

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION.  
FOR PRESENT TEXT SEE EXISTING DECLARATION.**

**AMENDED AND RESTATED  
DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
HUNTINGTON**

**KNOW ALL MEN BY THESE PRESENTS** that on April 14, 1988 the original Declaration was recorded in Official Record Book 1342, at Page 0135 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter the "Property") is legally described as set forth in the attached Exhibit "A" hereto.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a Lot or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a Lot or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

**1. DEFINITIONS.** The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

**1.1 "Assessments"** means a share of the funds required for the payment of common expenses and individual expenses which from time to time are assessed by the Association against an Owner as Regular, Special and Individual Assessments.

**1.2 "Articles" and "Bylaws"** as used herein, means the Articles of Incorporation and the Bylaws of Huntington Homeowners Association of Naples, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation and Bylaws are attached hereto as Exhibit "B" and "C" respectively.

**1.3 "Association"** means Huntington Homeowners Association of Naples, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and the other rights and obligations referenced herein.

**1.4 "Board"** means the Board of Directors responsible for the administration of the Association.

1.5 "**Common Areas**" means and refer to those areas of land shown on any plat of Huntington which are dedicated to or owned by Huntington Homeowners Association of Naples, Inc., or any other property which is dedicated, conveyed, leased or licensed to the Association, and which are intended to be devoted to the common use and enjoyment of the Members of Huntington Homeowners Association of Naples. Common Areas shall include, but not be limited to, streets, walls and/or fences, entry features, lighting, landscaping, irrigation systems as further described herein. The term "Common Area" shall also include any personal property acquired by Huntington Homeowners Association of Naples if said property is designated as Common Area in the bill of sale or instrument transferring same or subsequently declared by the Association to be Common Area. Any land or personal property leased by the Association shall lose its character as Common Area upon the expiration of such lease.

1.6 "**Common Expenses**" means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair and replacement of the Common Areas, other expenses declared by the governing documents to be common expenses and any other valid expenses or debts of the common property as a whole of the Association which are assessed against the Owners.

1.7 "**Common Surplus**" means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the common expenses.

1.8 "**Declaration**" means this Declaration as amended from time to time.

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

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

1.10 "**Governing Documents**" means and includes this Declaration, the Articles and Bylaws, and all recorded exhibits thereto, as amended from time to time.

1.11 "**Guest**" means any person who is not the Owner or a lessee of a Home or a member of the Owner's or lessee's family, who is physically present in, or occupies a Home on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

1.12 "**Home**" means a residential dwelling unit intended for residential use which is constructed on the properties and shall include any appurtenance garage associated with a Home.

1.13 "**Lease**" means the grant by a residential Owner of a temporary right of use of the Owner's Home with or without valuable consideration.

1.14 "**Lot**" or "**Site**" means and refers to any lots, together with any and all improvements thereon, numerically designated and shown or described on the Plat and Property, on which a residential structure or garage has been or is intended to be constructed. With respect to any attached residential structures situated on one or more lots, "Lot" shall mean the portion of the structure owned by the Owner and the Owner's interest in the underlying land. Huntington has two, three and four units per building, which may be referred to as a "Site."

1.15 "**Maintenance**", "**Repair**" and "**Replacement**." Maintenance means the upkeep or preservation of the condition of the property. Repair means to mend, remedy, or restore to a sound or good state after decay, injury, dilapidation or partial destruction. Replace means to place again; restore to a former condition after destruction.

1.16 "**Master Association**" means and refers to Walden Oaks of Naples Homeowners Association, Inc., a Florida not-for-profit corporation, or any successor thereof by whatever name, charged with the duties and obligations set forth in the Master Community Documents.

1.17 "**Master Community Documents**" means any and all documents, instruments and agreements governing the Walden Oaks of Naples Homeowners Association, Inc. including, but not limited to, the Declaration originally recorded at Official Records Book 1331 Page 0831 of the Public Records of Collier County, Florida, as amended, the Articles of Incorporation and Bylaws of the Master Association, and any procedures, rules, regulations or policies adopted by the Master Association, as amended from time to time.

1.18 "**Members**" means and refers to those persons who are entitled to membership in the Association as provided in its Articles of Incorporation and Bylaws. All Owners shall be Members; provided, however, that there shall be no more than one (1) Member for each Lot.

1.19 "**Occupy**" when used in connection with a Home, means the act of staying overnight in a Home. "**Occupant**" is a person who occupies a Home.

1.20 "**Owner**" or "**Lot Owner**" means the record Owner of legal title to a Lot.

1.21 "**Primary Occupant**" means the natural person approved for occupancy of a Home when title to the Lot is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person. When used in reference to a Home owned in one of the forms listed above, the term "primary occupant" shall be synonymous with the term "Owner".

1.22 "**Property**" or "**Community**" means all the real property which is subject to this Declaration.

**1.23 "Structure"** means 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 a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation swimming pools, fences, flagpoles, antennas, playground equipment, and storage sheds.

**1.24 "Tenant" or "Lessee"** means any individual or occupant who resides in the Home for at least 14 days out of any calendar month and pursuant to any other restrictions herein, with or without valuable consideration.

**1.25 "Voting Interests"** means the voting rights distributed to the Association members pursuant to the Bylaws.

## **2. ASSOCIATION.**

**2.1 Membership.** Every Owner of a Lot shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each Owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time.

### **2.2 Plan for Development.**

(A) The Huntington development is part of a large community known as Walden Oaks. Property within Huntington is governed by all of the terms and conditions of the Master Community Documents.

(B) All the property in Huntington shall be subject to such use limitations, restrictions and other provisions, if any, imposed thereon as may be set forth in this Declaration and the Master Community Documents. In addition to any other provisions thereof, the provisions of this Declaration may restrict specific portions of the property specific uses, including, without limitation, use as residential property, nonresidential property, property to be maintained in natural state, and property to be maintained for drainage and/or water management purposes.

(C) All owners of Lots within Huntington, by virtue of having acquired an interest in property located within Huntington, are deemed to have knowledge that their Lot is within the Master Association and subject to the Master Community Documents.

**2.3 Voting Rights.** Voting rights are set forth in the Bylaws of the Association.

**2.4 Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration as Exhibit "B".

**2.5 Bylaws.** A copy of the Amended and Restated Bylaws of the Association is attached to this Declaration as Exhibit "C".

**2.6 Delegation of Management.** The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing functions which may include but are not limited to the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Association for such purposes.

