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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PORTOFINO AT SUN CITY CENTER FT. MYERS**

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NOTICE: As provided in Article XIII, Section 7 of this Declaration, each Homeowner, by virtue of taking title to a Lot, hereby agrees that the deed of conveyance of the Lot to a third party shall specifically state that the Lot is subject to the terms of this instrument and shall state the recording book and page information for this instrument as recorded in the public records of the County. The intent of this provision is to defeat any potential argument or claim that Chapter 712, Florida Statutes, has extinguished the application of this instrument to each of the Lots.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PORTOFINO AT SUN CITY CENTER FT. MYERS ("Declaration" as defined hereinafter) is made by BAY COLONY-GATEWAY, INC., a Delaware corporation, and its successors, assigns and designees.

WITNESSETH:

WHEREAS, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon an exclusive residential community known as Portofino at Sun City Center Ft. Myers (hereinafter referred to as the "Neighborhood"); and

WHEREAS, Developer desires to insure the attractiveness of the individual lots and facilities within the Neighborhood and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the subject property, and to provide for the maintenance of Neighborhood common properties, areas and facilities and certain exterior maintenance on Lots as may be defined hereinafter, and, to this end, desires to subject the real property described in Article II of this Declaration to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Homeowner thereof; and

WHEREAS, Developer has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the Neighborhood and to insure the residents' enjoyment of the specific rights, privileges and easements in the Neighborhood common properties, areas and facilities, to create an organization to which should be delegated and assigned the powers of owning, maintaining and administering the Neighborhood common properties, areas and facilities and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Developer has incorporated under the laws of the State of Florida, as a corporation not for profit, PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC., for the purpose of exercising the functions aforesaid within the Community;

NOW, THEREFORE, Developer declares that the real property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to as "covenants and restrictions") hereinafter set forth.

Article 1: Definitions and Construction

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration:

1.1 "ACC" means the Architectural Control Committee of the Community Association, as established pursuant to the Community Declaration and as more particularly described in Article IV hereof. Wherever herein statements are made pertaining to approvals by the ACC, reference should be made to the Community Declaration.

1.2 "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Neighborhood Association, as may be amended from time to time. A copy of the Articles of Incorporation as filed with the Florida Department of State is attached as Exhibit B hereto. Any future amendments to the original Articles need not be recorded in the public records of the County.

1.3 "Board" or "Board of Directors" means the Neighborhood Association's board of directors.

1.4 "By-Laws" means the By-Laws of the Neighborhood Association as may be amended from time to time. A copy of the original By-Laws is attached as Exhibit C hereto. Any future amendments to the original By-Laws need not be recorded in the public records of the County.

1.5 "CDD" means the Gateway Services District, a special taxing district formed in accordance with Chapter 190, Florida Statutes.

1.6 "City" means the City of Ft. Myers, Florida.

1.7 "Common Expenses" means all expenses properly incurred by the Neighborhood Association in the performance of its duties pursuant to this Declaration, the Articles, the By-Laws or any rules promulgated thereunder, or any agreement properly entered into by the Neighborhood Association, including, but not limited to, (a) the expenses incurred in connection with the ownership, maintenance, repair, replacement, reconstruction or improvement of the Common Property and/or real property held in title by the Neighborhood Association, if any, as provided for pursuant to this Declaration (which expenses may, but shall not necessarily, include utilities, taxes, assessments, insurance and repairs); (b) the expenses of obtaining, repairing or replacing personal property owned by the Neighborhood Association; (c) the expenses incurred in the administration and management of the Neighborhood Association; and (d) the expenses declared to be Common Expenses pursuant to this Declaration or the Articles or the By-Laws.

1.8 "Common Property" or "Common Properties" mean any portion or portions of the Property now or hereafter owned by the Neighborhood Association or designated herein or on the plat of the Property as recorded in Plat Book 69, Pages 84 and 85, public records of the County, as from time to time may be amended ("Plat"), as either Common Property or property to be maintained by the Neighborhood Association (whether or not such property is part of a dedicated right-of-way or easement). "Common Property" shall include, but shall not be limited to, (a) any landscaping in any median or cul-de-sac island located in any right-of-way as shown on the Plat (whether or not these areas are indicated as common areas), (b) any lake areas for which the Neighborhood Association has maintenance responsibility and for which the costs thereof shall be shared by the Homeowners and certain owners of adjacent real property pursuant to separate agreement, (c) all portions of the surface water management system (including dedicated lake tracts, lake maintenance or drainage easements, and corresponding infrastructure), and (d) utility easements or tracts for corresponding sewer or potable water.

1.9 "Community" or "Development" or "Sun City Center Ft. Myers" or "Sun City Center Ft. Myers Development" means the master planned community development project known as Sun City Center Ft. Myers.

1.10 "Community Association" means the Sun City Center Ft. Myers Community Association, Inc., a Florida not for profit corporation, and its successors and assigns.

1.11 "Community Declaration" means that certain Community Declaration for Sun City Center Ft. Myers, as recorded in Official Records Book 3535, Page 4531, public records of the County, and as may be amended from time to time.

1.12 "County" means Lee County, Florida.

1.13 "Declaration" means this instrument, as may be amended from time to time.

1.14 "Developer" means Bay Colony-Gateway, Inc., a Delaware corporation, and its successors, assigns and designees.

1.15 "Family" means one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than 3 persons not all so related, together with domestic servants if any, maintaining a common household in a Home.

1.16 "First Mortgage" means a valid Mortgage (as defined hereinafter) having priority over all other mortgages on the same property.

1.17 "First Mortgagee" means the holder of a recorded First Mortgage encumbering a Lot and the Home thereon, if any.

1.18 "Home" means a residential housing unit or dwelling consisting of a group of rooms which are designed or intended for the exclusive use as living quarters for one Family as constructed by the Developer upon a Lot.

1.19 "Homeowner" means any person who from time to time holds record title to any Lot. If more than one person holds such title, all such persons are Homeowners, jointly and severally. The Developer is a Homeowner with respect to each Lot from time to time owned by such Developer.

1.20 "Landscaping Assessment" shall collectively mean Supplemental Lot Landscaping Assessments and Surrounding Landscaping Area Assessments, as more specifically described in Article VIII hereof.

1.21 "Lot" means each numbered lot as established by the recorded Plat of the Property.

1.22 "Member" means a member of the Neighborhood Association.

1.23 "Mortgage" means any valid instrument transferring any interest in real property as security for the performance of an obligation.

1.24 "Neighborhood Association" means Portofino at Sun City Center Ft. Myers Property Owners Association, Inc., a Florida corporation not for profit, organized or to be organized under Chapters 617 and 720, Florida Statutes.

1.25 "Person" means any natural person or artificial entity having legal capacity.

1.26 "Property" means the real property described in Article II of this Declaration.

1.27 "Resident" means a permanent occupant of a Home. A "permanent occupant" means a person who occupies a Home for more than 30 consecutive days.

1.28 "Sun City Center Ft. Myers" means the planned development being developed by Developer in the County which is presently contemplated to contain approximately 2,500 residential dwelling units, more or less. Each Homeowner, by virtue of taking title to a Lot, consents and understands that the foregoing estimate of the number of dwelling units within Sun City Center Ft. Myers is only an estimate, and Developer shall have the right, authority and power to create more or less dwelling units in Sun City Center Ft. Myers than as estimated above.

1.29 "Town Center Declaration" means the Town Center Declaration for Sun City Center Ft. Myers, as recorded in Official Records 3535, Page 4496, public records of the County, and as may be amended from time to time.

1.30 "Work" means the development of all or any portion of the Property as a residential community by Developer's construction and installation of streets, dwellings, buildings, and other improvements and the sale or other disposition of the Property and improvements thereon in parcels or as completed Lots.

1.31 The term "Article" and the term "paragraph" where used throughout this Declaration shall mean the same, unless the context requires otherwise.

1.32 The term "Section" where used throughout this Declaration shall refer to that portion of the Article indicated, unless the context requires otherwise.

Unless the context expressly requires otherwise: (i) the use of the singular includes the plural and vice versa; (ii) the use of one gender includes all genders; (iii) the use of the terms "including" or "include" is without limitation; (iv) the use of the term "Lot" includes any portion applicable to the context thereof, any and all improvements, fixtures, trees, vegetation, and other property from time to time situated thereon, and any and all appurtenant rights, unless the context otherwise dictates; and (v) the words "must," "should," and "will" have the same legal effect as the word "shall." This Declaration should be interpreted, construed, applied, and enforced in a reasonable, practical manner to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Lots by providing a common plan for their development and enjoyment. The various headings used in this Declaration are for indexing and organizational purposes only and are not to be used to interpret, construe, apply, or enforce its substantive provisions.

Article 2: Property Subject to this Declaration; General Plan of Development

2.1 Applicable Real Property. The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Lee County, State of Florida, and is more particularly described in the metes and bounds description attached hereto as Exhibit A and incorporated by reference as fully as if specifically repeated herein, and all of which real property shall hereinafter be referred to as "Property."

2.2 General Plan of Development. The Community is a mixed-use retirement community including a variety of residential and commercial uses, together with certain recreational and other ancillary facilities, some of which are open only to Owners and Authorized Users (as defined under the Community Declaration) and some of which are open to the public at large. Residential uses with the Community are age-restricted pursuant to the terms of Article 5 of the Community Declaration. As the Community is progressively developed, the property to which the Community Declaration shall apply shall also progressively increase in land area. The Neighborhood and the Property are subject to the Community Declaration. The Community is presently contemplated to contain approximately 2,500 residential Homes, more or less, and approximately 57 acres of commercial property. Each Homeowner, by virtue of taking title to a Lot and being subject to the Community Declaration, consents and understands that the foregoing estimate of the number of homes within the Community is only an estimate. Developer shall have the right, authority and power, in its sole discretion, to create more or less homes and additional commercial development in the Community from time to time.

The general plan of development for the Community includes a 27 hole golf course and related golf clubhouse facilities (collectively, the "Golf Club"). The Golf Club is not subject to the terms of the Community Declaration, except as otherwise specifically provided therein, or this Declaration. The Golf Club is located in close proximity to the Property. Membership in the Community Association and the Neighborhood Association does not include membership in the Golf Club. The facilities of the Golf Club shall be owned by Developer or another entity, and the Golf Club is presently contemplated by Developer to be open for use by the general public as well as by the owners in the Community; provided, however, that Developer reserves the right, in its sole discretion, to restrict usage to the Community owners or other specified individuals. One of the effects of establishing the Golf Club as being open for general public use and located within a residential community may be to increase the number of persons using the roads and the parking facilities of the Community. Developer hereby reserves unto itself and also the right to unilaterally grant over, across and through the Property any non-exclusive easements which may be required for the use, operation and enjoyment of the Golf Club.

The general plan of development for the Community also includes a community center (the "Town Center"). The Town Center is not subject to the Community Declaration, except as otherwise specifically provided therein, or this Declaration. The Town Center is located in close proximity to the Property. The facilities of the Town Center shall be owned by Developer or some other entity, and every Homeowner shall be permitted to utilize the Town Center facilities and shall be obligated to pay for such usage pursuant to the Town Center Declaration. It should be noted that Developer has the right, in its sole discretion, to permit individuals other than Community owners to utilize the Town Center, as provided further in the Town Center Declaration. Membership in the Community Association and the Neighborhood Association does not include any rights of use of the Town Center. The use of the Town Center may result in an increase in the number of persons using the roads and the parking facilities of the Community. Developer hereby reserves unto itself and also the right to unilaterally grant over, across and through the Property any non-exclusive easements which may be required for the use, operation and enjoyment of the Town Center. The owner of the Town Center shall have the right to provide from time to time rules and regulations governing the use and operation of the Town Center.

