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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR

WHISKEY POINTE

THIS DECLARATION made this 17th day of May, 1991, by **LUNDSTROM HOMES, INC.**, a Florida corporation, hereinafter called the "Declarant", for itself and its successors, grantees and assigns.

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W I T N E S S E T H:

WHEREAS, Declarant owns certain real property located in Lee County, Florida, described on Exhibit "A" attached hereto (hereinafter the "Properties"), and intends to create thereon a residential condominium and certain recreational facilities.

WHEREAS, Declarant has previously entered into a Cross-Easement Agreement regarding the use of the recreatinal facilities described herein, which Cross-Easement Agreement is recorded in Official Record Book 2201, Page 2976, of the Public Records of Lee County, Florida; and

WHEREAS, to provide a means for meeting certain of the purposes and intents herein set forth and those contained in the Cross-Easement Agreement, Declarant has incorporated **WHISKEY POINTE MASTER ASSOCIATION, INC.**, a Florida corporation not for profit (hereinafter the "Master Association"); and

WHEREAS, Declarant may, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within WHISKEY POINTE by deed, easement, or otherwise to the Master Association (which must accept the same) for the purpose for the use and benefit of Members and their families, tenants and guests.

NOW, THEREFORE, the Declarant, LUNDSTROM HOMES, INC., and any other person whose signature appears hereinafter by way of joinder or consent, declare that the Properties, together with such improvements as may hereafter be made thereto, are and shall be owned, used, and conveyed subject to the covenants, conditions, restrictions, and all other provisions of this Declaration as it may be amended from time to time, which shall run with the land and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

RECORD VERIFIED - CHARLIE GREEN, CLERK
BY: J. TURNER, D.C.

RETURN TO:
LEO J. SALVATORI
QUARLES & BRADY
SUITE 300
4501 TAMIAMI TRAIL N.
NAPLES, FLORIDA 33940

1. **DEFINITIONS**

1.1 **"Assessment" or "Assessments"** shall mean and refer to any charge imposed by the Master Association on any or all Owners including without limitation Initial Capital Assessments, Annual Assessments and Special Assessments.

1.2 **"Association"** shall mean and refer to any "Condominium Association".

1.3 **"Board"** shall mean and refer to the Board of Directors of **WHISKEY POINTE MASTER ASSOCIATION, INC.**

1.4 **"Community Common Areas"** shall mean and refer to all real property including any improvements and fixtures thereon, owned, leased or the use of which has been granted to the Master Association for the common use and enjoyment of its members.

1.5 **"Condominium"** shall mean and refer to any condominium, villa, or other sub-area development located in WHISKEY POINTE.

1.6 **"Condominium Association"** shall mean and refer to any condominium association, homeowners association, or other such entity, their successors and assigns, for any particular Condominium.

1.7 **"Condominium Common Area"** shall mean and refer to all common elements of any Condominium or villa project.

1.8 **"Declarant"** shall mean and refer to LUNDSTROM HOMES, INC., a Florida corporation, or any entity or person which succeeds to its position as the Developer of part or all of WHISKEY POINTE.

1.9 **"Declaration"** shall mean and refer to this document, entitled Declaration of Covenants, Conditions, Restrictions, and Easements for WHISKEY POINTE, as it may be amended from time to time.

1.10 **"General Development Plan"** shall mean and refer to the Declarant's plan for WHISKEY POINTE as it may be amended from time to time by Declarant.

1.11 **"Governing Documents"** shall mean and refer to the Declaration and the Articles of Incorporation and By-Laws of the Master Association, as the same may be amended from time to time. In the event of conflict or inconsistency among the documents, the controlling document shall be that first appearing in the following

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sequence: The Declaration, the Articles and the By-Laws.

1.12 **"Institutional Mortgage"** means a mortgage held by an Institutional Mortgagee. Furthermore, the term shall also include any mortgage given by Declarant or that Declarant shall declare by instrument in writing and placed of record among the Public Records of Lee County, Florida, to be an institutional mortgage.