**2.7 Acts of the Association.** Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Owners. The Officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.

**2.8 Powers and Duties.** The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the governing documents. The Association may contract, sue or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Common Areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

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

**2.10 Purchase of Lots.** The Association has the power to purchase Lots in the community in connection with the foreclosure of an Association lien for assessments, charges or fines or any other foreclosure of an interest that affects the Association's lien and to hold, lease, mortgage, encumber or convey them with such power to be exercised by the Board of Directors without prior approval of the members.

**2.11 Interests in Real Property.** The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in this Declaration, the power to acquire, encumber or convey ownership interests in real property, including recreational facilities, whether or not contiguous with the property, shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association.

**2.12 Disposition of Personal Property.** Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the Owners.

**2.13 Roster.** The Association shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Owners are responsible for notifying the Association of any change in their mailing address. All such notices shall be in writing. A copy of the roster shall be made available to any member upon request, except that any personal identifying information required to be kept confidential shall not be made available.

**3. ASSESSMENTS.** The provisions of this section shall govern assessments payable by all Owners, for the common expenses of the Association not directly attributable to one of the Lots.

**3.1 Covenant to Pay Assessments.** Each Owner of a Lot by the act of becoming an Owner covenants and agrees, and each subsequent Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Owner's share of annual assessments based on the annual budget adopted by the Board of Directors of the Association;

(B) The Owner's pro rata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments, provided, however, that special assessment needed for capital improvements must also be approved by the affirmative vote of a majority of voting interests present at a duly noticed membership meeting called for that purpose, and special assessment for the replacement or repair of a previously existing improvement shall be subject solely to the discretion of the Board of Directors with no membership vote required;

(C) Any charges properly levied against individual Owner(s) ("Individual Assessments") without participation from other Owners;

(D) Any assessment provided for by the Master Association.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. The Owner of each Lot, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee; except, however, that the Association shall not be jointly and severally liable with any prior or subsequent owner in the event the Association acquires to a Lot by virtue of foreclosing its lien provided for herein or by deed in lieu of foreclosure. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the

Common Areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no Owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

**3.2 Purposes of Assessments.** The Assessments levied by the Association shall be used for the purposes of promoting the general welfare of the Owners and residents of Huntington; to operate, maintain, repair, improve, construct, and preserve (on a non-profit basis) the Common Areas owned of the Association for the benefit of its members, their guests, tenants and invitees; and to perform all other duties and responsibilities of the Association as provided in the governing documents, including, but not limited to:

(A) Taxes. Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including, without limitation, all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts, and in general all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements, which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue thereon.

(B) Utility Charges. All charges levied for utilities providing services to Common Areas, whether supplied by a private or public firm, including, without limitation, all charges for water, gas, electricity, telephone, sewer, and any other types of utility or any other type services.

(C) Insurance. The premium on the policy of policies outlined herein as well as the repair and replacement of buildings or improvements covered in whole or in part by said insurance.

- (D) Maintenance, Repair and Replacement. Any and all expenses necessary to:
- i. maintain and preserve the landscaped, grassed and open and natural portions of the Common Areas including such expenses as grass cutting, tree trimming, all sprinkler systems, fertilizing, spraying and the like; and
  - ii. operate, maintain, preserve and protect the portions of the Common Areas designated or used for water management and drainage purposes including all costs of chemically treating the waters of such areas, controlling water levels, and maintaining and operating any improvements and amenities established within any such areas; and
  - iii. keep, maintain, operate, repair and replace any and all buildings,

improvements, personal property and furniture, fixtures and equipment upon the Common Areas including fences between Living Units, in a manner consistent with the development of Huntington and in accordance with the covenants and restrictions contained herein, and in conformity with all applicable federal, state, county or municipal laws, statutes, ordinances, orders, rulings and regulations; and

iv. maintain, repair and replace all street signs installed or placed on any the property by the Association which are not maintained, repaired, and replaced by the County or other applicable governmental body or agency; and

v. maintain, repair and replace all signs, decorative walls, fences and other structures installed, placed or erected by the Association within the property constituting signs and entry features for Huntington or any part thereof; and

vi. maintain and operate any street lights within or adjacent to the streets and roads within Huntington including, but not limited to, all charges of any utility company providing electric service for such street lights and costs for repair or replacement of damaged street lights to the extent any of such costs and charges are not paid for by governmental agencies or the utility company providing service with respect thereto.

(E) Administrative and Common Expenses. The costs of administration for the Association in the performance of its functions and duties contained herein including, but not limited to, costs for secretarial and bookkeeping services, salaries of employees, legal and accounting fees and contracting expenses. In addition, the Association may retain a management company or companies to assist in the operation of the Association and to perform or assist in the performance of certain obligations stated herein and the fees or costs of any management company so retained shall be deemed part of the Common Expenses.

(F) Compliance with Laws. The Association shall take action as it determines necessary or appropriate in order for the Common Areas and the improvements thereon to be in compliance with all laws, statutes, ordinances and regulations of any governmental authority, whether federal, state or local, including, without limitation, any regulations regarding zoning requirements, setback requirements, drainage requirements, sanitary conditions and fire hazards, and the cost and expense of such action taken by the Association shall be an Common Expense.

**3.5 Share of Assessments, Regular, Special and Individual.** The owners of each Lot shall be liable for a one-forty-ninth (1/49th) share of the regular annual and special assessments levied by the Association for Common Expenses of the Association. All monetary fines assessed against an Owner pursuant to the governing documents, or any expense or charge of the Association attributable to or on behalf of an individual Owner pursuant to the governing documents, shall be an Individual Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided herein.



**3.6 Lien.** The Association has a lien on each Lot for unpaid past due Association Assessments and charges, together with interest, late payment penalties, costs and reasonable attorney fees incurred by the Association in enforcing this lien. The lien is perfected by recording a Claim of Lien in the public records of the county, which Claim of Lien shall state the description of the property encumbered thereby, the name of the record Owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments, fines and charges, interests, late fees, costs and attorney fees which are due and which may accrue or come due after the recording of the Claim of Lien and before the entry of a final judgment of foreclosure. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

**3.7 Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments or charges by the procedures and in the same manner as is provided in Section 720.3085 of the Florida Statutes, as amended from time to time, for the foreclosure of a lien upon a Lot for unpaid assessments. All unpaid assessments and charges also constitute a personal obligation of the owners and the Association may, in addition to any other remedy herein provided, bring an action at law against any Owner liable for unpaid charges or assessments. If final judgment is obtained, such judgment shall include interest on the assessments as above provided and reasonable attorney fees to be fixed by the Court, together with the costs of the action, and the Association shall be entitled to recover reasonable attorney fees in connection with any appeal of such action.

