for any of the acts set out in this Article.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Mediterra are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Mediterra and its governing documents must be able to adapt to these changes while protecting the things that make Mediterra special.

Article XVII Changes in Ownership of Units

17.1 Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Such transfer may be subject to assessment in accordance with Sections 8.10 and 8.11.

17.2 Certificate of Compliance

(a) A conveyance of a Unit shall be voidable if a certificate of compliance (the "Certificate") is not recorded in the Public Records when the instrument of conveyance is recorded. The Certificate shall be executed by or on or behalf of the Association, shall state the legal description of the Unit(s) in question and shall certify that the Unit and its Owner are in material compliance with the covenants, restrictions, requirements and terms of this Declaration including, without limitation, as to being current in the payment of all Assessments and the APF (as defined Section 15.10 of this Declaration). When the Certificate is given in connection with a conveyance of a Unit, it shall state whether the Unit purchaser is required to maintain membership in the Club and if so, shall attest to the fact that the purchaser(s) has applied and been approved for the requisite membership in the Club (as defined in Section 15.9 of this Declaration).

(b) The foregoing requirements of Section 17.2 (a) shall not apply to (i) acquisition of a Unit by a mortgagee as a result of the foreclosure, or granting of a deed in lieu thereof, of a mortgage or other lien on a Unit (provided, however, that any sale by the party acquiring title in such manner shall be subject hereto), (ii) acquisition of a Unit by a purchaser at a sale resulting from foreclosure of a mortgage or other lien on a Unit (provided, however, a person acquiring title

in such manner is not relieved of the obligation to maintain the requisite membership in the Club if the Unit acquired in such manner requires that the Owner maintain a Club membership), (iii) the conveyance by an Owner to his or her spouse or lineal descendant(s), (iv) a conveyance for no consideration as evidenced by no documentary stamp taxes or minimum documentary stamp taxes being paid on the instrument of conveyance, and (v) vesting of title to the Unit by will, intestate succession or otherwise by operation of law.

(c) In the case of a conveyance not exempt pursuant to Section 17.2 (b), the proposed purchaser or other grantee shall make application to the Club and comply with all requirements of the Club incidental thereto. Should the Club determine not to approve such applicant for membership, it shall so notify the Association and the Certificate shall indicate that the Club has waived its right to require that the applicant acquire a membership. In no event, however, shall such waiver apply to any subsequent conveyance of the Unit, which conveyance shall remain subject to the requirements of this Section 17.2 (a), unless such conveyance is exempt pursuant to Section 17.2 (b).

(d) Notwithstanding the requirements of Section 17.2 (a), a conveyance of a Unit not exempt pursuant to Section 17.2 (b) and in which no Certificate is recorded with the instrument of conveyance as required by Section 17.2 (a), shall be valid and no longer voidable if a Certificate is later recorded as to such Unit or there is a subsequent conveyance of such Unit and a Certificate is recorded with the instrument of conveyance or later recorded as to such Unit.

Article XVIII Changes in Common Area

18.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Neighborhood Representatives representing at least 75% of the total Class "A" votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Lee County and Collier County, Florida, or to any other local, state, or federal governmental or quasi-governmental entity.

Article XIX Amendment of Declaration

19.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose so long as such amendment does not substantially conflict with the Master Plan; provided, however, any amendment which would affect the Surface Water Management System, including the rights and obligations of the Association to fulfill such rights and obligations, must have the prior approval of the South Florida Water Management District. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

19.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing 75% of the total Class "A" votes in the Association, and the consent of the Declarant, so long the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

19.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant, the Class "B" Member, or a Builder without the written consent of the Declarant, the Class "B" Member, or the Builder, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

19.4. Exhibits.

Exhibits "A," "B," and "D" are attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is attached for informational purposes and may be amended as provided in Article III. Exhibit "D" may be amended as provided therein.

[*Exhibit A is the property which is subject to this Declaration.*]
[*Exhibit B is the property from which Declarant could add to the Declaration.*]
[*Exhibit C is the "Initial Use Restrictions.*]
[*Exhibit D is the Bylaws of the Association.*]