1.13 **"Institutional Mortgagee"** means the holder of any mortgage against a Unit, which holder is the Declarant, a bank, savings and loan association, mortgage company, real estate or mortgage investment trust, pension or profit sharing trust; or the Federal Housing Administration, the Veterans Administration, any agency of the United State of America, or the holder of a first mortgage which is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of American or by any other public or private corporation engaged in the business of guaranteeing or insuring first mortgage loans, and their successors and assigns. The term also includes any and all lending institutions, or the successors and assigns of such lenders (herein referred to as the "Lenders") which have loan money to Developer to acquire, or construct improvements upon the Properties and which hold a mortgage upon any portion of the Properties securing such a loan.

1.14 **"Master Association"** shall mean and refer to **WHISKEY POINTE MASTER ASSOCIATION, INC.**, a Florida corporation not for profit, which has its principal place of business in Lee County, Florida, its successors and assigns.

1.15 **"Members"** shall mean and refer to those persons who are entitled to membership in the Master Association as provided in its Articles of Incorporation and By-Laws.

1.16 **"Owner"** shall mean and refer to the record owner of fee simple title to any Unit located within the Properties, but does not include a person having an interest in a Unit merely as security for the performance of an obligation. Owner shall also mean and refer to the record owner of any real property, either vacant or under development.

1.17 **"Properties"** shall mean and refer to those certain lands located within WHISKEY POINTE as described in Exhibit "A" to this Declaration.

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1.18 **"Structure"** shall mean that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The terms includes, without limitation, swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

1.19 **"Unit"** shall mean and refer to any condominium unit or villa located within WHISKEY POINTE and intended for occupancy by one family or household.

1.20 **Whiskey Pointe.** That real property described in Exhibit "B" attached hereto and incorporated herein by virtue of this reference. Only that part of Whiskey Pointe described in Exhibit "A" is owned by Declarant. The balance of the Whiskey Pointe is owned by independent third parties. Said third parties may or may not request to join the Master Association, or to contract for the use and enjoyment of the Community Common Areas and facilities.

2. DECLARANT'S RIGHT AND POWERS

In addition to rights and powers set forth elsewhere in the Governing Documents, the Declarant shall have the following rights and powers.

2.1 **Additions to the Properties.** Declarant shall have the right and the power, but neither the duty nor the obligation, in its sole discretion, to add any lands to the Properties by recording an instrument subjecting such additional land to this Declaration. THE EFFECT OF SUCH AN ADDITION WOULD ALLOW FOR AN INCREASE IN THE NUMBER OF UNITS, THE NUMBER OF MEMBERS, AND THE TOTAL NUMBER OF VOTES WHICH COULD BE CAST BY THE MEMBERS OF THE CORPORATION. At the time that any additional lands are made subject to this Declaration, Declarant may also record an instrument which:

A. modifies any of the provisions of this Declaration as they may apply to such additional lands only; or

B. creates new provisions applicable only to such additional lands; or

C. omits the applicability of any of the provisions of this Declaration to such additional lands; or

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D. does any, all, or none of the above.

The execution and recording of this Declaration shall not be construed to require Declarant to subject any other lands to the covenants, conditions, restrictions or other provisions of this Declaration or any other recorded instrument.

2.2 **Deletions from the Properties.** Declarant shall have the right, and the power, in its sole discretion, to delete lands from WHISKEY POINTE, without the consent of the Class A Members so long as Declarant is a Class B Member, and thereafter only with the consent of a majority of the Class A Members. Such deletions shall be made by recording in the Public Records of Lee County an instrument which deletes such lands from WHISKEY POINTE. Lands excluded from WHISKEY POINTE may be used by Declarant for any lawful purpose, whether or not consistent with the General Development Plan.

2.3 **Community Common Areas.** Declarant shall have the right, and the power, but neither the duty nor the obligation, in its sole discretion to convey, lease, grant an easement, or grant a license or other use right to real property within or without WHISKEY POINTE, to the Master Association for such purposes as may be expressed in the instrument of conveyance, lease or grant of license or use. No such real property shall be considered to be Community Common Areas until actually so conveyed, leased or a grant of license or other use right is created by a written instrument.