**3.8 Priority of Liens.** Unless otherwise provided for by law, the Association's lien for unpaid charges, assessments and all other amounts shall relate back to the date the original Declaration was recorded in the Public Records of Collier County, Florida and be superior to, and take priority over, any other mortgage, lien or interest recorded after that date. Any lease of a Lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed.

**3.9 Application of Payments; Failure to Pay; Interest.** Assessments, charges and installments thereon paid on or before the first day of every month. In addition to interest, the Association may also charge an administrative late payment fee in an amount not to exceed the maximum amount allowed by law. Assessments, charges and installments thereon shall become due, and the Owner shall become liable for said assessments or installments on the date established in the Bylaws or otherwise set by the Board of Directors for payment. Any restrictive endorsement on or accompanying a payment notwithstanding, all payments made to the Association by or on behalf of an Owner shall be applied first to interest, then, to late fees, then to costs (including but not limited to collection charges imposed by the management company, attorney and court) then to attorney fees, then to fines (if allowed by law), then to other charges, and then to the oldest outstanding unpaid regular, special or individual assessments. No payment by check is deemed received until the check has cleared. The Association shall also have the right to require any tenant occupying the Lot during any period in which assessments for the Lot are due but have not been paid to the Association to pay the rent to the Association as provided

in this Declaration.

**3.10 Acceleration.** If any special assessment or installment of a regular assessment as to a Lot becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

**3.11 Removal of Property.** After the Association successfully performs a foreclosure on the property, if the Owner does not remove personal property from the foreclosed premise, such property will be deemed forfeited to the Association and the Association may authorize removal and may sell or donate such forfeited property after ten (10) days written notice by certified mail addressed to the homeowner at the last known address or at such address on record as provided to the Association by the Owner. Such remedy shall be in addition to all other remedies available to the Association under applicable laws, rules and regulations including the right to compel removal of the property and right to impose any and all fines.

**3.12 Certificate as to Assessment, Mortgagee Questionnaires.** Within fifteen (15) days after request by an Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge up to the maximum amount allowed by law to issue an estoppel certificate. The Association may, but is not obligated to, respond to mortgagee questionnaires. If the Association chooses to respond to a mortgagee questionnaire the Association may charge up to \$150.00 (in addition to any charge for an estoppel letter) plus attorney's fees for doing so.

**3.13 Mortgage Foreclosure.** Unless otherwise provided by law, if the mortgagee of a first mortgage or an institutional mortgage of record acquires title to a Lot as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such acquirer or title shall be jointly and severally liable for all past due monetary obligations attributable to the Lot, or to the former Owner of the Lot, including but not limited to, any assessments, interest, late fees, administrative costs, attorneys' fees and any other monetary obligation which came due prior to the mortgagee's acquisition of title or as required by Section 720.3085, Florida Statutes. Any unpaid share of common expenses for which such acquirer is exempt from liability becomes a common expense collectible from all Owners, including such acquirer and his or her successors and assigns. All other persons or entities acquiring title to a Lot as the result of a foreclosure or other Court ordered sale shall be obligated to pay all past due assessments and monetary obligations due and owing at the time of sale regardless of whether or not the Association has

filed a lien. No Owner or acquirer of title to a Lot by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any assessments coming due during the period of his or her ownership.

**4. EASEMENTS.**

**4.1 Appurtenant Easements.** All Owners shall have a non-exclusive easement to use and enjoy the Common Areas, subject to the terms of the Governing Documents, payment of use or access fees or other charges reasonably imposed by the Association and subject to any restrictions or limitations contained in any instrument conveying such property to the Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the lessee of the Lot. All Common Areas shall be maintained by the Association in such manner that its use and enjoyment as open space will not be diminished or destroyed. No Common Area shall be developed except for use by Owners as open space.

**4.2 Utility Easements.** There is hereby reserved unto the Association and the designees (which may include, without limitation, Collier County, Florida, and any utility company), blanket easements upon, over, across, and under all of Huntington for ingress and egress; dispensing pesticides; installation, replacing, repairing, relocating and maintaining roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including but not limited to water, sewer, meter boxes, telephones, gas, electricity and irrigation; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot.

**4.3 Subordination.** Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate and will be subordinate without the necessity of any other instrument, to any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the Common Areas.

**4.4 Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

(A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Areas and providing the services herein, and, to aid thereof, to mortgage said properties;

(B) the right of the Association to impose rules and regulations governing the use of the Common Areas and Association property as further provided in the Bylaws; and

(C) the right of the Association to a non-exclusive easement over, across and through each Lot as necessary to meet the Association's maintenance responsibilities as well as the Water Management System.

**4.5 Easement for Encroachment and Overhang.** There shall be a reciprocal appurtenant easement for encroachments which now exist or hereafter exist, caused by settlement or movement of any building, or caused by minor inaccuracies in building or rebuilding, including the location of fences, landscaping, walkways, privacy walls and party walls, which encroachments shall be permitted to remain undisturbed and such easements shall continue so long as the encroachment exists.

**4.6 Grant, Modify, or Relocate.** Notwithstanding anything to the contrary contained herein, the Association has the power, without the joinder of any Owner, to grant, modify or relocate easements in any portion of the common area or association property, as the Board shall deem necessary or desirable for the Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots.

**5. MAINTENANCE.**

**5.1 Association Maintenance.** All ~~land~~ <sup>land</sup> ~~and~~ <sup>and</sup> within the privacy walls of the Home, shall be under the exclusive jurisdiction and responsibility of the Association for the purposes of installation, maintenance and replacement of the landscaping, utilities and all installations of fixtures and facilities. No Owner shall place, or cause to be placed, any landscaping, lighting, fixture, structure, or personal property on the area of any Lot outside of the privacy walls, or within the area of the privacy walls if such can be viewed from outside of the Home located thereon, without prior written approval of the ARC. The cost of maintaining Common Areas shall be a Common Expense.