Article 3: Property Rights, Easements and Restrictions

3.1 Appurtenances. The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as non-exclusive by this Article, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article unless this Article expressly grants such benefit to other persons. In no event will the benefit of any such easement extend to the general public.

3.2 Utility Easements. Developer has identified areas for use by all utilities for the construction and maintenance of their respective facilities servicing the Property, and Developer hereby grants to such utilities, jointly and severally, easements for such purpose. The location and extent of such easements are as shown on the Plat (recorded or to be recorded) of the Property or such other instrument defining them. In addition to the above, Developer hereby reserves unto itself and its successors and assigns an easement over, under, across and through the Common Property as may be required for the construction, maintenance and operation of a two-way communication and monitored access control system. Such utilities, as well as Developer, and their respective agents, employees, designees and assigns shall have full rights of ingress and egress over any Lot for all activities appropriately associated with the purposes of said easements.

3.3 Common Properties. Subject to the provisions of subsection (b) below, every Homeowner shall have a non-exclusive right and easement of enjoyment in and to the Common Properties, if any, and such easement shall be appurtenant to and shall pass with the title to every Home situated within the Community.

3.3.1 Extent of Members' Easement. The rights and easements of enjoyment created herein shall be subject to the following:

3.3.1.1 the right of the Neighborhood Association to limit the use of the Common Properties to Homeowners, their families and guests;

3.3.1.2 the right of the Neighborhood Association to suspend the voting and enjoyment rights of a Homeowner for any period during which any Assessment against his Lot remains overdue and unpaid, or for any infraction of the Neighborhood Association's published rules and regulations;

3.3.1.3 the right of the Neighborhood Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Homeowners. No such dedication or transfer shall be effective unless the Members entitled to at least 2/3 of the Class A votes and all of the Class B votes agree to such dedication or transfer, provided that this paragraph shall not preclude the Board of Directors from granting easements for the installation and maintenance of electrical, telephone, special purpose cable for television and other uses, water and sewer, utilities and drainage facilities upon, over, under and across the Common Property without the assent of the membership; and

3.3.1.4 the right of the Neighborhood Association to impose reasonable covenants and restrictions with respect to the use of the Common Properties in addition to those set forth herein.

3.3.2 Extension of Rights and Benefits. Every Homeowner shall have the right to extend the rights and easements of enjoyment vested in him under this Article to each of his tenants and to each member of his Family who resides with him and to such other persons as may be permitted by the Neighborhood Association.

3.4 Lots. The following covenants, restrictions and easements are hereby imposed on each Lot in the Community:

3.4.1 General Restrictions. Article 7 of the Community Declaration contains specific use and architectural restrictions which apply to the Lots and Homes, and each Homeowner, by virtue of taking title to a Lot, covenants and agrees to abide by such provisions. In addition, the following restrictive covenants are easements and covenants running with the land and are binding upon all Homeowners, Residents, and other occupants and their respective successors and assigns:

3.4.1.1 The Neighborhood is part of an age-restricted community. Each Home in the Community, if occupied, shall be occupied by at least one person 55 years of age or older (hereinafter referred to as the "Community Age Restriction"); provided, however, that upon written petition, the Community Association's board of directors may grant a waiver of this restriction only to persons at least 40 years of age (based upon birthdate) but no greater than 55 years of age (based upon

birthdate) if at least one person 40 years of age or older will occupy the Home that is the subject of the petition and the result of such waiver would result in at least 80% of all the Homes in the Community (as defined in the Community Declaration) being occupied by at least one person 55 years of age or older. The Community Association's board of directors may grant such waiver for a limited time period and upon such terms and conditions as deemed necessary by the Community Association's board of directors to protect the retirement character of the Community. No children under the age of 18 years of age shall occupy any Home; provided, however, that such children may visit and temporarily occupy such Home for periods not to exceed 30 days in any calendar year. Each Homeowner, by virtue of taking title to a Lot, and the Neighborhood Association consent to and agree to comply with the Community Age Restriction and any and all age restrictions and provisions contained in the Community Declaration. Further, each Homeowner and the Neighborhood Association covenant and agree to promptly respond to any requests for information requested by the Community Association which is to be used in whole or in part to ensure compliance with applicable Fair Housing Act requirements.

In order to preserve the retirement nature of the Neighborhood served by this Declaration and the Community as a whole and to maintain an exemption from the applicable age discrimination provisions of the Fair Housing Act Amendments of 1988 or any similar federal, state, or local law regulation dealing with age discrimination, the Developer, as long as it owns any interest in any portion of the Community, shall have the power to amend, from time to time, the Community Age Restriction and/or the terms and provisions of this subparagraph (i), unilaterally and without the consent of the Homeowners or any other party.

Separate and apart from the foregoing, the Community Age Restriction and/or the terms and provisions of this subparagraph (i) may only be amended or rescinded by consent of 100% of the total voting interests in the Neighborhood Association and with the consent of the Community Association's board of directors (save and except for modifications to comply with changes to applicable federal or state law pertaining to age-restricted communities, which modifications shall require a vote of a majority of the total voting interests in the Neighborhood Association). Notwithstanding the foregoing, no such amendment shall be effective without the prior written consent of Developer for so long as Developer owns any property in the Community.

3.4.1.2 There shall be no alteration, addition or improvement of any Common Properties except as provided in this Declaration, nor shall any person use the Common Properties or any part thereof in any manner contrary to or not in accordance with this Declaration or the rules and regulations pertaining thereto as from time to time may be promulgated by the Neighborhood Association or approved and authorized in writing by the Neighborhood Association.

3.4.1.3 The Board of Directors may from time to time adopt or amend previously adopted rules and regulations governing the details of the operation, use, maintenance, management and control of the Common Properties; provided, however, that copies of such rules and regulations are furnished to each Homeowner prior to the time same became effective and provided that said rules and regulations are a reasonable exercise of the Neighborhood Association's power and authority based upon the overall concepts and provisions in this Declaration.

3.4.1.4 Signs shall be permitted only in accordance with the Community Declaration.

3.4.1.5 Each Lot and the Common Property are hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the use, construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including, but not limited to, driveways, walkways and roof structures which overhang and encroach upon the servient Lot or Common Property, if any, provided that such structures were constructed by Developer or the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to make full use of such structure for its intended purposes and to maintain, repair and restore any improvements located on the dominant tenement; provided, however, that any such entry made for purposes of maintenance, restoration or repair shall be limited to daylight hours and shall only be made with the prior knowledge of the owner of the servient tenement. In case of emergency, the right of entry for maintenance, restoration or repair shall be immediate, not restricted as to time, and not be conditioned

upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this paragraph. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Developer notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area.

3.4.1.6 Maintenance and irrigation of grass and landscaping on a Lot shall be undertaken by the Neighborhood Association pursuant to Article VI, Section 1 hereof and any rules and regulations duly promulgated by the Board of Directors from time to time (which shall not be in conflict with the provisions of this Declaration).

3.4.2 Provisions Inoperative as to Initial Construction. Nothing contained in this Declaration will be interpreted, construed, or applied to prevent Developer, or its or their contractors, subcontractors, agents, and employees, from doing or performing on all or any part of the Property owned or controlled by Developer, whatever they determine to be reasonably necessary or convenient to complete the Work, including:

3.4.2.1 Improvements. Erecting, constructing, and maintaining such structures and other improvements as may be reasonably necessary or convenient for the conduct of such Developer's business of completing the Work, establishing the Property as a residential community, and disposing of Developer's ownership of the Property in parcels or Lots by sale, lease, or otherwise; or

3.4.2.2 Development. Conducting thereon its business of completing the Work, establishing the Property as a residential community, and disposing of the Property in parcels or Lots by sale, lease or otherwise, including, but not limited to, maintaining such signs as may be reasonably necessary or convenient in connection with the sale, lease or other transfer of the Property in parcels or Lots.

3.4.3 Access by Neighborhood Association. The officers, employees, or designated agents of the Neighborhood Association have a right of entry onto the exterior of each Lot to the extent reasonably necessary to discharge any duty imposed, or exercise any right granted, by this Declaration or to investigate or enforce the provisions of the Declaration and the rules and regulations of the Neighborhood Association. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times, and the entry may be only upon reasonable notice whenever circumstances permit. Entry into any improvement upon any Lot may not be made without the consent of its Homeowner or occupant for any purpose, except pursuant to court order, other authority conferred by law or in the event of an emergency. Such consent will not be unreasonably withheld or delayed.

3.4.4 General Easements. In the event that any part of any Home encroaches or shall hereafter encroach upon any part of any other Lot or the Common Property, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Homeowner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Home of another Homeowner and if it occurred due to the willful conduct of any Homeowner.

3.4.5 Easement for Irrigation. The CDD, the Community Association and the Neighborhood Association shall each have a perpetual, non-exclusive easement over, across, under and through each of the Lots and the Common Property for purposes of installing, maintaining, repairing, replacing and/or reconstructing all lines and facilities pertaining to the irrigation system for the Community, together with the right to provide irrigation waters (which may or may not be potable waters) to the Community. The provisions of this paragraph shall not be amended without the prior written consent of the CDD and the Community Association.

3.5 Ingress and Egress. Each Homeowner shall have a perpetual, unrestricted easement over, across and through the Common Property for the purpose of ingress to and egress from his Lot, subject only to the right of the Neighborhood Association to impose reasonable and non-discriminatory

rules and regulations governing the manner in which such easement is exercised, which easement shall be appurtenant to and pass with ownership to each Lot.

3.6 Continuous Maintenance of Easements by Neighborhood Association. The Neighborhood Association shall be responsible for the continuous maintenance of the easements and rights-of-way of the drainage system located on the Property. This obligation shall run with the land as do other provisions of this Declaration, and any Homeowner may enforce this covenant and will be entitled to costs and fees, pursuant to Article XIII hereof, which result from such enforcement.

3.7 Restrictions on Use of Lakes, Waterways, Wetlands, or Other Bodies of Water. With respect to any lakes, waterways, wetlands or other bodies of water located on the Property, no Homeowner, Resident or any temporary occupant of a Home shall: (i) disturb, remove, alter or in any way disrupt vegetation thereon; (ii) construct permanent or temporary docks or seawalls; or (iii) connect to any lake, waterway, wetland or other body of water through the use of a well, pump, ditch or other system of any nature for any purpose, including, but not limited to, lawn irrigation, lawn maintenance, water features or for any other use. In addition, no Homeowner, Resident or any temporary occupant of a Home shall dig a well on any Lot for any purpose, including but not limited to lawn irrigation, lawn maintenance, water features or for any other use. The provisions of this paragraph shall not apply to Developer. No amendment to this paragraph shall be effective without the express prior written consent of Developer.

Article 4: Architectural Control

The ACC shall be responsible for enforcing any and all architectural control provisions contained in the Community Declaration which pertain to the Neighborhood and the Property, and the Neighborhood Association shall not (a) undertake any enforcement or architectural regulation activities with regard to the Neighborhood and the Property (except as permitted pursuant to specific delegation of such activities by the Community Association, as may be contemplated in the Community Declaration), and (b) promulgate any rules and regulations with regard to architectural control in the Neighborhood and for the Property. The provisions of this Article shall not be amended without the prior written consent of the Developer (for so long as Developer owns any portion of the property subject to the Community Declaration) and the Community Association.