A. Any such conveyance, lease or grant of license or use right to the Master Association may be exclusive or non-exclusive, so that persons or entities other than the Master Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. The Master Association must accept from Declarant any such conveyance, lease, grant of license or grant of use right. The Master Association shall not accept, from any person other than Declarant, a conveyance, lease, grant or license of grant of use right except upon the prior written approval of the Declarant.

B. Prior to any conveyance, lease or grant of license or other use right by Declarant to the Master Association of any property, Declarant or the Master Association shall have the right to charge reasonable fees for the use of such property;

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thereafter the right to use such property may be subject to reasonable rents, fees and other charges in favor of the Master Association; in any event, rents, fees and other charges required to be paid to Declarant under leases, grants, licenses or contracts creating use rights shall continue to be paid.

2.4 **Other Entities or Associations.** Declarant shall have the right and the power, but neither the duty nor the obligation, to record an instrument subjecting the additional lands as provided in Section 2.1 to protective covenants, conditions, restrictions or provisions other than those provided for in the Declaration. Such provisions may or may not create condominium associations or entities other than the Master Association. Such other entities may or may not have the same, additional, or different rights, powers, duties or privileges with respect to such additional lands; provided, however, that any such recorded instrument may subject such additional lands to the jurisdiction of the Master Association, and may make the owners of such additional lands Members of the Master Association under such terms and conditions as may be provided therein, which may be the same as or substantially different from the terms and conditions of membership as are provided herein.

2.5 **Enforcement**

A. Declarant reserves unto itself the right, and the power

(1) to enforce the covenants, conditions, restrictions, and other provisions of this Declaration, and

(2) to delegate or assign, either exclusively or non-exclusively, any or all of its rights, powers, duties or privileges hereunder to the Master Association, or to a Condominium Association, or to any other person.

B. The Declarant shall have the right and the power to enforce the covenants, conditions, restrictions and other provisions imposed by this Declaration by any proceeding at law or in equity against any person violating or attempting to violate any such provisions, to restrain any violation or attempted violation of such provisions, to require specific performance of such provisions, to recover damages for violations or such provisions, and against the

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land to enforce any lien created by this Declaration. Failure by Declarant, or the Master Association, or a Condominium Association, or any other person, to enforce any of such provisions shall in no event be deemed a waiver of their right to do so thereafter.

2.6 Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the creation of any Association or other entity, nor the recordation of any other instrument subjecting any land in WHISKEY POINTE to protective covenants, conditions or restrictions or other provisions shall obligate or require:

A. Declarant to grant any right, power, duty or privilege of any nature or kind to the Master Association or to any other entity; or

B. Declarant, the Master Association or any other entity, to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do so.

2.7 Reserved.

2.8 Assignment of Rights to Subsequent Developer. Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, to any person or entity, any or all of its development rights, powers, duties, privileges created or provided for by this Declaration or by any other recorded instrument.

3. RESERVED.

4. COMMUNITY COMMON AREAS.

4.1 Members Rights and Easements.

A. Every Member shall have a right and easement of enjoyment and use in and to the Community Common Areas, which right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to:

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(1) The right of the Master Association to charge reasonable admission use, or other fees for any Community Common Areas;

(2) The right of the Master Association to suspend a Member's right to use Community Common Areas, for any period during which any assessment against the Member's Unit or any obligation of the Member to the Master Association remains unpaid, and for a reasonable period during or after any infraction of the Master Association's rules and regulations;

(3) The right of the Master Association to dedicate or transfer all or any part of the Community Common Areas to any governmental agency, public authority, or utility;

(4) The right of the Master Association to borrow money for the purpose of improving the Community Common Areas to any governmental agency, public authority, or utility;

(5) The right to take such steps as are reasonably necessary to protect Community Common Areas against foreclosure; and

(6) The provisions of this Declaration, or any other applicable recorded instrument, the Article of Incorporation and By-Laws of the Master Association; any rules and regulations governing use and enjoyment of the Community Common Areas adopted by the Master Association.