**5.2 Maintenance of Exterior of Homes.** The Association shall paint and maintain the appearance of, and repair and/or replacement of the roofs, driveways, walkways, footbridges, and exterior surfaces of the residences and appurtenant structure, keeping the same in a condition comparable to the condition of such improvements at the time of their initial construction except for normal wear despite the fact that the Homes are individually owned. Each Owner hereby expressly and irrevocably appoints the Association as his agent for the purpose of performing said maintenance and repair, including painting. The cost of such maintenance is not part of the Common Expenses and shall be billed directly to the Owner. Where the Association performs similar work on several Homes at one time, the Association may allocate the cost of said work at different rates among those Homes receiving such services based on the sizes and types of Homes receiving the services. The amounts billed shall be secured by a lien on the Lot and Home in the same manner as if they were part of the Common Expenses. The Association is not responsible for internal structural repairs or replacements, nor is it responsible for day-to-day cleaning.

**5.3 Maintenance of Lot and Homes.** The individual Owners shall, in addition to other obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility of the following:

- (A) The Home, structure and all structural components, entry doors, garage doors, windows, sliding glass doors, screens, screen doors and their hardware, frameworks, and

locks serving the Home. Notwithstanding the above, the Association shall be responsible for the painting of the outside of the exterior doors and walls as well as the periodic cleaning of the exterior of the Homes and garages, the frequency of which being in the sole discretion of the Board, to remove and discourage mold growth and to present the exterior in an attractive condition.

(B) The complete interior of the Home including all interior walls, floors, ceilings, partitions, cabinets, plumbing and all other interior components.

(C) Interior and exterior electrical lines and hookups, all air conditioning components, appliances, TV cables and connections, telephone and other similar lines and connections and sewer pipes and septic systems serving the individual Lot.

(D) Any modification, alteration, installation or addition to the Lot or Common Areas made by the Owner or his predecessors in title with Board approval including but not limited to, any decks or concrete pads. The Owner shall be responsible for insurance, maintenance, repair and replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the properties for which the Association is responsible.

(E) The Lot on which any Home or garage exists, it being the intention of this Section that the Owner shall be responsible for the maintenance, repair and replacement of the real property supporting the Home or garage, including damage from natural disasters including, but not limited to, sinkholes, catastrophic ground cover collapses, or similar events.

**5.4 Irrigation of Lots.** The Association shall maintain and control the usage, frequency and duration of the irrigation system on the Lots and the Common Areas. Each Owner hereby consents and agrees to provide the Association, its agents and assigns, reasonable access to the irrigation control box attached to each Home to regulate the usage, frequency and duration of the irrigation system. No Owner shall alter or interfere with the control box, irrigation controls, or the Association's ability to regulate the irrigation system. The Owner shall be responsible for reporting the need for maintenance of sprinkler equipment within the privacy walls of his Home and the Association shall have no duty to inspect any portion of the equipment within the privacy walls.

**5.5 Enforcement of Maintenance.** If the Owner fails to maintain his Lot as required above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the Lot and remedying the violation, with or without consent of the Owner but only after ten (10) days written notice of intent to do so. No hearing shall be required prior to the Association enforcement under this Section. The Association may repair, replace or maintain any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the

appearance of the Properties. Any expenses so incurred by the Association shall be billed directly to the Owner of the Lot to which such services are provided, and shall be an individual assessment charged against the Lot, secured by a lien against the Lot as provided in Article 3 above.

**5.6 Negligence; Damage Caused by Condition in Lot.** Each Owner shall be liable for the expenses of any maintenance, repair or replacement of Common Areas, other Lots, or personal property made necessary by his act or negligence or by that of any member of his family or his guests, employees, agents, or lessees.

**6. ARCHITECTURAL CONTROL TO PRESERVE THE BEAUTY, QUALITY AND VALUE OF THE COMMUNITY.**

**6.1 Improvements Requiring Approval.** No building, structure, mailbox or related components, enclosure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color or other work which in any way alters the exterior appearance of any structure or Lot shall occur unless and until the plans, specifications and location of same shall have been submitted to, and approved in writing by, the Architectural Review Committee ("ARC") of the Master Association as set forth in the Master Community Documents.

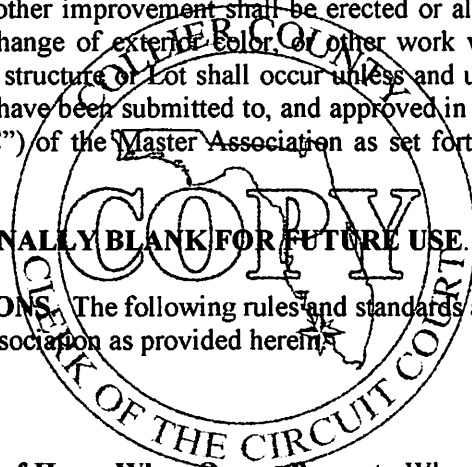
**7. LEFT INTENTIONALLY BLANK FOR FUTURE USE.**

**8. USE RESTRICTIONS.** The following rules and standards apply to Huntington and shall be enforced by the Association as provided herein.

**8.1 Occupancy.**

**(A) Occupancy of Home When Owner Present.** When the Owner is in residence, a Home may be occupied by the Owner, his family, guests or invitees without limitation, except that the maximum number of permanent residents who may occupy any Home, regardless of size, is five (5) persons at any one time. A permanent resident is any natural person who is physically present in a Home for longer than thirty (30) days in any calendar year. There are no age restrictions and permanent residents need not be related to each other.

**(B) Occupancy of Home When Owner Not Present.** An Owner may allow family, friends or business associates to occupy his Home in his absence on not more than three (3) occasions each calendar year, provided, that no single occasion of such occupancy may exceed sixty (60) consecutive days nor may the total of all three (3) such occasions exceed ninety (90) days in any twelve (12) month period. The Owner must register all such guests with the Association in advance, giving such information about the guests and the period of their stay as the Board may reasonably require. The Owner is responsible for the conduct of his guests. When the Owner is not in residence, no more than four (4) overnight occupants are allowed at any time. No pets are permitted by guests.



**8.2 Home.** Each Home shall be used as a home and for no other purpose. However, “no impact” or “low impact” home based business in and from a Home are allowed. Such uses are expressly declared customarily incident to residential use. Examples of businesses which are prohibited and are considered “impact” businesses are businesses or commercial activity or ventures that create excessive customer traffic to and from the Home, create noise audible from outside the Home, or generate fumes or odors noticeable outside the Home, or other activities as determined by the Board of Directors, including but not limited to, a home day care, beauty salon/barber, and animal breeding. Signs and other advertising material visible from the street are prohibited.