Article 5: Membership and Voting Rights

5.1 Membership. Every Homeowner of a Lot that is subject to assessment under Article VIII of this Declaration shall become a member of the Neighborhood Association upon the recording of the instrument of conveyance. If title to a Lot is held by more than one person, each such person is a member. A Homeowner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to that Lot whether or not mention thereof is made in such conveyance of title. No person other than a Homeowner may be a member of the Neighborhood Association, and a membership in the Neighborhood Association may not be transferred except by the transfer of title to a Lot; provided, however, the foregoing does not prohibit the assignment of membership and voting rights by a Homeowner who is a contract seller to such Homeowner's vendee in possession.

5.2 Voting. The Neighborhood Association shall have two (2) classes of voting membership: Class A and Class B. So long as there is Class B membership, Class A members are all Homeowners except Developer. The Class B member shall be Developer. Upon termination of Class B membership, as provided below, Class A members are all Homeowners, including Developer so long as such Developer is a Homeowner. Subject to the provisions of Section 3 of this Article, all members, Class A or Class B, are entitled to cast one (1) vote for each Lot owned; however, as provided in the Articles of Incorporation, the Class B members are entitled to elect the Neighborhood Association's directors until termination of Class B membership.

5.3 Co-Ownership. If more than one person owns an interest in any Lot, all such persons are members, but there may be only one vote cast with respect to such Lot. Such vote may be exercised as the co-owners determine among themselves, but no split vote is permitted. Prior to any meeting at which a vote is to be taken, each co-owner must file the name of the voting co-owner with the secretary of the Neighborhood Association to be entitled to vote at such meeting, unless such co-owners have filed a

general voting authority with the secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot is held in a tenancy by the entireties, either tenant is entitled to cast the vote for such Lot unless and until the Neighborhood Association is notified otherwise in writing.

5.4 Termination of Class B Membership; Transfer of Control. Prior to termination of Class B membership, the Developer shall be entitled to solely appoint all members at the Board. From time to time, Class B membership may cease and be converted to Class A membership, and any Class B Lots then subject to the terms of this Declaration shall become Class A Lots, and members other than the Developer shall be entitled to elect a majority of the members of the Board, upon the happening of the earliest of the following events:

5.4.1 3 months after 90% of the Lots in all portions of the Neighborhood which are or may be ultimately subject to governance by the Neighborhood Association have been conveyed to third party Homeowners of Lots; or

5.4.2 when the Developer waives in writing its right to Class B membership, which waiver shall be evidenced by the recording of a certificate to such effect in the public records of The County, Florida.

Notwithstanding the foregoing, despite an event of transfer of control having occurred, the Developer shall be entitled to appoint at least one member to the Board, but not more members which would constitute a majority of the Board, as long as the Developer holds for sale in the ordinary course of business at least 5% of the total number of Lots which are or may ultimately be contained within the Community.

Article 6: Rights and Obligations of the Neighborhood Association

6.1 Neighborhood Association. The Neighborhood Association shall govern, make rules and regulations, control and manage the Lots and Common Properties, if any, located on the Property pursuant to the terms and provisions of this Declaration and the Articles of Incorporation and By-Laws. The Neighborhood Association shall at all times pay the real property ad valorem taxes on any Common Properties if said taxes are billed to the Neighborhood Association as differentiated from being billed to the Homeowner and pay any governmental liens assessed against the Common Properties. The Neighborhood Association shall further have the obligation and responsibility for the hiring of certain personnel and purchasing and maintaining such equipment as may be necessary for maintenance, repair, upkeep and replacement of any Common Properties and facilities which may be located thereon, the performance of any of its maintenance obligations and performance of such other duties as are set forth herein, as follows:

6.1.1 Notwithstanding the foregoing, the Neighborhood Association may, but is not obligated to, employ community access or patrol services or personnel. If community access or patrol services or personnel are employed by the Neighborhood Association, the Board of Directors shall determine, in its sole discretion, the schedule and cost of expense of such access or patrol services or personnel. Developer, while in control of the Neighborhood Association, does not intend to hire or pay for access or patrol services or personnel. Each Homeowner, by virtue of taking title to a Lot, consents and agrees that Developer is and shall be under no obligation to provide any access or patrol services or personnel within the Community, and shall hold Developer harmless for any occurrences in such regard.

Developer, the CDD, the Neighborhood Association and the Community Association may, but shall not be obligated to, maintain or support certain activities within the Property and the Community designed to make the Property and the Community more secure than they otherwise might be. Neither the Neighborhood Association nor Community Association nor the CDD nor Developer shall in any way be considered insurers or guarantors of security or safety within the Property. Neither the Neighborhood Association nor the Community Association nor the CDD nor Developer shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security or safety measures undertaken. All Homeowners and occupants of any Home, Authorized Users, tenants, guests and invitees of any Homeowner or Authorized User, as applicable, acknowledge that Developer, the CDD, the Neighborhood Association and the Community Association, and the officers, directors and supervisors of each

of them, do not represent or warrant that any fire protection system, electronic monitoring system or other security system designated by or installed according to guidelines established by Developer or the ACC may not be compromised or circumvented, that any fire protection or electronic monitoring systems or other security systems will prevent loss by fire, smoke, burglary, theft, hold-up, or otherwise, and that fire protection or electronic monitoring systems or other security systems will in all cases provide the detection or protection for which the system is designed or intended. Each Homeowner and occupant of any Home, and each Authorized User, tenant, guest and invitee of a Homeowner, as applicable, acknowledges and understands that each Homeowner and occupant of any Home and each Authorized User, tenant, guest and invitee of any Homeowner assumes all risks for loss or damage to persons, to Homes and to the contents of Homes and further acknowledges that the Community Association, the Neighborhood Association, the CDD, and Developer have made no representations or warranties nor has any Homeowner, Authorized User, occupant, tenant, guest or invitee relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to any fire and/or electronic monitoring systems or other security systems recommended or installed or any security measures undertaken within the Property and the Community.

6.1.2 The Neighborhood Association shall maintain the Common Properties and pay the real property ad valorem taxes and governmental liens assessed against the Common Properties and billed to the Neighborhood Association. Any Common Properties which are to be maintained by the Neighborhood Association as provided herein shall be maintained in good condition and repair. Should real property ad valorem taxes or governmental liens as to any Common Properties be assessed against the billed Lots, the Board of Directors shall have the right to determine, in its sole discretion, if the Neighborhood Association should pay all or any portion of said bill(s) for taxes or liens, and such amount as they determine should be paid by the Neighborhood Association shall be levied as a Special Assessment pursuant to Article VIII of this Declaration.

6.1.3 The Neighborhood Association shall maintain any and all landscaping islands and all landscaping and/or signage located, placed, installed or erected thereon.

6.1.4 In the event the Neighborhood Association in the future acquires any Common Properties, the Neighborhood Association shall obtain, maintain and pay the premiums for the hazard insurance, flood insurance, liability insurance and fidelity bond coverage as set forth below and as consistent with state and local insurance laws, and such other types of insurance as the Board may deem advisable:

6.1.4.1 Hazard insurance covering all Common Properties, except for land foundations and excavations, and all common personal property and supplies. The policy must protect against loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement and all other perils customarily covered for similar types of communities, including those covered by the standard "all risk" endorsement. The policy shall cover 100% of the current replacement cost of all covered facilities and shall include the following endorsements: agreed amount and inflation guard (if available); and construction code (if the local construction code requires changes to undamaged portions of buildings even when only part of the Property is destroyed by an insured hazard).

6.1.4.2 Flood insurance covering the Common Property buildings and any other common personal property if any part of the Neighborhood is in a special flood hazard area as defined by the Federal Emergency Management Agency. The amount of flood insurance shall be for not less than the lesser of (i) 100% of the current replacement cost of all buildings and insurable property within the flood hazard area, or (ii) the maximum coverage available for the Property under the National Flood Insurance Program.

6.1.4.3 Comprehensive general liability insurance covering all Common Properties and any other areas under the Neighborhood Association's supervision, including public ways and commercial spaces owned by the Neighborhood Association. The policy must provide coverage of at least \$1,000,000.00 for bodily injury and property damage for any single occurrence. The policy must cover bodily injury and property damage resulting from the operation, maintenance or use of the Common Properties and other areas under the Neighborhood Association's control and any legal liability resulting

from law suits related to employment contracts to which the Neighborhood Association is a party. The policy must provide for at least 10 days' written notice by the insurer to the Neighborhood Association prior to cancellation or substantial modification.

6.1.4.4 Fidelity bond coverage for any person (including a management agent) who either handles or is responsible for funds held or administered by the Neighborhood Association, whether or not such persons are compensated for such services. The bond shall name the Neighborhood Association as an obligee and shall cover the greater of (i) the maximum funds that will be in the custody of the Neighborhood Association or its management agent while the bond is in force, and (ii) the sum of 3 months' General Assessments on all Lots plus the Reserve Fund. The bond shall provide for 10 days' written notice to the Neighborhood Association and all servicers of FNMA-owned mortgages in the Property prior to cancellation of or substantial modification to the bond.

6.1.5 The Neighborhood Association shall care for and maintain any entryway walls and signage intended for and/or identifying the Property and shall maintain any landscaping located within the Common Property, road right-of-way or any landscaping easement which is owned by or runs in favor of the Neighborhood Association, which maintenance activities may, but not necessarily will, include without limitation any of the following: replacement and/or replanting of existing landscaping, excavation, construction of berms, end installation, maintenance and repair of irrigation facilities.

6.1.6 The Neighborhood Association shall care for and maintain all grass and landscaping located on the Lots and to the extent as provided in this Declaration, it being the intent of this Declaration to provide for a common appearance and quality of the grass and landscaping within the Neighborhood (as used in this sentence, the term "maintain" shall include, but shall not be limited to, all mowing, edging, blowing, weeding, fertilizing, spraying with insecticides, trimming and pruning of hedges and trees, and sod replacement).

Upon the recording of the Plat, the Developer shall promulgate a base standard for landscaping on each Lot (which standard may consist of one or more different landscaping packages). A Homeowner shall be required, in connection with the purchase of their Lot, to select one of such landscaping packages. All maintenance of the landscaping installed under one of these landscaping packages shall be undertaken by the Neighborhood Association, and the costs for such maintenance activities shall be a Common Expense. In the event a Homeowner elects to install additional landscaping on the Lot ("Supplemental Lot Landscaping," which shall be separate and distinct from landscaping contained within the Surrounding Landscaping Area as defined and described hereinafter), which installation shall only occur with the prior written approval of (1) the ACC and (2) the Board of Directors of the Neighborhood Association (so as to ensure proper allocation of costs between the Homeowners), the maintenance of such Supplemental Lot Landscaping shall be undertaken by the Neighborhood Association, and the costs of such maintenance shall be charged to the Homeowner as a Supplemental Lot Landscaping Assessment.

Notwithstanding the foregoing, there shall exist a 5 foot perimeter around each Home ("Surrounding Landscaping Area") within which a Homeowner shall be permitted, with prior written approval of the ACC, to install plants, bushes and shrubs installed at the time of completion of construction of the Home. Any such additional plantings within the Surrounding Landscaping Area shall be solely maintained by the Homeowner at the Homeowner's sole cost and expense; provided, however, that in the alternative, the Neighborhood Association may elect to undertake maintenance of such plantings and to charge the Homeowner for the costs of such maintenance (which costs shall be levied through a Surrounding Landscaping Area Assessment).