B. So long as there is a Class B Member, any and all rights of a Member and any and all restrictions, limitations, conditions and rules and regulations that a Member shall be subject to, shall not be amended without the written approval of the Class B Member.

4.2 Delegation of Right.

A. A Member may temporarily delegate his right of use in and to the Community Common Areas to his guests or tenants who reside in the Member's Unit, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the By-Laws and the Master Association's rules and regulations.

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B. Each Member shall be responsible for the actions of any person to whom the Member has delegated his right to use the Community Common Areas. Any unpaid charge against such person shall be charged against such Member personally and be assessed against such Member's Unit. Any infraction of the Master Association's rules and regulations by such person shall be deemed an infraction by the Member.

4.3 Conveyance and Use.

A. Any real property conveyed, leased, or the use of which has been granted by Declarant or any third party to the Master Association as Community Common Areas is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Members.

B. Declarant may convey property to the Master Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, with or without a mortgage lien and the Master Association must accept such property. The Master Association shall not accept the conveyance of real property from any third party, in either an improved or unimproved conditions, without the prior written consent of Declarant, so long as Declarant owns any Unit or any land in WHISKEY POINTE.

4.4 Master Association's Rights and Powers.

A. Subject to the provisions of this Declaration or any other applicable recorded instrument and the Master Association's Articles and By-Laws, the Master Association shall have the right, and the power, to develop, promulgate and enforce reasonable rules and regulations for the use and enjoyment of Community Common Areas.

B. No Community Common Areas shall be used in violation of any rule or regulation or other requirement of the Master Association established pursuant to the provisions of this Declaration or the By-Laws.

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4.5 Declarant's Rights and Powers.

A. Declarant shall have the right and the power to regulate and control the external design and appearance of Community Common Areas in such a manner as to:

(1) Promote a quality environment which will preserve the value of the Member's Units; and

(2) Foster the attractiveness and functional utility of WHISKEY POINTE as a place to live and play, including a harmonious relationship among structure, vegetation and topography.

B. The Community Common Areas shall be subject to the provisions of Section 3 of this Declaration. The uses of the Community Common Areas shall be in conformity with the uses permitted in Section 3. The provisions of Section 3 shall not be applicable to any property owned by Declarant prior to its conveyance to the Master Association.

C. No nuisance or obnoxious or offensive activity shall be conducted or permitted on any Community Common Areas. The Declarant shall have the right and the power in the exercise of its reasonable discretion to determine what activities or uses constitute nuisances or obnoxious or offensive activity. Nothing shall be done within the Community Common Areas which is a reasonable source of annoyance to the residents or Members.

D. Any use of Community Common Areas shall be subject to the prior written approval of Declarant so long as Declarant owns any land or Unit in WHISKEY POINTE.

E. No amendment to any of the Governing Documents shall have the effect, or be effective to diminish or alter Declarant's rights, powers, and privileges as long as Declarant holds any Unit for sale in the ordinary course of business, unless Declarant shall consent in writing.

4.6 Maintenance. The Master Association shall be responsible for the maintenance, repair, replacement and control of Community Common Areas, and shall keep the same in good, safe, clean, attractive and sanitary condition, order at all times.

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4.7 **Partition Prohibited.** There shall be no judicial partition of the Community Common Areas, except as expressly provided elsewhere herein, nor shall Declarant, or any Owner or any other person acquiring any interest in WHISKEY POINTE, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prohibit judicial partition of any Unit owned in co-tenancy.

5. **MEMBERSHIP AND VOTING RIGHTS.**

5.1 **Members.**

A. Every Owner and the Declarant, so long as they are Owners, shall be Members of the Master Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit.

B. Members' rights, powers, duties and privileges shall be as set forth in the Articles of Incorporation and By-Laws of the Master Association.