**8.3 Minors; Operation of Motor Vehicles on Common Area.** All persons under eighteen (18) years of age shall be closely supervised at all times by an adult to insure that they do not become a source of unreasonable annoyance to other residents. Any person that does not have a valid, current driver’s license is prohibited from operating any motor vehicle, including but not limited to golf carts, on the Common Areas unless said person is under the direct supervision of another person that has a valid, current driver’s license.

**8.4 Pets.** Owners may keep pets of a normal domesticated household type (such as cats, fish or dogs) are permitted and any pet dog must be registered with the Association demonstrating validated vaccines. Owners may keep no more than one (1) dog, not to exceed twenty-five (25) pounds at maturity, and one (1) cat per living unit. Pets may not be left unattended in vehicles, porches, patios or in garages. The Association may adopt rules and regulations which restrict the walking of pets in certain areas. Pets must be leashed at all times when outside the Owner’s Home or Lot. The ability to keep pets is a privilege, not a right, and the Board of Directors, in its sole and absolute discretion, is empowered to fine an Owner and/or order and enforce the removal of any pet that becomes a source of unreasonable annoyance or a danger to the health, safety and welfare to other residents. No reptiles, monkeys, rodents, amphibians, poultry, swine, rabbits, ferrets or livestock may be kept on the properties. All animals kept in the Home must be for personal family enjoyment as pets, no commercial breeding or boarding of animals of any type is allowed. Tenants shall not be permitted to keep dogs as pets in Huntington. No dog runs or animal pens of any kind will be permitted on any Lot. Lot Owners shall be responsible to pick up and dispose of pet waste.

**8.5 Nuisances.** No obnoxious or offensive activity, noise or sound shall be carried on within Huntington or upon any part, portion or tract thereof, nor shall any Owner use his Home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Home, or which would not be consistent with the maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each Home shall be consistent with existing laws and the governing documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the community. The Board of Directors’ determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

**8.6 Garages.** In addition to reasonable rules adopted by the Board in its sole discretion concerning garage use, garage doors shall remain closed unless maintenance work is being performed on the Home or its systems in the garage or temporary work is taking place adjacent to the garage such that constant access is required. Garages are intended for vehicle parking.

**8.7 Subdivision and Partition.** Huntington has two, three and four units per building. The Sites shall not be subdivided except as provided in this Declaration.

**8.8 Vehicle Parking.**

**(A) Owners and Guests.** Family vehicles of Owners and guests are permitted in Huntington. The parking of any vehicle upon any other part of the property is prohibited except in spaces expressly provided for guest or as may be approved in writing by the Board of Directors. Designated parking spaces within the Common Areas are intended for parking of vehicles belonging to Owners or their guest.

**(B) Commercial.** Commercial vehicles which can be kept in the garage of a residence shall be permitted on the property except for repairman and maintenance personal whose vehicles are on the property temporarily. Any vehicle displaying a company name or logo on its exterior, or adorned with signs, flags, advertisements or any type of lettering or graphic of a commercial nature, or any vehicle with racks, ladders, staging, or other equipment or attachments of a commercial nature including supplies used for commercial purposes, on or visible in the vehicle is considered a "commercial vehicle." Other than service vehicles serving Huntington, commercial vehicles will not be permitted in Huntington overnight unless parked in an enclosed garage with the door completely closed.

**(C) Recreational.** Recreational vehicles, motorcycles, mopeds, ATV's, swamp buggies, dune buggies, go carts, golf carts, boats, watercraft, wave runners, jet skis, motor homes, campers, travel trailers, trailers, etc., must be kept inside the garage at all times with garage doors fully closed or off the premises.

**(D) Violation.** The Association is authorized to tow or place a disabling "boot" on any vehicle violating this Section, the Rules or Regulations, a law or any other retraction contained in the governing documents and cost of towing and/or booting shall be the obligation of the Owner of the vehicle. The Board is authorized to adopt additional rules and regulations regarding parking and vehicles restrictions not expressly provided for above, at the Board's discretion, to prevent against unsightly conditions.

**8.9 Clotheslines.** No towels, garments, rugs, etc., may be hung from windows or other parts of the Homes. No clotheslines or drying yards shall be allowed.

**8.10 Radio Equipment and Antennas.** No ham radios or radio transmission equipment shall be operated or permitted to be operated on Common Areas without prior written consent of the Board. Satellite antennas are permitted; however, the Board may adopt reasonable rules and



regulations regarding the placement of satellite and areal antennas and no aerial, antenna or other similar device shall be placed or erected upon any Home without prior written approval of the Board. . The Board of Directors may approve, in its sole discretion, the erection of a common structure to serve all Homes.

**8.11 Trash and Garbage.** Trash, garbage and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and kept inside the Owner's garage except when placed outside on the day before pick-up and not before 6:00pm, and as otherwise required by the Board in its sole discretion.

**8.12 Personal Property.** No personal property of Owners and occupants, such as bicycles, toys, equipment, barbecue grills, lawn furniture, etc. may be left or stored on the Common Areas outside of the privacy walls of the Homes. No inoperative motor vehicle or vehicles parts may be kept or stored anywhere except fully enclosed in a garage. The Board has the right to adopt reasonable rules and regulations regarding the placement of any personal property on the Common Areas or outside the privacy walls of the Homes.

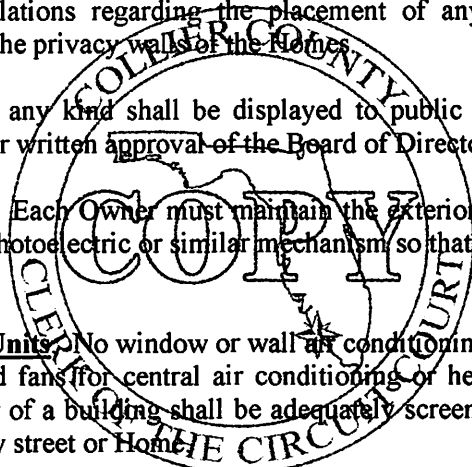
**8.13 Signs.** No sign of any kind shall be displayed to public view on any Home, Lot or Common Area without prior written approval of the Board of Directors.

**8.14 Exterior Lighting.** Each Owner must maintain the exterior garage light and shall keep the same equipped with a photoelectric or similar mechanism so that the light is illuminated at all times during the night.