Irrigation of all grass and landscaped portions of a Lot shall be the sole responsibility of the Neighborhood Association, and the costs of irrigation shall be charged to a Homeowner as a Common Expense (provided, however, that certain Homeowners may be assessed a Landscaping Assessment (as applicable) to pay for irrigation costs of plants, shrubs and the like which are installed on a Lot and which exceed those contemplated by the Neighborhood Association for general irrigation of landscaping on Lots in the Community). A water irrigation timer may be installed on the exterior of the Dwelling, and a perpetual, exclusive easement is hereby granted to the Neighborhood Association for the use and operation of such timer equipment. No Homeowner shall be permitted to modify or alter the times and dates upon which irrigation shall occur on the Lot. If Supplemental Lot Landscaping is installed on a Lot,

any irrigation costs pertaining specifically thereto shall be charged to the Homeowner as part of a Supplemental Lot Landscaping Assessment.

6.1.7 The CDD shall care for and maintain any lakes and associated equipment located wholly on the Property. Notwithstanding the foregoing, if the CDD fails to maintain such lakes and equipment or if the CDD and the Neighborhood Association enter an agreement (this provision shall be deemed to be specific authorization for the Neighborhood Association to enter into such an agreement), the Neighborhood Association shall maintain such lakes and equipment as may be necessary and levy Assessments for the costs and expenses associated therewith. In such an event, the Neighborhood Association shall have the power to contract with any other Neighborhood Association or entity to share the expense of maintaining any lake and associated equipment which is not located wholly on the Property but which is contiguous to any portion of the Property, and such contractual obligations shall be a valid expense of the Neighborhood Association.

6.1.8 The Neighborhood Association shall care for, maintain, repair and replace all trees installed by the Developer on or directly adjacent to the boundaries of the Lots which are adjacent to the roadways providing access to the Lots and through the Neighborhood (regardless of whether or not such palm trees are located in whole or in part on a Lot), and the costs of such activities shall be a Common Expense.

The foregoing constitutes the basic and general expenses of the Neighborhood Association, and said expenses are to be paid by members of the Neighborhood Association as hereinafter provided, except as otherwise provided herein. It shall be the duty and responsibility of the Neighborhood Association, through its Board of Directors, to fix and determine from time to time the sum or sums necessary and adequate to provide for the expenses of the Neighborhood Association. The procedure for the determination of such assessments shall be as hereinafter set forth in this Declaration or the By-Laws or the Articles of Incorporation. The Board of Directors shall have the power and authority to levy a Special Assessment, should one become necessary, as determined by it in its sole discretion, and said Special Assessment shall be determined, assessed, levied and payable in the manner determined by the Board of Directors as hereinafter provided in this Declaration or the Articles of Incorporation or the By-Laws. A General Assessment shall be payable in advance or monthly, quarterly, or on a semi-annual or annual basis or otherwise as determined by the Board of Directors.

6.2 Management Contracts and Leases of Common Property. The Neighborhood Association shall expressly have the power to contract for the management of the Neighborhood Association and/or the Common Property, if any, and to lease the recreation areas, further having the power to delegate to such contractor or lessee any or all of the powers and duties of the Neighborhood Association respecting the contract granted or property demised. The Neighborhood Association shall further have the power to employ administrative and other personnel to perform the services required for proper administration of the Neighborhood Association.

The undertakings and contracts authorized by the first Board of Directors shall be binding upon the Neighborhood Association in the same manner as though such undertakings and contracts had been authorized by the first Board of Directors duly elected by the membership of the Neighborhood Association; provided, however, that any management or property maintenance contract entered into by the Neighborhood Association prior to the election of such first Board shall be terminable by the Neighborhood Association without cause or penalty at any time after such election upon not more than ninety (90) days' advance notice.

6.3 Easements.

6.3.1 Easements for installation and maintenance of utilities (including, but not limited to, those required for cable television service) and drainage facilities are reserved as shown on the Plat or as otherwise granted by Developer. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channel in the easements, or which may obstruct or retard the flow of water through drainage channel in the easements, or which are or might be prohibited by the public authority to whom said easement is given.

6.3.2 Easements over, under, across and through each Lot and the Common Properties are hereby expressly granted to the Neighborhood Association for the purpose of making any repairs or performing any maintenance provided for or required by this Declaration, regardless of whether such repairs or maintenance directly benefit the Lot upon which they are performed.

6.3.3 The easement area of each Lot and all improvements in it shall be maintained by the Homeowner of the Lot, except for those improvements for which a public authority or utility company is responsible.

Article 7: Maintenance of Homes and Lots; Failure to Maintain

7.1 Homeowners. Except as otherwise provided herein, each Homeowner shall be responsible for the maintenance, repair and replacement of all improvements (including landscaping within the Surrounding Landscaping Area) on such Homeowner's Lot and such other areas as are provided herein. Any area or matter not specifically required to be maintained, repaired or replaced by the Neighborhood Association shall be maintained, repaired and replaced by the Homeowner.

7.2 Failure to Maintain Lots. In the event a Homeowner of any Lot shall fail to maintain or repair the Lot and/or the Home in a manner required under this Declaration and as determined by the ACC from time to time, within 30 days' written notice of same, the Neighborhood Association, after approval by 2/3 vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot and/or the Home as required under this Declaration and as determined by the ACC. The cost of same shall be charged to the Homeowner as a Specific Assessment, the nonpayment of which may lead to foreclosure of the lien for such Specific Assessment in accordance with the provisions of Article VIII.

Article 8: Covenant for Assessments

8.1 Assessments Established. Each Homeowner of any Lot, by acceptance of a deed to such Lot, whether or not it is so expressed in such deed, is deemed to covenant to pay to the Neighborhood Association:

8.1.1 General Assessments, as defined in Section 2 of this Article; and

8.1.2 Special Assessments, as defined in Section 6 of this Article; and

8.1.3 Specific Assessments against any particular Lot that are established pursuant to any provision of this Declaration as provided in Section 7 of this Article

8.1.4 Supplemental Lot Landscaping Assessments against a particular Lot as defined in Section 8 of this Article; and

8.1.5 Surrounding Landscaping Area Assessments against a particular Lot as defined in Section 9 of this Article; and

8.1.6 All taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this Article.

All of the foregoing, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are a continuing charge on the land secured by a continuing lien upon the Lot against which each assessment is made as provided in Section 12 of this Article. Each such assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the person or persons who was or were the Homeowner(s) of such Lot when such assessment fell due.

8.2 Purpose of Assessments; General Assessment. The assessments levied by the Neighborhood Association must be used exclusively to promote the common good and welfare of the residents, to operate and manage the Neighborhood Association and the Common Properties, if any, and to perform such duties as may be required by this Declaration and the Articles of Incorporation and

By-Laws of the Neighborhood Association. To effectuate the following, the Neighborhood Association may levy an annual general assessment ("General Assessment") to provide and be used for the operation, management and all other general activities and expenses of the Neighborhood Association.

8.3 Initial General Assessment. The initial General Assessment shall be Four Hundred Fourteen and 90/100 Dollars (\$414.90) per quarter and will remain in effect until a different General Assessment may be determined as provided in Section 4 of this Article.

8.4 Determination of General Assessment. Except with regard to the initial General Assessment, the amount of the General Assessment shall be fixed by the Board of Directors at least thirty (30) days in advance of each General Assessment period, and shall be based upon an adopted budget. The General Assessment period shall coincide with the Neighborhood Association's fiscal year. Except for the initial General Assessment, written notice of the amount of the General Assessment should be given to every Homeowner, but the failure to give or receive such notice, or both, shall not invalidate any otherwise valid assessment. The General Assessment shall be paid in equal quarterly installments without interest until delinquent, and prepayable in whole at any time or times during the applicable assessment period without penalty or other consideration; provided, however, at the discretion of the Board of Directors, the General Assessment may be collected on a monthly, semi-annual or annual basis rather than collected on a quarterly basis.

8.5 Developer Requirements for the Payment of Assessments. Prior to Turnover, Developer may be excused, in its sole discretion, from payment of its share of the Common Expenses and Assessments related to the Lots owned by developer from time to time, provided that Developer pays any operating expenses incurred by the Neighborhood Association that exceed the Assessments receivable from other Homeowners and other income of the Neighborhood Association. Such deficit funding shall not preclude the levying of Special Assessments against the Homeowners to defray the costs of Neighborhood Association expenses not contemplated under the Neighborhood Association's estimated operating budget for that fiscal year. Subsequent to Turnover, Developer shall be responsible for the payment of Assessments only upon Lots which it owns and on which a Home has been constructed for which a certificate of occupancy has been issued.

8.6 Special Assessments. In addition to the General Assessment, the Neighborhood Association may levy in any fiscal year a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, known expenses which exceeded, or when mature will exceed, the budget prepared and on which the General Assessment was based, or as described in Section 5 of this Article. Notwithstanding the foregoing, no Special Assessment against the Homeowners shall exceed 1/12 of the total of the General Assessments levied against the Homeowners for that fiscal year without the prior approval of 75% of the total voting interests in the Neighborhood Association.

8.7 Specific Assessments. Any and all accrued liquidated indebtedness of any Homeowner to the Neighborhood Association arising under any provision of this Declaration also may be assessed by the Neighborhood Association against such Homeowner's Lot after such Homeowner fails to pay it when due and such default continues for 30 days after written notice.

8.8 Supplemental Lot Landscaping Assessments. The Neighborhood Association shall have the obligation to maintain, repair and/or replace any Supplemental Lot Landscaping installed upon a Lot and to levy an assessment for the costs and expenses associated therewith ("Supplemental Lot Landscaping Assessment"). The Supplemental Lot Landscaping Assessment may be levied by the Neighborhood Association on a monthly, quarterly, semi-annual or annual basis as determined by the Neighborhood Association from time to time.

8.9 Surrounding Landscaping Area Assessments. The Neighborhood Association shall have the right and authority, but not the obligation, to maintain, repair and/or replace the planting installed by a Homeowner in the Surrounding Landscaping Area and to levy an assessment for the costs and expenses associated therewith ("Surrounding Landscaping Area Assessment"). The Surrounding Landscaping Area Assessment may be levied by the Neighborhood Association on a monthly, quarterly, semi-annual or annual basis as determined by the Neighborhood Association from time to time.

8.10 Uniformity of Assessments. The General Assessment and any Special Assessment must be uniform for each Homeowner throughout the Community.

8.11 Commencement of General Assessment. The General Assessment as to each Lot owned by a Homeowner other than the Developer shall be prorated as of the day of closing for the current installment period, and thereafter the first full payment shall be due and owing on the first day of the next full installment period.

8.12 Lien for Assessment. All sums assessed against any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a lien on such Lot in favor of the Neighborhood Association. Such lien is subject and inferior to the lien for all sums validly secured by any First Mortgage encumbering such Lot. Except for liens for all sums validly secured by any such First Mortgage, all other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that such liens are inferior to the lien established by this Article, whether or not such consent is specifically set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and/or creditors of the existence of the Neighborhood Association's lien and its priority. The Neighborhood Association from time to time may record a Notice of Lien for the purpose of further evidencing the lien established by this Article, but neither the recording of, nor failure to record, any such notice of lien will affect the existence or priority of the Neighborhood Association's lien.

8.13 Certificate. Upon demand, and for a reasonable charge, the Neighborhood Association will furnish to any interested person a certificate signed by an officer of the Neighborhood Association setting forth whether the General Assessment and any Special Assessment, Specific Assessment and the Surrounding Landscaping Area Assessment have been paid and, if not, the unpaid balance(s).