5.2 The Master Association shall have two classes of voting membership:

A. Class A. All Owners, other than Declarant, so long as it is the Class B Member, shall be Class A Members. One vote may be cast for each Property Unit assigned to a Unit of which one or more Class A Members are the Owners. In the event that two or more Class A Members are the Owners of a Unit, then the Class A Member who shall be entitled to cast the vote for each Property Unit assigned to such Unit shall be determined as provided for in the Master Association By-Laws.

B. Class B. The Class B Member shall be Declarant, its successors and assigns. Ten votes may be cast for each Property Unit assigned to a Unit of which the Class B Member is the Owner. The Class B Member shall, in its sole discretion, determine who shall be entitled to cast the votes for the Property Units assigned to the Units of which the Class B Members is the Owner. The Class B membership shall be converted to Class A membership and shall forever cease to exist on the occurrence of whichever of the following events occurs first in time, after which Declarant shall be a Class A Member entitled to cast one vote for

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each Property Unit assigned to the Units of which Declarant is the Owner:

(1) When the total number of outstanding votes held by the Class A Members exceeds the total number of outstanding votes held by the Class B Member, or

(2) On December 31, 1999, or such earlier date as Declarant in its sole discretion establishes, or

(3) Upon the election of the Class B Member. If upon said election Declarant still owns Units, Declarant shall become a Class A member entitled to case one vote for each Unit so owned.

5.3 **Association Voting.** The By-Laws of each Condominium Association shall establish a procedure by which any of its members who are entitled to cast vote as Members of the Master Association shall cast their votes on Master Association matters directly with the Association. Each Association shall have the duty to collect and tabulate its members' votes and cast them with the Master Association. Such procedure, subject to any restrictions, limitations or conditions which may be imposed by the applicable Declaration of Condominium or by other recorded instrument, may provided for votes to be cast in a block, or in the same manner as originally cast by its members, or in any other manner that is fair, equitable, uniformly applied within the Association and does not result in the casting of fractional votes.

6. **ASSESSMENTS.**

6.1 **Creation of the Lien and Personal Obligation.**

A. Each Owner, by acceptance of a deed for a Unit, whether or not it shall be so expressed in such deed, shall be covenanting and agreeing to pay to the Master Association:

(1) Annual Assessments.

(2) Special Assessments.

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(3) Other charges (including fines) against the Owner of one or more Units, as provided for elsewhere in this Declaration or in the By-Laws of the Master Association.

B. Assessments shall be fixed, levied, established and collected as provided in the By-Laws.

C. The assessments, together with interest and costs of collection, including reasonable attorney's fees, which includes those resulting from any appellate proceedings, shall be a continuing lien upon the Unit against which such assessment is made.

D. Each assessment, together with interest and costs of collection, including reasonable attorney's fees, which includes those resulting from appellate proceedings, shall also be the personal obligation of the Person who was the Owner of the Unit at the time such assessment came due, and any due and unpaid assessments shall also be the personal obligation of each Person who becomes an Owner of the Unit. Each Owner, by acceptance of a deed for a Unit, is personally covenanting and agreeing to pay any such obligation coming due prior to or during the time of his ownership and such personal obligation shall survive any conveyance. Joint Owners shall be jointly and severally liable.

E. Each Condominium Association shall have the duty and responsibility for collecting and timely remitting to the Master Association any and all Master Association assessments and other charges; provided, however, that the Master Association may, in its sole discretion, elect to collect due and unpaid Master Association assessments and other charges directly from any Owner personally and may impose a lien against such Owner's Unit for the payment of such assessments and other charges which are due and unpaid.

F. The purpose, amount, rate, exemption from, and non-payment of initial, annual and special assessments, and the establishment of annual budgets shall be as set forth in the Master Association's By-Laws.

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G. No land shall be subject to assessment by the Master Association for so long as it is Community Common Areas, or it is Condominium Common Area, or it is owned by a governmental agency and used solely for a public purpose, or is owned by Declarant (subject to the provisions of Paragraph 6.02).