**8.15 Air Conditioning Units.** No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately screened or landscaped to prevent their being viewed from any street or Home.

**8.16 Hazardous Materials.** Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment (the "Environmental Laws"). Environmental Laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials (collectively, the "Hazardous Materials"). No Owner or his tenants, guests, invitees, or permittees shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about his or her Lot any Hazardous Materials except in compliance with the Environmental Laws.

**8.17 Solar Heating Systems.** No solar heating systems of any kind shall be placed on or erected upon any Lot or affixed in any manner to the exterior of any building without the prior written approval of the Board.



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

9.1 **Association; Required Coverage.** The Association shall maintain adequate property insurance covering all of the common area buildings, the Common Areas and all Association property. The Association shall also provide adequate general liability insurance. The amounts of coverage shall be determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following protection:

- (A) **Property.** Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by the standard "All Risk" property contract.
- (B) **Liability.** Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to an Owner.
- (C) **Automobile.** Automobile liability for bodily injury and property damage for all owned and non-owned motor vehicles when used for Association business, in such limits of protection and with such coverage as may be determined by the Board of Directors.
- (D) **Compensation.** The Association may maintain Workers' Compensation insurance and shall if required by law.

9.2 **Duty to Insure.** Each Owner is responsible for insuring the real and personal property within his own home or residence or garage. Each Owner must recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance liability including all risk, sinkhole, catastrophic ground cover collapse, flood, liability, etc.

9.3 **Duty to Reconstruct.** Except as otherwise approved by the Board of Directors, if any home or residence or other improvements located on any residential Lot is destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvements shall cause repair or replacement to be commenced within one hundred and eighty (180) days from the date that such damage or destruction occurred, and to complete the repair or replacement within twelve (12) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, and shall utilize and conform to the original foundation and appearance of the original improvements.

9.4 **Failure to Reconstruct.** If the Owner of any residence fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 9.3 above, the Association shall give written notice to the Owner

of default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet its obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the residence shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvements. The Association shall have the right to recover from the Owner any costs not paid by insurance, and shall have a lien on the Lot and residence to secure payment.

**9.5 Association Insurance; Duty and Authority to Obtain.** The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

**9.6 Optional Coverage.** The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Owners.

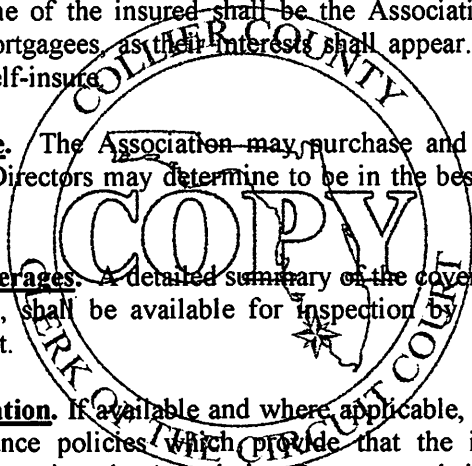
**9.7 Description of Coverages.** A detailed summary of the coverage included in the policies, and copies of the policies, shall be available for inspection by Owners or their authorized representatives upon request.

**9.8 Waiver of Subrogation.** If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

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

(A) **Common Areas.** Proceeds on account of damage to common areas shall be held in as many undivided shares as there are homes or residences, the shares of each Owner being the same as his share in the common areas.

(B) **Mortgagee.** If a mortgagee endorsement has been issued as to a home or residence, the shares of the mortgagee and the Owner shall be as their interests appear. In no event



shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against lots or parcels, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

**9.10 Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be payable to the Association or as otherwise provided by law.

**9.11 Association as Agent.** The Association is hereby irrevocably appointed as agent for each Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the common areas.

**9.12 Damage to Common Areas.** Where insured loss of damage occurs to the common areas or Association property, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Owners for the deficiency. Such special assessments need not be approved by the Owners. The special assessments shall be added to the funds available for repair and restoration of the property.

**10. LEASING.** In order to foster a stable residential community and prevent a motel-like atmosphere, the leasing Homes by their Owners shall be restricted as provided in this section. All leases of Homes must be in writing. An Owner may lease only his entire Home, and then only in accordance with this Section, after receiving the approval of the Association. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The following also applies to any new occupant of a Home that was not approved under the existing lease of the Home.

**10.1 Procedures.**

(A) **Notice by the Owner.** An owner intending to lease his Home shall give to the Board of Directors or its designee written notice of such intention at least 30 days prior to the first day of occupancy under the lease together with the name and address of the proposed lessee, a fully executed copy of the proposed lease, and such other information as the Board may reasonably

require including but not limited to a credit report, background check and proof of lawful residency. The Board may require a personal interview with any lessee, proposed occupant and his or her spouse, if any, as a pre-condition to approval. The applicant must sign for having received copies of the rules and regulations of the Association.

(B) Board Action. After the required notice and all information or interviews requested have been provided, the Board shall have fifteen (15) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

(C) Disapproval. A proposed lease shall be disapproved only if a majority of the whole Board so votes, and in such case the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

1. the Owner is delinquent in the payment of assessments, fines or other charges or is in violation of any covenants, rules or regulations at the time the application is considered;
2. the Owner has a history of leasing his unit without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Home;
3. the real estate company or rental agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;
4. the application on its face indicates that the person seeking approval or any of the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;
5. the prospective lessee or any of the proposed occupants have been convicted of a felony involving violence to persons or property, a felony involving sale or possession of a controlled substance, or a felony demonstrating dishonesty or moral turpitude;
6. the prospective lessee has a history of conduct which evidences disregard for the rights and property of others.
7. the prospective lessee evidences a strong possibility of financial irresponsibility;
8. the lessee or any of the proposed occupants, during previous occupancy, has evidenced an attitude of disregard for the Association rules;
9. the prospective lessee or any of the proposed occupants give false or

incomplete information to the Board as part of the application procedure, or the required transfer fees and/or security deposit is not paid.

10. the Owner fails to give proper notice of his intention to lease his Home to the Board of Directors.

**10.2 Term of Lease and Frequency of Leasing.** No Home may be leased more often than three (3) times in any calendar year. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

**10.3 Exceptions.** Upon written request of an Owner, the Board of Directors may approve one additional lease of the Home within the same calendar year, but only under unusual circumstances to avoid undue hardship and inequity.

**10.4 Occupancy During Lease Term.** The unit may be occupied by the lessee and his immediate family, and in no event shall more than five (5) individuals occupy a leased Home overnight.