8.14 Remedies of the Neighborhood Association. Any assessment not paid within 30 days after its due date bears interest at the rate of 15% per annum or such other rate as may be from time to time determined by the Board, provided, however, that such rate shall not exceed the maximum rate allowed by law not constituting usury. The Neighborhood Association may bring an action at law against the Homeowner personally obligated to pay such assessment, or foreclose its lien against such Homeowner's Lot. No Homeowner may waive or otherwise escape liability for the Neighborhood Association's assessments. A suit to recover a money judgment for unpaid Assessments may be maintained without foreclosing, waiving, or otherwise impairing the security of the Neighborhood Association's lien or its priority.

8.15 Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Homeowner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. The Homeowner also is required to pay to the Neighborhood Association any assessments against the Lot that become due during the period of foreclosure, which assessments also are secured by the lien foreclosed and accounted on a pro rata basis and paid as of the date the Homeowner's title is divested by foreclosure. The Neighborhood Association has the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, or to acquire such Lot by deed or other proceeding in lieu of foreclosure, and thereafter to hold, convey, lease, rent, encumber, use, and otherwise deal with such Lot as its Homeowner for purposes of resale only. If any foreclosure sale results in a deficiency, the court having jurisdiction over the foreclosure may enter a personal judgment against the Homeowner for such deficiency.

8.16 Subordination of Lien. Except where a notice of lien has been filed in the public records prior to the recording of a valid First Mortgage, the lien for the assessments provided in this Article is subordinate to the lien of any such First Mortgage. Sale or transfer of any Lot does not affect the assessment lien. The Neighborhood Association may give any encumbrancer of record 30 days' notice within which to cure such delinquency before instituting foreclosure proceedings against the Lot. Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amounts secured by the lien established by this Article; upon such payment, such encumbrancer will be subrogated to all rights of the Neighborhood Association with respect to such lien, including priority.

8.17 Homesteads. By acceptance of a deed to any Lot, each Homeowner is deemed to acknowledge conclusively and consent that all assessments established pursuant to this Article are for the improvement and maintenance of any homestead thereon and that the Neighborhood Association's lien has priority over any such homestead.

8.18 Reserve Fund. In the event the Neighborhood Association in the future acquires any Common Properties, then the Neighborhood Association shall maintain a reserve fund to be used solely for making expenditures in connection with the Common Properties ("Reserve Fund"). The Board shall determine the appropriate level of the Reserve Fund based on a periodic review of the useful life of the improvements to the Common Properties and equipment owned by the Neighborhood Association, as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Properties, the purchase of equipment to be used by the Neighborhood Association in connection with its duties hereunder, or performance of required maintenance. Each budget shall disclose that percentage of the General Assessment which shall be added to the Reserve Fund and each Homeowner shall be deemed to make a contribution to the Neighborhood Association equal to such percentage multiplied by each installment of the General Assessment paid by such Homeowner.

8.19 Initial Funding of Working Capital Fund. At the time the initial sale of each Lot is closed, the purchaser of the Lot shall pay to the Neighborhood Association an "Initial Working Capital Fund Payment". This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Neighborhood Association. This payment shall not be refundable or applied as a credit against the Homeowner's payment of assessments. The amount of the Initial Working Capital Contribution shall be specified in the purchase contract between Developer and the purchaser.

8.20 Assessments under the Community Declaration and the Town Center Declaration. The Property is subject to the Community Declaration and the Town Center Declaration, and each Lot is subject to the terms and provisions of the Community Declaration and the Town Center Declaration. Each Homeowner, by virtue of taking title to a Lot, shall (a) become a member of the Community Association and agrees to pay all assessments levied from time to time by the Community Association, and (b) be responsible for the payment of assessments and dues levied pursuant to and required under the Town Center Declaration.

8.21 Additional Master Association. In the event the Neighborhood Association, or its members, become members of a master community association or umbrella association ("Master Association") in addition to the Community Association, or as is otherwise described herein, then and in that event the Neighborhood Association shall have the power to:

8.21.1 levy and collect on its own behalf as part of the General Assessment an amount equal to the amount levied upon the Neighborhood Association by the Master Association; or

8.21.2 collect on behalf of the Master Association as part of the General Assessment or as a separate charge an amount equal to the amount levied upon the Neighborhood Association's members by the Master Association.

8.22 Gateway Services District. Each Homeowner, by virtue of taking title to a Lot, is a member of the CDD and agrees to pay all assessments and charges levied from time to time by the CDD.

Article 9: Miscellaneous Provisions Respecting Mortgages

The following provisions are intended for the benefit of a First Mortgagee and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

9.1 Notices of Overdue Assessments; Foreclosure. Upon request in writing to the Neighborhood Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded First Mortgage on a Lot ("Insurer or Guarantor") and the Lot number, the Neighborhood Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of such Lot owner's obligations under this Declaration which is not cured within 60 days. Any First

Mortgagee of a Lot who comes into possession of the said Lot pursuant to the remedies provided in the Mortgage, foreclosure or a deed in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Neighborhood Association against the mortgaged Lot which become due prior to (i) the date of the transfer of title, or (ii) the date on which the holder comes into possession of the Home, whichever occurs first.

9.2 Rights of First Mortgagees, Insurers and Guarantors. Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

9.2.1 to examine current copies of this Declaration, the By-Laws, all rules and regulations, and the books and records of the Neighborhood Association during normal business hours;

9.2.2 to receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Neighborhood Association to the Homeowners at the end of each of its respective fiscal years; provided, however, that in the event an audited financial statement is not available, any First Mortgagee shall be entitled to have such an audited statement prepared at its expense;

9.2.3 to receive written notices of all meetings of the Neighborhood Association and to designate a representative to attend all such meetings;

9.2.4 to receive written notice of any decision by the Homeowners to make a material amendment to this Declaration, the By-Laws or the Articles of Incorporation;

9.2.5 to receive written notice of any lapse, cancellation or modification of an insurance policy or fidelity bond maintained by the Neighborhood Association; and

9.2.6 to receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

9.3 Distribution of Proceeds. No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Property or the Lots therein shall be deemed to give a Homeowner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Homeowners of insurance proceeds or condemnation awards for losses to or a taking of the Lots, and/or the Common Property, or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Lots affected shall be entitled, upon specific written request, to timely written notice of any such loss.

9.4 Termination of the Community. Unless the First Mortgagees of the individual Lots representing at least 67% of the votes in the Neighborhood Association have given their prior written approval, neither the Neighborhood Association nor the Homeowners shall be entitled to terminate the legal status of the Neighborhood for reasons other than substantial destruction or condemnation thereof.

9.5 Notice of Damage, Destruction or Condemnation. Upon specific written request to the Neighborhood Association, a First Mortgagee, Insurer or Guarantor of a Lot shall be furnished notice in writing by the Neighborhood Association of any damage to or destruction or taking of the Common Property if such damage or destruction or taking exceeds \$10,000.00. If damages shall occur to such Lot in excess of \$1,000.00, notice of such event shall also be given.

9.6 Condemnation; Priority of Awards. If any Lot, Home thereon or portion thereof or the Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of said Lot will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition, and no provisions of any document will entitle the Homeowner of such Lot or other party to priority over such First Mortgagee with respect to the distribution to such Lot of the proceeds of any award or settlement.

9.7 Rights of Mortgagees. Any First Mortgagee has the following rights:

9.7.1 Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect the books, records, and papers of the Neighborhood Association.

9.7.2 Copies. Upon payment of any reasonable, uniform charge that the Neighborhood Association may impose to defray its costs, to receive copies of the Neighborhood Association's books, records, or papers, certified upon request.

9.7.3 Financial Statements. Upon written request to the secretary of the Neighborhood Association, to receive copies of the annual financial statements of the Neighborhood Association; provided, however, the Neighborhood Association may make a reasonable charge to defray its costs incurred in providing such copies.

9.7.4 Meetings. To designate a representative to attend all meetings of the membership of the Neighborhood Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

By written notice to the secretary of the Neighborhood Association, and upon payment to the Neighborhood Association of any reasonable annual fee that the Neighborhood Association from time to time may establish for the purpose of defraying its costs, any First Mortgagee also is entitled to receive any notice that it required to be given to the Class A members of this Neighborhood Association under any provision of this Declaration or the Articles of Incorporation or By-Laws.

Article 10: Damage, Destruction, Condemnation and Restoration of Improvements

10.1 Damage, Destruction and Restoration. In the event the improvements forming a part of the Common Property, or any portion thereof, shall suffer damage or destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus the Reserve Fund, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Reserve Fund shall be applied by the Board or the payee of such insurance proceeds in payment thereof; provided, however, that in the event, within 180 days after said damage or destruction, the Homeowners shall elect to withdraw the Property from the provisions of this Declaration, or if the insurance proceeds and the Reserve Fund are insufficient to reconstruct the damaged or destroyed improvements to the Common Property and the Homeowners and all other parties in interest do not voluntarily make provision for reconstruction within 180 days from the date of damage or destruction, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration, or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Homeowners, after first paying from the share of each Homeowner the amount of any unpaid liens on his Lot, in the order of the priority of such liens.

10.2 Withdrawal of Property From Declaration. In the case of damage or other destruction, upon the unanimous affirmative vote of the Homeowners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from this Declaration. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Homeowners, shall be on an equitable basis. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Property shall be allocated to the Homeowners on the basis of an equal share for each Lot. Upon the withdrawal of any Lot or portion thereof, the responsibility for the payment of assessments on such Lot or portion thereof by the Homeowner shall cease.

10.3 Eminent Domain. In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portion so taken from the provisions of this Declaration may be made by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Homeowner shall be on an equitable basis. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Property shall be allocated to the Homeowners on the basis of an equal share for each Lot. Upon the withdrawal of any Lot or portion thereof, the responsibility for the payment of assessments on such Lot or portion thereof by the Homeowner shall cease. The Neighborhood Association shall represent the Homeowners in any

condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Property or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the Neighborhood Association among all Homeowners on the basis of an equal share for each Lot, after first paying from the share of each Homeowner the amount of any unpaid liens on his Lot, in the order of the priority of such liens.

Article 11: Termination of the Community

At a meeting called for such purpose and attended by all Homeowners, the Homeowners, by affirmative vote of 100% of the Homeowners, may elect to terminate the legal status of the Neighborhood and sell the Common Property as a whole. Within 10 days after the date of the meeting at which such sale was approved, the Board shall give written notice of such action to all First Mortgagees, Insurers and Guarantors entitled to notice under Article IX of this Declaration, and the termination shall only be effective upon the affirmative vote required under Article IX, Section 4 hereof. Such action shall be binding upon all Homeowners, and it shall thereupon become the duty of every Homeowner to execute and deliver such instruments and to perform all acts in manner and form as may be necessary to effect such termination and sale. The Neighborhood Association shall represent the Homeowners in any negotiations, settlements and agreements in connection with termination of the Neighborhood and sale of the Common Property, and any proceeds obtained therefrom shall be first used to pay all expenses and outstanding obligations of the Neighborhood Association and the remainder, if any, shall be divided among all Homeowners on the basis of an equal share for each Lot. Notwithstanding any provision to the contrary, the termination of the legal status of the Neighborhood shall in no manner impact each Homeowner's membership in and obligations due to the Community Association, the CDD and the owner of the amenities under the Town Center Declaration.

Article 12: Operation

The provisions of this Declaration are self-executing and will run with the land and be binding upon all persons having any right, title, or interest therein, or any part, their respective heirs, successors, and assigns.