6.2 Declarant's Duties and Obligations.

A. For any assessment year, the Declarant may elect to pay the lesser of:

(1) The actual operating expenses of the Master Association (excluding reserves) but only to the extent the expenses exceed the assessments for that year receivable from Owners other than Declarant; or

(2) Such amount as it would otherwise be obligated to pay if it had been subject to the annual assessments for that year on those Units within the Properties of which it is the Owner.

Declarant shall make said election each year at such time and in such manner as shall be provided in the Master Association's By-Laws.

B. Except as specifically provided in this Section 6.2 and in the Master Association's By-Laws, the assessment and lien provisions of this Section 6 shall not apply to any Unit owned by Declarant or by any successor developer succeeding Declarant, whether by assignment or in reorganization or by other arrangement. The assessment and lien provisions of this Section 6 shall apply to a Unit of which the Declarant is the Owner only after the occurrence of any one of the following events:

(1) Declarant has conveyed the Unit to another Owner.

(2) Declarant executed and records a written instrument subjecting the Unit to the assessment and lien provisions of this Section 6.

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C. Declarant's duties and obligations as set forth herein shall be further subject to the conditions, restrictions and other limitations and any procedures for billing and payment as set forth in the Master Association's By-Laws.

6.3 Lien.

A. If any Owner fails to pay any assessment or to make any other payment required to be paid to the Master Association within thirty (30) days after the same becomes due, then the Master Association is hereby granted a lien on such Owner's Unit, which lien shall secure the payment then due and all sums coming due thereafter up to the date of the satisfaction or other discharge of the claim of lien hereinafter mentioned, together with interest at the highest lawful rate from the date of delinquency, and all costs of collection, including reasonable attorney's fees, which includes those resulting from appellate proceedings, which may be incurred by the Master Association enforcing this lien and the costs of performing any other work required to enforce compliance with this Section 6.

B. The lien herein created shall be perfected from and after the date of recording of a Claim of Lien in the Public Records of Lee County, Florida, which Claim of Lien shall state the description of the property encumbered thereby, the name of the Owner, the amount then due and the date when due and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid, and the lien satisfied or discharged.

C. The Master Association may bring an action of law against an Owner to pay his personal obligations to the Master Association, or it may foreclose the lien against his Unit. An Owner against whom any such proceeding is successfully brought shall pay all costs of collection, including reasonable attorney's fees, which includes those resulting from appellate proceedings.

D. No Owner may avoid or escape liability for the payments provided for herein by non-use or abandonment of his Unit or the Community Common Areas.

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6.4 **Priority of Lien.** The Master Association's lien for unpaid assessments shall be subordinate and inferior to that of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded prior to the mortgage; but shall be superior to, and take priority over, all other mortgages and recorded judgments, liens, etc., regardless of when recorded. Any lease of a Unit shall be subordinate and inferior to any Claim of Lien of the Master Association, regardless of when the lease was executed. The Master Association's Claim of Lien shall take priority over the lien of any Condominium Association.

7. **CONDOMINIUM ASSOCIATIONS.**

7.1 Reserved.

7.2 Reserved.

7.3 **Maintenance of Condominium Common Area.** The Master Association may contract with any Condominium Association to provide for the operation and maintenance of its Condominium Common Area.

7.4 **Declarant's Right to Amend.** Declarant reserves the right, and the power, without the consent of any other person being required:

A. To amend the specific provisions of this Declaration insofar as they apply to one or more Condominiums, without amending those provisions with respect to all Condominiums; and

B. To supplement this Declaration by recording separate covenants, conditions, restrictions an other provisions applying to any specific Condominium.

8. **INSURANCE: Reserved.**

9. **COVENANT AND RULE ENFORCEMENT:**

9.1 **Dispute Resolution.** The Master Association has the power to enforce all covenants, conditions, restrictions, and agreements applicable to any real property in WHISKEY POINTE, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Community Common Areas. Enforcement actions for damages, or for injunctive relief, or both, may be brought by the Association against the owner of any Unit.

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9.2 **Attorney's Fees.** In any action brought under this Section, the prevailing party is entitled to recover reasonable attorney's fees and the costs of the action.