**10.5 Fees and Deposits for the Lease of Homes.** Whenever herein the Board's approval is required to allow the lease of a Home, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person intending to occupy the Home except only one fee may be charged for a husband and wife and minor children. No fee may be charged for approval of a renewal or extension of a lease with the same lessee. The Association may also require a security deposit to protect against damage to the Common Area or Association property.

**10.6 Unapproved Leases.** Any lease of a Home not approved pursuant to this Section shall be void and unenforceable unless subsequently approved by the Board.

**10.7 Use of Common Area and Association Property.** To prevent overtaxing the facilities, an Owner whose Home is leased may not use the recreation or parking facilities during the lease term.

**10.8 Regulation by Association.** All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable and enforceable against any person occupying a Home as a lessee or guest to the same extent as against the Owner. A covenant on the part of each occupant to abide by the rules and regulations of the Association and the provisions of the governing documents, designating the Association as the Owner's agent with the authority to terminate any lease agreement and evict the tenants in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written, and whether specifically expressed in such agreement or not. Any individual residing in a Home for fourteen (14) days or more in any calendar month shall be deemed a tenant and subject to approval as required herein.

**10.9 Collateral Assignment of Rents.** In the event an Owner is in default in payment of assessments for Common Expenses or any other monetary amounts owed to the Association, the Association shall have the authority to collect rents directly from the Owner's tenant. Upon demand by the Association the tenant shall pay said rent to the Association. Such rental payments shall be collected in accordance with the procedures established by the Board of Directors and applied in accordance with Article 3 of this Declaration until all past due amounts are paid in full. In the event such tenant fails to remit said rents directly to the Association within seven (7) days (but no later than the day the next rental payment is due) from the day the Association notified such tenant in writing that the rents must be remitted directly to the Association, the Association shall have the right to terminate the lease and evict the tenant. For the purpose of such eviction, the Association shall be deemed to be an agent of the landlord. The authority granted in this Section is in addition to any authority granted by law.

**11. TRANSFER OF OWNERSHIP OF LOTS.** In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Lots and Homes, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of ownership of a Home shall be subject to the following provisions: NOTE: Any person who was not approved as part of the conveyance to the present unit Owner must be approved in advance of taking occupancy as provided herein, and for good cause may be disapproved, regardless of whether or not said person shall be obtaining an ownership interest in the Lot or Home.

**11.1 Forms of Ownership.**

(A) A Lot may be owned by one natural person who has qualified and been approved as elsewhere provided herein.

(B) Co-Ownership. Co-ownership of Lots is permitted. If the co-owners are to be other than husband and wife, the Board shall condition its approval upon the designation by the proposed new owners of one (1) natural person as "primary occupant". The use of the lot by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupant shall be treated as a transfer to ownership by sale or gift subject to the provisions of this Section 11. No more than one such change will be approved in any twelve (12) month period. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the unit may be used as short-term transient accommodations for several individuals or families or in the manner of fractional ownership or a vacation club.

(C) Ownership by Corporations, Partnerships or Trusts. A Lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person, if approved in the manner provided elsewhere herein. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the lot may be used as short-term transient accommodations for several individuals or families or in the manner of fractional ownership or vacation club. The approval of a trust, or corporation,

partnership or other entity as a lot owner shall be conditioned upon designation by the owner of not more than one (1) natural person to be the "primary occupant". The use of the Lot by other persons shall be as if the primary occupant were the only actual owner. Any subsequent change in the primary occupants shall be treated as a transfer of ownership by sale or gift subject to the provisions of this Section 11. No more than one such change will be approved in any twelve (12) month period.

(D) Designation of Primary Occupant. If any Owner fails to designate a primary occupant when required to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action.

(E) Life Estate. A lot may be subject to a life estate, either by operation of law or by a voluntary conveyance approved as provided herein. In that event, the life tenant shall be the only Association member from such Lot, and occupancy of the lot shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the lot. Any consent or approval required of association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-owners for purposes of determining voting and occupancy rights under Section 11.1(B), above.

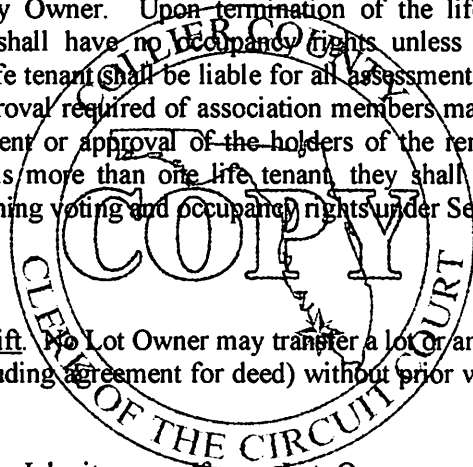
11.2 Transfers.

(A) Sale or Gift. No Lot Owner may transfer a lot or any ownership interest in a Lot by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any Lot Owner acquires his title by devise or inheritance, his right to occupy or use the Lot shall be subject to the approval of the Board of Directors under Section 11.3(A)(2) below. The approval shall not be denied to any devise or heir who was the prior owner's lawful spouse at the time of death, or was related to the owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Lot before being approved by the Board of Directors under the procedures outlined in Section 11.3 below.

(D) To facilitate transfers proposed during times when many of its members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three (3) unit owners, or to the President, Vice President or Treasurer, any of whom may be deemed a Vice President for purposes of executing a Certificate of Approval.





**11.3 Procedures.**

**(A) Notice to Association.**

1. Sale or Gift. An Owner intending to make a sale or gift of his Lot or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, and such other information as the Board may reasonably require. The Board may require a personal interview with any purchaser or donee and his spouse, if any, as a pre-condition to approval.
2. Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of his ownership and submit a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy or use rights until and unless approved by the Board, but may sell or lease the unit following the procedures herein.
3. Demand. With the notice required in Subsection (A)(1) above, the Owner or transferee seeking approval may make a written demand that if the transfer is disapproved without good cause, the Association shall furnish an approved alternate purchaser who shall purchase the lot at the same price and upon substantially the same terms as in the disapproved sales contract, or if no contract is involved, for the fair market value of the unit determined as provided below.
4. Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Lot, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

**(B) Board Action.** Within 20 days after receipt of the required notice and all information or interview requested, or not later than 60 days after the notice required by paragraph (A) above is received, whichever occurs first, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by the President or Vice-President of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, such failure to act shall be deemed the equivalent of approval and on demand the Board shall issue a Certificate of Approval to the transferee.