Article 13: General Provisions

13.1 **Enforcement.** Unless expressly provided otherwise, the Neighborhood Association, or any Homeowner, has the right to enforce, by any appropriate proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, charges, rules, and regulations now or hereafter imposed by, or pursuant to, the provisions of this Declaration. If the Neighborhood Association or any person entitled to enforce any of the provisions of this Declaration is the prevailing party in any litigation involving this Declaration or any rule or regulation, such party may recover from the losing party all costs and expenses incurred, including reasonable attorneys' fees for all trial and appellate proceedings, if any. If the Neighborhood Association is the losing party against any Homeowner, such costs and expenses, including reasonable attorneys' fees, payable to the prevailing party and those incurred by the Neighborhood Association itself, may be assessed against such Homeowner's Lot, as provided in Article VIII of this Declaration. Failure by the Neighborhood Association or by any Homeowner to enforce any covenant, restriction, rule, or regulation will not constitute a waiver of the right to do so at any time.

13.2 **Amendment.** Except as may be otherwise provided herein, Developer may amend this Declaration by an instrument executed with the formalities of a deed without the approval or joinder of any other party at any time prior to the date on which Developer shall have conveyed 90% of the Lots on the Property. Except as may be otherwise provided herein, commencing on the date that Developer shall have conveyed 90% of the Lots on the Property, this Declaration may be amended: (i) on or before January 1, 2006, by an instrument executed by the Neighborhood Association with the formalities from time to time required of a deed and approved by 90% of the total voting interests in the Neighborhood Association; and, (ii) thereafter by an instrument so executed by the Neighborhood Association and approved by not less than 70% of the total voting interests in the Neighborhood Association. No amendment is effective until recorded, and the Neighborhood Association's proper execution will entitle it to public record, notwithstanding the informal execution by the requisite percentage of Homeowners.

Notwithstanding the foregoing, (a) no instrument of amendment, rescission or termination shall be effective while there are Class B memberships unless 100% of the Class B members shall approve and join in such instrument, and (b) no amendment which will affect any aspect of the surface water management system located on the Property shall be effective without the prior written approval of the South Florida Water Management District. For purposes of this Section, a Lot shall be considered conveyed when the deed is duly recorded.

13.3 Special Amendment. Anything herein to the contrary notwithstanding, and subject to the requirement of First Mortgagee approval set forth herein where applicable, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration, at any time and from time to time, which amends this Declaration and any provision therein: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Homes; (iii) to correct clerical or typographical errors in this Declaration; (iv) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations; or (v) to minimize any federal or state income tax liability of the Neighborhood Association. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Homeowner and the Neighborhood Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Home and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power of Developer to make Special Amendments hereunder shall terminate on December 31, 2006, or on the date of the conveyance of all Lots in the Neighborhood by the Developer to third parties, whichever occurs last.

13.4 Additions to the Property.

13.4.1 Additional land may be made subject to all the terms hereof and brought within the jurisdiction and control of the Neighborhood Association in the manner specified in this Section, provided such is done within 30 years from the date this Declaration is recorded. Notwithstanding the foregoing, however, under no circumstances shall Developer be required to make such additions, and until such time as such additions are made to the Property in the manner hereinafter set forth, no other real property owned by Developer or any other person or party whomsoever, other than within the Property, shall in any way be affected by or become subject to this Declaration. All additional land which, pursuant to this Section, is brought within the jurisdiction and control of the Neighborhood Association and made subject to the Declaration shall thereupon and thereafter be included within the term "Property" as used in this Declaration. Notwithstanding anything contained in this Section, Developer neither commits to, nor warrants or represents, that any such additional land will be made subject to and brought within the jurisdiction and control of the Neighborhood Association.

13.4.2 Procedure for Making Additions to the Property. Additions to the Property may be made by the following procedure:

13.4.2.1 Developer shall have the right from time to time, in its discretion and without need for consent or approval by either the Neighborhood Association, any Homeowner, Resident or other Person to make additional land owned by Developer subject to the scheme of this Declaration and to bring such land within the jurisdiction and control of the Neighborhood Association; provided, however, in the event any portion of such additional land is encumbered by one or more mortgages, Developer must obtain the consent and approval of each holder of such mortgage(s).

13.4.2.2 The addition shall be accomplished by Developer filing of record in the public records a supplement to this Declaration with respect to the additional land extending the terms of the covenants and restrictions of this Declaration to such land as specifically and legally described. Such supplement need only be executed by Developer and shall be accompanied by the consent(s) and joinder(s) of any holder(s) of mortgage(s) on such additional land. No joinder or consent

of the Neighborhood Association, any Homeowner, Resident or other Person shall be required. Such supplement may contain such additional provisions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land or permitted uses thereof. In no event, however, shall such additional provisions and/or modifications revoke, modify, or add to the covenants and restrictions established by this Declaration as such affect the land described in the original Exhibit A or added by a previous supplement.

13.4.2.3 Nothing contained in this Section shall obligate Developer to make additions to the Property.

13.5 Severability. Invalidation of any particular provision of this Declaration by judgment or court order will not affect any other provision, all of which shall remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision contained in this Declaration when necessary to avoid a finding of invalidity while effectuating Developer's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Community.

13.6 Joinder. Should title to any Lot of the Neighborhood have been conveyed by Developer prior to the recording of this Declaration, such Homeowners of Lots by their signature to a Joinder shall be deemed to have joined with the Homeowner in the recording of this Declaration and shall have subordinated their right, title and interest in the Lot to the terms hereof and declare that their property shall be subject to this Declaration as fully as if title had been taken by them subsequent to the recording hereof.

13.7 Covenant Running with the Property. Except as otherwise provided herein, the covenants, conditions and restrictions of this Declaration shall run with and be binding upon the Property, and shall remain in force and be enforced by the Board of Directors and the Homeowners, their heirs, successors and assigns, for a term of 30 years after the date this Declaration is recorded in the public records of the County, and shall be automatically renewed for successive periods of 10 years, unless the Homeowners, upon the affirmative vote of the holders of 70% of the voting interests decide within 6 months of such renewal date, not to renew these covenants, conditions and restrictions, and a certificate executed by the president or the vice-president and secretary of the Neighborhood Association certifying to such vote is recorded in the public records of the County.

Each Homeowner, by virtue of taking title to a Lot, hereby agrees that the deed of conveyance of the Lot to a third party shall specifically state that the Lot is subject to the terms of this instrument and shall state the recording book and page information for this instrument as recorded in the public records of the County. The intent of this provision is to defeat any potential argument or claim that Chapter 712, Florida Statutes, has extinguished the application of this instrument to each of the Lots.

13.8 Amendment Pertaining to Surface Water Management System. Notwithstanding any provisions to the contrary contained in this Declaration, any amendment which will affect the surface water management system, including the management portion of the Common Property, serving the Community, must have the prior written approval of the South Florida Water Management District in order to be effective and binding.

13.9 Amplification. The provisions of this Declaration are amplified by the Articles of Incorporation and By-Laws, but no such amplification will alter or amend substantially any of the rights or obligations of the Homeowners set forth in this Declaration. Developer intends the provisions of this Declaration, on the one hand, and the Articles of Incorporation and By-Laws, on the other, to be interpreted, construed, applied, and enforced to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Developer intends that the provisions of this Declaration control anything in the Articles of Incorporation or By-Laws to the contrary. The terms defined in this Declaration shall have same meanings in the Articles of Incorporation and By-Laws, unless otherwise provided.

IN WITNESS WHEREOF, Developer has duly executed this instrument on this 4th day of December, 2001.

WITNESSES:

BAY COLONY-GATEWAY, INC., a Delaware Corporation

Denise L. Lavery
Name: Denise L. Lavery

By: [Signature]
Tim Oak, Vice President

William Smith
Name: William Smith

(SEAL)

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 4th day of December, 2001, by Tim Oak, as Vice President of BAY COLONY-GATEWAY, INC., a Delaware corporation, on behalf of the corporation, as Developer of Portofino at Sun City Center Ft. Myers. He is personally known to me.

My Commission Expires:

(AFFIX NOTARY SEAL)



Joyce E. Van Deusen
(Signature)
Name: Joyce E. Van Deusen
(Legibly Printed)

Notary Public, State of Florida

CC 724271
(Commission Number, if any)

**CONSENT OF MORTGAGEE REGARDING RECORDATION OF
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR PORTOFINO AT SUN CITY CENTER FT. MYERS**

Fleet National Bank, f/k/a BankBoston, N.A., a national banking association, as Agent for the Banks (the "Mortgagee"), the holder of that certain Second Consolidated, Amended and Restated Mortgage and Security Agreement and Notice of Future Advance dated as of April 26, 2000, and recorded in Official Records Book 3248, at Page 3065 of the Public Records of Lee County, Florida (the "Mortgage"), which Mortgage constitutes a lien upon the real property described in the Declaration of Covenants, Conditions and Restrictions for Portofino at Sun City Center Ft. Myers dated December 4, and to which this instrument is attached (the "Declaration"), hereby consents to Bay Colony-Gateway, Inc., a Delaware corporation (the "Developer"), recording the Declaration and subjecting the real property described in such exhibit to the terms and provisions of such Declaration.

Notwithstanding the execution of this consent, nothing herein shall be construed to render the Mortgagee responsible or liable for the performance of any of the covenants or undertakings of the Developer under the Declaration nor shall this consent affect the priority of the Mortgage lien and interest of the Mortgagee.

Dated this 5 day of December, 2001.

WITNESSES:

Fleet National Bank, f/k/a BankBoston, N.A., a national banking association

Olivia A. Narr
Name: OLIVIA A. NARR

By: *S. Selbo*
Steven P. Selbo, Director

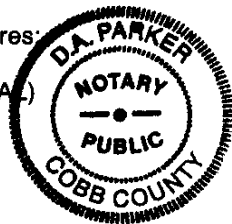
Angela M. Collins
Name: Angela M. Collins

(SEAL)

STATE OF GEORGIA
COUNTY OF DEKALB

The foregoing instrument was acknowledged before me this 5 day of December, 2001, by Steven P. Selbo, as Director of Fleet National Bank, f/k/a BankBoston, N.A., a national banking association, who either is personally known to me or has produced _____ as identification.

My Commission Expires:
(AFFIX NOTARY SEAL)



My Commission Expires
May 29, 2002.