10. **GENERAL AND PROCEDURAL PROVISIONS:**

10.1 **Utility and Other Easements.**

A. There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Properties, such easements and rights-or-way for any other purposes as Declarant in its sole discretion may in the future determine.

B. Declarant hereby reserves the right, and the power, during a period of thirty (30) years from the date of the recordation of this Declaration, to declare, grant and record additional easements granting the full free right, power and authority to lay, operate and maintain such drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, communication lines, cable television lines, and such other and further public service facilities as Declarant may deem necessary. Declarant further reserves the right to give, grant and receive non-exclusive easements for ingress, egress or parking over any portion of the Community Common Areas in favor of any Owner, Member, or Condominium Association. The duration of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the encumbered property.

10.2 **Service Easement.** Declarant hereby grants to delivery, pickup and fire protection services, police and the authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities authorized by the Declarant, its successors or assigns to service the Properties, and to such other persons as the Declarant from time to time may designate, the non-exclusive, perpetual right of ingress and egress over and across the Properties for the purposes of performing their authorized services and investigation.

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10.3 **Duration.** The covenants, conditions and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of an be enforceable by the Master Association, the Declarant and any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of thirty (30) years from the date this Declaration is recorded. Upon the expiration of said thirty (30) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial thirty (30) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes cast at a duly held meeting of Members of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Lee County, Florida, and may be relied upon for correctness of the facts contained therein as they relate to the termination of this Declaration.

10.4 **Non-Liability of Declarant.** The Declarant shall not be liable or responsible for any violation of these covenants, conditions, restrictions or other provisions by any Person other than itself.

10.5 **Amendment of Declaration.** In addition to any other right of amendment or modification provided for in this Declaration, Declarant may unilaterally modify,

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enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration. This right shall expire at such time as Declarant no longer holds any property for sale in the ordinary course of business, or ten (10) years from the recording of this Declaration, whichever comes first.

10.6 **Amendments by Members.** This Declaration may be amended at any time provided that two-thirds (2/3) of the voting interests present and voting at a duly called and held meeting of the Master Association vote in favor of the proposed amendment provided; however, that if the affirmative vote required, for approval of action under the specific provision to be amended, is a higher or lower percentage, then such higher or lower percentage shall be required to approve amendment of that provision. Notice shall be given at least forty-five (45) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above the President and Secretary of the Master Association shall execute an Amendment to this Declaration which shall set forth the amendment, the date of the meeting of the Master Association at which such amendment was adopted, the total number of votes cast for the amendment, and the total number of votes cast against the amendment. Such amendment shall be effective when recorded in the Public Records of Lee County, Florida.

10.7 **Other Documents.** Declarant, the Master Association and any Condominium Association provided for herein or in any applicable recorded instrument shall have such rights, powers, duties, and privileges as set forth herein or in the Articles of Incorporation, By-Laws and other constituent documents of such entity; however, no such entity may have rights, duties, powers or privileges that are in conflict with the provisions of this Declaration, and this Declaration shall prevail in all events of conflict.

10.8 **Severability.** If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any Court of competent jurisdiction, then such holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

10.9 **Dissolution.** In the event of dissolution of the Master Association each Unit shall continue to be subject to the annual assessment specified in Section 5 and each

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Owner shall continue to be personally obligated to Declarant or the successor or assigns of the Master Association as the case may be for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Master Association to properly maintain, operate and preserve it.

10.10 Gender. Wherever in this Declaration the context so requires the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

10.11 Notices.

A. To Declarant. Notice to Declarant as may be required herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by Declarant.

B. To Master Association. Notice to the Master Association shall be in writing and delivered or mailed to the Master Association at its principal place of business as shown by the records of the Secretary of State of Florida, or at any other location designated by Master Association.

C. To Owner. Notice to any Owner of a violation of any of these restrictions, or any other notice as may be required herein shall be in writing and shall be delivered or mailed to the Owner at his last known address, or at the address shown on the deed recorded in the Public Records of Lee County, Florida.

10.12 Construction. The provisions of this Declaration shall be liberally construed to provide maximum flexibility consistent with the General Development Plan and the purposes set forth herein, including the Preamble.