(C) Disapproval.

1. With Good Cause. Approval of the Association shall be withheld for good cause only if a majority of the whole Board so votes. Only the following may be deemed to constitute good cause for disapproval:

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

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

(c) The application on its face gives the Board reasonable cause to believe that the applicant intends to conduct himself in a manner inconsistent with the covenants and restrictions applicable to the Association;

(d) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

(e) The person seeking approval has evidenced an attitude of disregard for association rules by his conduct in the community as a tenant, owner or occupant of a home;

(f) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process.

(g) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

2. Without Good Cause. The Association's approval shall not be denied unless a majority of the whole Board so votes. If the Board disapproves without good cause, and if the owner or transferee has made the demand set forth in Section 11.3(A)(3), then within thirty (30) days after the Board meeting at which the disapproval took place, the Board shall deliver in writing to the owner the name of an approved purchaser(which may be the Association) who will purchase the lot at the same price, and upon substantially the same terms, as in the disapproved sales contract. If no sales contract was involved, or if the Association challenges the contract price as not being a good faith purchase price, then the purchase price shall be paid in cash, and the price to be paid shall be determined by agreement, or in the absence of

agreement, shall be the fair market value determined by the arithmetic average of appraisals by two state-certified property appraisers, one selected by the owner and the other by the Association. The cost of the appraisals, and all other closing costs in cases where no sales contract is involved, shall be shared equally by the purchaser and selling owner, except that the purchaser shall pay for his own title insurance, and all costs of mortgage financing. Real property taxes and assessments shall be prorated to the day of closing and the parties shall bear their own attorneys fees, if any. The closing shall take place not longer than sixty (60) days after the date of Board disapproval or thirty (30) days after determination of fair market value by appraisal, whichever occurs last. Failure or refusal to close by either party shall constitute a breach of contract and shall entitle the other party to seek specific performance or damages.

3. If the Board fails to deliver the name of the approved purchaser within thirty (30) days as required above, then the original proposed purchaser shall be deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

**11.4 Exception.** The provisions of Sections 11.2 and 11.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, but shall apply to the acquisition of title by any other person without regard to how the title was acquired.

**11.5 Unapproved Transfers.** Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board.

**11.6 Fees and Deposits Related to the Sale of Lots.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Lot, the Association may charge the Owner a preset fee for processing the application, such fee not to exceed the maximum amount allowed by law. A separate fee may be charged for each person who is obtaining an interest in the Lot except if such persons are husband and wife.

**12. PARTY WALLS.**

**12.1 Definition.** Each wall which is built as part of the original construction of any two, three, or four-unit building subject to this Declaration and placed on the dividing line between adjoining Homes shall constitute a party wall, and, to the extent no inconsistent with this section, the general rules of law regarding party walls and liability for property damage due to negligence to willful acts or omissions shall apply thereto.

**12.2 Cost of Repairs.** The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who share the wall.

**12.3 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if any other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. This paragraph shall be deemed to be in addition to, and not in lieu of or to the exclusion of, the rights of the Association herein.

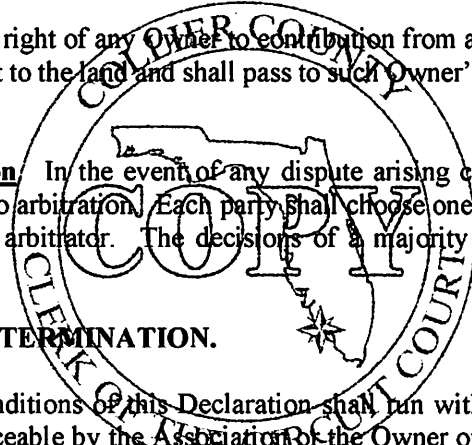
**12.4 Weatherproofing.** Notwithstanding any other provision of this Section, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of refurbishing the necessary protection against such elements.

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

**12.6 Binding Arbitration.** In the event of any dispute arising concerning a party wall, such dispute shall be submitted to arbitration. Each party shall choose one arbitrator, and the arbitrators shall choose an additional arbitrator. The decisions of a majority of arbitrators shall bind the parties.

**13. AMENDMENTS; TERMINATION.**

**13.1 Duration.** The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for forty (40) years of recording of the original Declaration. Thereafter, 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, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of all owners of lots and two-thirds (2/3rds) of all Institutional Mortgagees on lots affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary 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, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida at least one (1) year prior to the effective date of termination, and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

**13.2 Amendments by Members.** Except as otherwise provided herein or by law, this Declaration may be amended at anytime by the affirmative vote of at least three-fourths (3/4) of the voting interests voting in person or by proxy at a duly called meeting of the members of the Association. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by the President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida. No amendment shall increase the proportion by which any Owner shares in the payment of Common Expenses of the Association without the consent of that Owner and the holders of all recorded liens upon that Owner's Lot and Home.

**14. ENFORCEMENT; GENERAL PROVISIONS.**

**14.1 Enforcement.** Enforcement of these covenant, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any Owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any Lot to enforce any lien created by these covenants. Failure of the Association or any Owner to enforce any covenants, Condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

**14.2 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the Common Areas, as well as to any other person occupying any Home under lease from the Owner or by permission or invitation of the Owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests and by the guests, licensees and invitees of his tenants, at any time.

**14.3 Litigation.** No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a majority of the votes eligible to be cast by the Members of the Association. This Section shall not apply, however, to: (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association

in proceedings instituted against it

**14.4 Attorney Fees.** In any legal proceeding arising out of an alleged failure of a guest, tenant, residential Owner, officer, Director or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court.

**14.5 No Election of Remedies.** All rights, remedies and privileges granted to the Association or owners under the law and the governing documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

**14.6 Notices.** Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, electronically as permitted by law or with the proper postage affixed to the last known address of the Owner appearing in the records of the Association, or to the address of the member's Home. Notice to one of two or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

**14.7 Severability.** Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Amended and Restated Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no affect on the remaining provisions herein.

**14.8 Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

**14.9 Not-For-Profit Status.** Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its not-for-profit status under applicable state or federal law.

**14.10 Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

**14.11 Headings.** The headings used in the governing documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

**15. DISCLAIMER OF LIABILITY OF ASSOCIATION.** NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

**15.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;**

**15.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.**

**15.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.**

**15.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED**

**ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.**

**15.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.**