D. A. Parker
(Signature)
Name: D. A. Parker
(Legibly Printed)
Notary Public, State of Georgia

(Commission Number, if any)

**EXHIBIT "A" TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PORTOFINO AT SUN CITY CENTER FT. MYERS**

Legal Description of the Property

PORTOFINO AT SUN CITY CENTER FT. MYERS, ACCORDING TO MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 69, PAGES 84 & 85, PUBLIC RECORDS OF LEE COUNTY, FLORIDA. ALSO DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LYING IN SECTION 2, TOWNSHIP 45 SOUTH, RANGE 25 EAST, CITY OF FT. MYERS, LEE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 2; RUN THENCE S.89°20'53"W., ALONG THE NORTH LINE OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 2, 1276.63 FEET; THENCE S.00°39'07"E., PERPENDICULAR TO SAID NORTH LINE, 1805.62 FEET TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF SUN CITY CENTER BOULEVARD (100' WIDE RIGHT-OF-WAY) AND TO THE POINT OF BEGINNING; SAID POINT LYING ON THE ARC OF A CURVE (A RADIAL LINE THROUGH SAID POINT BEARS S.82°31'27"E.); THENCE SOUTHWESTERLY, 382.14 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT HAVING A RADIUS OF 850.00 FEET AND A CENTRAL ANGLE OF 25°45'33" (CHORD BEARING S.20°21'19"W., 378.93 FEET); THENCE N.71°37'31"W., 79.82 FEET; THENCE N.87°09'22"W., 128.91 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY, 475.84 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 920.00 FEET AND A CENTRAL ANGLE OF 29°38'05" (CHORD BEARING N.72°20'20"W., 470.56 FEET) TO A POINT OF TANGENCY; THENCE N.57°31'18"W., 157.51 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY, 241.24 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 580.00 FEET AND A CENTRAL ANGLE OF 23°49'52" (CHORD BEARING N.69°26'13"W., 239.50 FEET) TO A POINT OF COMPOUND CURVATURE; THENCE WESTERLY, 99.10 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 250.00 FEET AND A CENTRAL ANGLE OF 22°42'47" (CHORD BEARING S.87°17'27"W., 98.46 FEET) TO A POINT OF REVERSE CURVATURE; THENCE WESTERLY, NORTHERLY AND EASTERLY, 759.74 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 204.00 FEET AND A CENTRAL ANGLE OF 213°22'50" (CHORD BEARING N.02°37'29"E., 390.81 FEET) TO A POINT OF TANGENCY; THENCE S.70°41'06"E., 121.97 FEET; THENCE S.86°10'28"E., 33.86 FEET TO A POINT ON A CURVE; THENCE NORTHERLY, EASTERLY AND SOUTHERLY, 777.67 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 204.00 FEET AND A CENTRAL ANGLE OF 218°25'01" (CHORD BEARING S.66°57'58"E., 385.29 FEET); THENCE S.57°31'18"E., 138.32 FEET TO A POINT OF CURVATURE; THENCE EASTERLY, 299.99 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 580.00 FEET AND A CENTRAL ANGLE OF 29°38'05" (CHORD BEARING S.72°20'20"E., 296.66 FEET) TO A POINT OF TANGENCY; THENCE S.87°09'22"E., 319.84 FEET TO THE POINT OF BEGINNING.

CONTAINING 13.977 ACRES, MORE OR LESS.

**EXHIBIT "B" TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PORTOFINO AT SUN CITY CENTER FT. MYERS**

Articles of Incorporation of the Neighborhood Association

State of Florida



Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC., a Florida corporation, filed on December 5, 2001, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H01000119019. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N01000008510.

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Fifth day of December, 2001

Authentication Code: 101A00064298-120501-N01000008510-1/1



CR25022 (1-99)

Katherine Harris
Katherine Harris
Secretary of State

**ARTICLES OF INCORPORATION
OF
PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC.
(A Corporation Not for Profit)**

THE UNDERSIGNED INCORPORATOR to these Articles of Incorporation hereby proposes the incorporation under Chapters 617 and 720, Florida Statutes, of a corporation not for profit, and hereby makes, subscribes, acknowledges and files with the Secretary of State of the State of Florida, Articles of Incorporation, and hereby certifies as follows:

ARTICLE I: NAME AND LOCATION

The name of this corporation shall be **PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as the "Neighborhood Association"), and its initial office for the transaction of its affairs shall be 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134, and the initial Registered Agent at that address is Vivien N. Hastings.

ARTICLE II: PURPOSES

This Neighborhood Association does not contemplate pecuniary gain or profit to the members thereof, and no distribution of income to its members, directors or officers shall be made, except that nothing herein shall prevent the Neighborhood Association from compensating persons who may be members, directors or officers in exchange for services actually rendered to, or costs actually incurred for the benefit of, the Neighborhood Association in furtherance of one or more of its purposes. The general purpose of this Neighborhood Association is to promote the common interests of the property owners in Portofino at Sun City Center Ft. Myers (hereinafter referred to as the "Neighborhood"), and the specific purpose is to perform the functions of the Neighborhood Association contemplated in the Declaration of Covenants, Conditions and Restrictions for the Neighborhood recorded in the Public Records of Lee County, Florida (hereinafter referred to as the "Declaration"), as the same may in the future be amended, which purposes shall include but not be limited to:

- (a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Neighborhood Association as set forth in the Declaration;
- (b) Fix, levy, collect and enforce payment, by any lawful means, all charges or assessments pursuant to the terms of the Declaration;
- (c) Own and convey property;
- (d) Establish rules and regulations;
- (e) Sue and be sued;
- (f) To pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Neighborhood Association;
- (g) Maintain, repair and replace Common Properties as contemplated by the Declaration, and to enter into contracts for the provision of services to maintain and operate the Common Properties; and
- (h) Have and exercise any and all other powers, rights and privileges of a not-for-profit corporation organized under the law of the State of Florida.

ARTICLE III: MEMBERSHIP AND VOTING RIGHTS

A. Eligibility. Every person, whether an individual, corporation or other entity, who is the record owner of a Lot that is subject to assessment pursuant to the Declaration shall become a member

Prepared by: Robert S. Freedman, Esquire, Carlton Fields, P.A., One Harbour Place,
Tampa, FL 33602 (813) 223-7000 Fla. Bar No. 881562

of the Neighborhood Association upon the recording of the instrument of conveyance. If title to a Lot is held by more than one person, each such person shall be a member. A Homeowner of more than one Lot is entitled to membership for each Lot owned. No person other than a Homeowner may be a member of the Neighborhood Association, and a membership in the Neighborhood Association may not be transferred except by the transfer of title to a Lot; provided, however, the foregoing does not prohibit the assignment of membership and voting rights by a Homeowner who is a contract seller to such Homeowner's vendee in possession.

If more than one person owns a fee interest in any Lot, all such persons are members, but there may be only one vote cast with respect to such Lot. Such vote may be exercised as the co-owners determine among themselves, but no split vote is permitted. Prior to any meeting at which a vote is to be taken, each co-owner must file a certificate with the secretary of the Neighborhood Association naming the voting co-owner entitled to vote at such meeting, unless such co-owners have filed a general voting certificate with the Secretary applicable to all votes until rescinded. Notwithstanding the foregoing, no separate certificate shall be necessary if title to any Lot is held in a tenancy by the entireties, and in such event either tenant is entitled to cast the vote for such Lot unless and until the Neighborhood Association is notified otherwise in writing by such co-tenants by the entireties.

B. Classes of Membership and Voting; Transfer of Control. The Neighborhood Association shall have two classes of voting membership: Class A and Class B. So long as there is Class B membership, Class A members shall be all persons owning record title to the Lots of the Neighborhood ("Homeowners") except the Developer. All Class B memberships shall belong to the Developer. Upon termination of Class B membership as provided below, Class A members shall be all Homeowners, including the Developer so long as such Developer is a Homeowner. Subject to the provisions of Section A of this Article, members, Class A or Class B, are entitled to cast one vote for each Lot owned. There shall be no cumulative voting for Directors or any other matters.

Until such time as Class B membership is terminated, the Developer shall be entitled to solely appoint all Members of the Board. The Class B membership will terminate and convert automatically to Class A membership, and transfer of control of the Neighborhood Association for the Members other than the Developer shall occur, upon the happening of any of the following, whichever occurs first:

(a) Three months after 90% of the Lots in all portions of the Neighborhood which are or may be ultimately subject to governance by the Neighborhood Association have been conveyed to third party Homeowners; or

(b) When the Developer waives its rights to Class B membership, which waiver shall be evidenced by the recording of a certificate to such effect in the public records of Lee County, Florida.

Upon termination of Class B membership, all provisions of the Declaration, Articles of Incorporation, or By-Laws referring to Class B membership will be obsolete and without further force or effect, including any provision requiring voting by classes of membership.

C. Transferability. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to that Lot whether or not mention thereof is made in such conveyance of title.

ARTICLE IV: TERM OF EXISTENCE

The Corporation shall have perpetual existence. In the event the Corporation is dissolved, the Corporation shall ensure that the maintenance of the surface water management system is delegated, transferred or assigned to a similar not-for-profit corporation.

ARTICLE V: INCORPORATOR

The name and address of the Incorporator to these Articles of Incorporation is the following:

NAME
Robert S. Freedman

ADDRESS
Carlton Fields, P.A.
One Harbour Place
777 S. Harbour Island Boulevard
Tampa, Florida 33602-5799

ARTICLE VI: MANAGEMENT

The affairs of the Corporation shall be managed by its Board of Directors, which shall consist of not less than 3 nor more than 7 individuals, the precise number to be fixed in the By-Laws or by the Board of Directors of the Neighborhood Association from time to time. Directors shall be elected for one year terms by the members at the annual members' meeting, to be held as scheduled by the Board of Directors in the last quarter of each fiscal year in the manner prescribed in the By-Laws of the Neighborhood Association, and shall hold office until their respective successors are duly elected and qualified; provided, however, that the Developer shall be entitled to solely appoint all members of the Board of Directors prior to transfer of control. The Board shall elect a President, a Vice President, and a Secretary-Treasurer of the Neighborhood Association, and such other officers as may, in the opinion of the Board, from time to time be necessary to adequately administer the affairs of the Neighborhood Association. Such officers are to hold office at the pleasure of the Board or until their successors are duly elected and qualified. Officers may be Directors. Officers and Directors must be members of the Neighborhood Association except with respect to those who are elected by the Class B members. Any individual may hold 2 or more corporate offices, except that the offices of President and Secretary-Treasurer may not be held by the same person. The officers shall have such duties as may be specified by the Board or the By-Laws of the Neighborhood Association. Vacancies occurring on the Board and among the officers shall be filled in the manner prescribed by the By-Laws of the Neighborhood Association.

Notwithstanding the foregoing, the Class B members shall have the right to elect all Directors as long as there shall be Class B membership, except that such Class B members, in their sole discretion, may voluntarily consent to the election of one director by the Class A members after fifty percent (50%) of the Lots in the Neighborhood have been conveyed to Class A members.

ARTICLE VII: INITIAL OFFICERS

The names of the initial officers who are to serve until their successors are elected under the provisions of these Articles of Incorporation and the By-Laws are the following:

<u>Title</u>	<u>Identity</u>
President	Tim Oak
Vice President	Valerie McChesney
Secretary-Treasurer	Milt Flinn

ARTICLE VIII: INITIAL BOARD OF DIRECTORS

The number of persons constituting the initial Board of Directors of the Neighborhood Association shall be three (3) and the names and addresses of the members of such first Board of Directors, who shall hold office until their respective successors are elected pursuant to the provisions of these Articles of Incorporation and the By-Laws, are the following:

Tim Oak	24301 Walden Center Drive, Suite 300 Bonita Springs, Florida 34134
Valerie McChesney	24301 Walden Center Drive, Suite 300 Bonita Springs, Florida 34134
Milt Flinn	24301 Walden Center Drive, Suite 300 Bonita Springs, Florida 34134

ARTICLE IX: BY-LAWS

The By-Laws of the Neighborhood Association shall be adopted by the initial Board of Directors, as constituted under Article VIII above, at the organizational meeting of the Board. Thereafter the By-Laws may be altered, amended, or rescinded by the affirmative vote of 2/3 of the Board of Directors, and after notice to the members, by the majority vote of Class A members, and the unanimous vote of the Class B members, present at any regular or special meeting of the membership.

However, no amendment to the By-Laws shall be valid which affects any of the rights and privileges provided to the Developer without the written consent of the Developer as long as Developer shall own any Lots in the Neighborhood.

ARTICLE X: AMENDMENTS

Amendments to these Articles of Incorporation shall be made in the following manner:

(a) The Board of Directors shall adopt a resolution setting forth a proposed amendment and, if members have been admitted, directing that it be submitted to a vote at a meeting of members, which may be either the annual or a special meeting. If no members have been admitted, the amendment shall be adopted by a vote of the majority of directors and the provisions for adoption by members shall not apply.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be affected thereby shall be given to each member of record entitled to vote thereon within the time and in the manner provided by Florida Statutes for the giving of notice of meetings of members. If the meeting is an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting, a vote of the members entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving both the affirmative vote of a majority of the votes of members of each class entitled to vote thereon as a class and the affirmative vote of a majority of the votes of all members entitled to vote thereon.