10.13 Captions, Headings and Titles. Captions, headings, and titles inserted throughout this Declaration are for convenience only, and in no way shall captions, headings or titles define, limit, or in any way affect

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the subject matter, content or interpretation of the terms and provisions of this Declaration.

10.14 **Damages and Attorney's Fees.** Damages shall not be conclusively deemed adequate relief for any breach or violation or any provisions hereof. Any person or entity entitled to enforce any provision hereof shall be entitled to relief by way of injunction as well as any other available relief either at law or in equity. Any party to a proceeding who succeeds in enforcing any provision of this Declaration or enjoining violation or breach of any provision hereof against an Owner or the Master Association shall be entitled to reimbursement of reasonable attorney's fees and court costs (including those resulting from appellate proceedings) by such Owner or Master Association.

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

10.16 **Applicable Statutes.** The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida as they exist on the date of the recording of this Declaration.

IN WITNESS WHEREOF, LUNDSTROM HOMES, INC., a corporation organized and existing under the laws of the State of Florida, as Owner of the hereinabove described property, hereby executes this Declaration by and through its duly authorized officer.

WITNESSES:

Witness #1

Witness #2

(Corporate Seal)
LUNDSTROM HOMES, INC.,
a Florida corporation

By: _____
BOB L. LUNDSTROM, as
President

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STATE OF FLORIDA
COUNTY OF Collier

This instrument was acknowledged before me this 17th day of May, 1991, by **BOB L. LUNDSTROM**, as President of LUNDSTROM HOMES, INC., a Florida corporation, on behalf of the corporation.

My Commission Expires:

Notary Public (SEAL)

Notary Public, State of Florida at Large
My Commission Expires July 27, 1991

a1/dccr/4-26-91:kkl

Description of Parcel "F" being a part of Tract "A"
of "BONITA BAY UNIT TWO" (P.B. 38, pages 86-88)
Lee County, Florida

All that part of Tract "A" of "BONITA BAY UNIT TWO" according to the plat thereof as recorded in Plat Book 38, pages 86 through 88, Public Records of Lee County, Florida;
Commencing at the northwest corner of said Tract "A";
thence along the northerly line of said Tract "A" in the following three (3) described courses;

1) northeasterly 35.14 feet along the arc of a circular curve concave to the northwest, having a radius of 60.00 feet, through a central angle of 33°-33'-28" and being subtended by a chord which bears North 60°-57'-40" East 34.64 feet to a point of reverse curvature;
2) northeasterly and easterly 89.57 feet along the arc of a tangential circular curve concave to the southeast, having a radius of 100.00 feet, through a central angle of 51°-19'-04" and being subtended by a chord which bears North 69°-50'-28" East 86.60 feet;
3) South 84°-30'-00" East 195.56 feet;

thence leaving said northerly line of Tract "A" South 29°-00'-00" West 129.79 feet;
thence South 8°-30'-00" East 62.63 feet;
thence South 32°-00'-00" West 45.25 feet to the POINT OF BEGINNING of the parcel herein described;
thence North 79°-00'-00" East 29.42 feet;
thence South 3°-30'-00" East 171.43 feet;
thence South 75°-00'-00" West 99.31 feet;
thence North 3°-30'-00" West 91.85 feet;
thence North 32°-00'-00" East 117.36 feet to the Point of Beginning of the parcel herein described;
subject to easements and restrictions of record;
containing 0.32 acres more or less.

WILSON, MILLER, BARTON & PEEK, INC.
Reg. Engineers and Land Surveyors

BY John E. Boutwell, P.L.S. #3934 DATE 1/4/1991

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Tract A, Bonita Bay, Unit 2, according to the plat thereof recorded in Plat Book 38, Pages 86 through 88, inclusive of the Public Records of Lee County, Florida.

LESS AND EXCEPTING

Whiskey Pointe, Phase I, a condominium

CHARLIE GREEN LEE CTY FL
91 MAY 23 PM 3:28

Exhibit B