Any number of amendments may be submitted to the members and voted upon by them at one meeting.

Notwithstanding the foregoing, (a) no amendment to the Articles of Incorporation shall be valid which affects any of the rights and privileges provided to the Developer without the written consent of the Developer as long as Developer shall own any Lots in the Neighborhood, and (b) no amendment which will affect any aspect of the surface water management system located on the Property shall be effective without the prior written approval of the South Florida Water Management District.

ARTICLE XI: REGISTERED OFFICE AND AGENT

Pursuant to Section 48.091 and Section 607.0501, Florida Statutes, the name and address of the Initial Registered Agent for service of process upon the Neighborhood Association is:

Vivien N. Hastings
24301 Walden Center Drive, Suite 300
Bonita Springs, Florida 34134

The above address is also the address of the registered office of the Neighborhood Association.

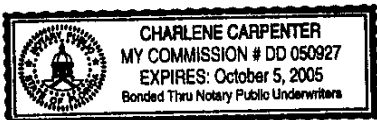
Robert S. Freedman
Robert S. Freedman, Incorporator

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 5th day of December, 2001, by ROBERT S. FREEDMAN, being known to me to be the person who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same as his free act and deed for the uses and purposes therein set forth. He is personally known to me.

My Commission Expires:

(AFFIX NOTARY SEAL)



Charlene Carpenter
(Signature)
Name Charlene Carpenter
(Legibly Printed)
Notary Public, State of Florida
DD 050927
(Serial Number, if any)

ACCEPTANCE OF DESIGNATION AS REGISTERED AGENT

The undersigned, having been named as registered agent and to accept service of process for Portofino at Sun City Center Ft. Myers Property Owners Association, Inc., hereby accepts the appointment as registered agent and agrees to act in such capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of his duties and is familiar with and accepts the obligations of his position as registered agent.

Vivien N. Hastings
Vivien N. Hastings

**EXHIBIT "C" TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR PORTOFINO AT SUN CITY CENTER FT. MYERS**

By-Laws of the Neighborhood Association

**BY-LAWS
OF
PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC.
(A Corporation Not for Profit)**

**ARTICLE I
Name and Location**

The name of the corporation is **PORTOFINO AT SUN CITY CENTER FT. MYERS PROPERTY OWNERS ASSOCIATION, INC.** (hereinafter referred to as the "Neighborhood Association"), and its initial office for the transaction of its affairs shall be 24301 Walden Center Drive, Suite 300, Bonita Springs, Florida 34134. Meetings of members and directors may be held at such places within the State of Florida as may be designated by the Board of Directors (hereinafter referred to as the "Board").

**ARTICLE II
Definitions**

Unless the context expressly requires otherwise, the terms used herein shall have the meanings set forth in the Declaration of Covenants, Conditions and Restrictions for Portofino at Sun City Center Ft. Myers ("Declaration").

**ARTICLE III
Meeting of Members**

Section 1. **Annual Meetings.** All annual and special meetings of the Neighborhood Association shall be held in Lee County, Florida, or at such other place as may be permitted by law and from time to time as fixed by the Board and designated in the notices of meetings.

Section 2. **Notice of Annual Meetings.** Annual meetings of the members of the Neighborhood Association shall be held in the fourth quarter of each fiscal year. Notice of the meeting, which shall include an agenda, shall be hand-delivered or sent by first class mail to each member listed in the membership book of the Neighborhood Association at the address shown therein ("Member of Record") at least 14 and no more than 60 days prior thereto. The secretary of the Neighborhood Association shall obtain and retain a written receipt of delivery or the post office certificate of mailing as proof that the notice was delivered or mailed.

Section 3. **Special Meetings.** Special meetings of the members, for any purpose or purposes, whether or not specifically required by these By-Laws, the Articles of Incorporation, or the Declaration may be called by the president, secretary, a majority of the Board, or by the members having 1/10 of the votes of the Class A membership.

Section 4. **Notice of Special Meetings.** No business shall be transacted at any special meeting except as stated in the notice thereof. Notice of all special meetings shall be given by the secretary to Members of Record, or if the secretary shall fail to do so, by the president or Board, not less than 30 nor more than 60 days prior to the date thereof, stating the date, time, and place of the meeting and the purpose or purposes thereof. Notices deposited in the United States mail, postage prepaid within the prescribed time or, in lieu of mailing, delivered by hand to the members shall suffice. The Secretary shall obtain and retain a written receipt of delivery of the post office certificate of mailing as proof that the notice was delivered or mailed.

Section 5. **Quorum.** Members present in person or represented by proxy, entitled to cast at least 1/3 of the votes of the membership of the Neighborhood Association, shall constitute a quorum.

Section 6. **Action Taken at Meeting.** When a quorum is present at any meeting, a majority of the votes duly cast by the members present at the meeting or represented by written proxy shall decide any question brought before the meeting, unless the question is one upon which by express provision of law, the Declaration, the Articles of Incorporation or these By-Laws, a different vote is required, in which

case the express provision shall govern and control. If any meeting of members cannot be organized because a quorum is not present, the meeting may be adjourned by a majority of the members present in person, until a quorum is present

Section 7. **Order of Business.** The order of business at all meetings shall be as prescribed in the agenda prepared by the Board and submitted to the Members of Record with the notice of each meeting.

Section 8. **Action Without Meeting.** Any action which may be taken by the membership pursuant to a duly called meeting, may be taken without a meeting provided that: a proposal of action to be taken by the members is mailed to every member of the Neighborhood Association together with a request for approval or disapproval; and, the members responding to the proposal ("**Responding Members**") hold at least 1/3 of the votes of all members of the Neighborhood Association. A proposed action may be approved by a majority of the votes attributable to the Responding Members unless the proposed action is one which by express provision of law, the Declaration, the Articles of Incorporation or these By-Laws requires a different vote, in which case the express provision as it pertains to voting percentages shall govern and control.

Section 9. **Voting.** The Neighborhood Association has two classes of voting membership: Class A and Class B. So long as there is Class B membership, Class A members are all Homeowners except Developer. The Class B members shall be the Developer. Upon termination of Class B membership, as provided by the Declaration, Class A members are all Homeowners, including the Developer so long as such Developer is a Homeowner. Subject to the provisions of the following paragraph all members, Class A or Class B, are entitled to cast one vote for each Lot owned; but, as provided in the Articles of Incorporation, the Class B members are entitled to elect the Neighborhood Association's directors until termination of Class B membership.

If more than one person owns an interest in any Lot, all such persons are members, but there may be only one vote cast with respect to such Lot. Such vote may be exercised as the co-owners determine among themselves, but no split vote is permitted. Prior to any meeting at which a vote is to be taken, each co-owner must file the name of the voting co-owner with the secretary of the Neighborhood Association to be entitled to vote at such meeting, unless such co-owners have filed a general voting authority with the Secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot is held in a tenancy by the entireties, either tenant is entitled to cast the vote for such Lot unless and until the Neighborhood Association is notified otherwise in writing.

Section 10. **Presiding Officers.** At each meeting of the members, the president, or in his absence the vice president, shall preside and the secretary, or in his absence the assistant secretary, shall be the secretary for the meeting.

ARTICLE IV **Directors**

Section 1. **Board of Directors.** Until transfer of control of the Neighborhood Association from the Developer to the non-Developer owners, the affairs of the Neighborhood Association shall be managed by a Board of 3 directors. A director must be a member except that the directors elected by the Class B members need not be members and may be the officers and/or employees of the Developer. There shall be at all times a minimum of 3 directors.

Section 2. **Election of Directors.**

(a) Election of directors shall be held at the annual members' meeting.

(b) The election of directors to be elected by the Class A members shall be by ballot (unless dispensed by the unanimous vote consent of those members eligible to vote in person or proxy) and shall be determined by a plurality of the Class A votes cast. There shall be no cumulative voting.

(c) Except as to vacancies provided by removal of directors by members, all vacancies in the Board occurring between annual meetings of members, including vacancies created by increasing the size of the Board, shall be filled by the vote of a majority of the remaining directors.

(d) Any directors elected by Class A members may be removed by concurrence of 2/3 of the votes of the Class A members at a special meeting of the members called for that purpose. The vacancy in the Board so created shall be filled by the members of the Neighborhood Association at the same meeting.

(e) Notwithstanding the foregoing, the Board shall be elected solely by Class B members as long as there are Class B members, with the exception that in the sole discretion of the Class B members, one director may be elected by the Class A members after 50% of the Lots have been conveyed to Class A members.

Section 3. **Term of Office.** Unless otherwise provided herein, the term of each director's service shall be one year and until his successor is duly elected and qualified or until he is removed in the manner provided elsewhere herein.

Section 4. **Composition of the Board of Directors.** In accordance with the Articles of Incorporation, the Board appointed and named in said Articles of Incorporation (and their successors appointed by the Developer) shall serve at least until Class A members are entitled to elect one or more of the directors.

At the meeting of the members at which transfer of control of the Neighborhood Association to the non-Developer members occurs, a simple majority of directors shall be elected for a term of office to end at the second subsequent annual meeting of the members of the Neighborhood Association, and the remaining directors shall be elected for a term of office to end at the subsequent annual meeting of the members of the Neighborhood Association. Following the initial election of non-Developer members, subsequent elections to the Board shall be for a 2 year term of office, unless otherwise provided herein. All officers of a corporation owning a Lot shall be deemed to be members of the Neighborhood Association so as to qualify each to become a director hereof.

Section 5. **Annual Meetings.** The annual meeting of the Board may be held at such time and place as shall be determined by the directors, except that such annual directors' meeting shall be held as soon as practicable following the annual members' meeting. If held at any time other than immediately following the annual members' meeting, there shall be 3 days notice given by the President personally or by mail, telephone or telegraph, which notice shall state the time and place of the meeting.

Section 6. **Special Meetings.** Special meetings of the directors may be called by the president and must be called by the secretary at the written request of 2/3 of the directors. Not less than 3 days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

Section 7. **Waiver of Notice.** Any director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice. Attendance at a meeting shall constitute a waiver of notice.

Section 8. **Quorum and Voting.** A quorum at directors' meetings shall consist of a majority of the entire Board. The acts approved by a majority of directors shall constitute the acts of the Board except when approval by a greater number of directors is required by the Declaration, the Articles of Incorporation, these By-Laws, or the laws of the State of Florida.

Section 9. **Adjourned Meetings.** If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called may be transacted without further notice.

Section 10. **Joinder in Meeting by Approval of Minutes.** The joinder of a director in the action of a meeting by signing and concurring in the minutes of that meeting shall constitute the presence of such director for the purpose of determining a quorum.

Section 11. **Presiding Officer and Secretary for Meetings.** The presiding officer of the directors' meetings shall be the chairman of the Board if such an officer has been elected; and if none, the president shall preside. In the absence of the presiding officer, the directors present shall designate one of their number to preside. The secretary of the Neighborhood Association shall be the secretary for meetings of the directors, unless absent, in which case the directors shall designate one of their members to act as secretary for the meeting.

Section 12. **Compensation.** No director shall receive compensation for any service he may render to the Neighborhood Association as director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties, and this provision shall not preclude a person who is also a director to receive compensation in exchange for other services rendered to or on behalf of the Neighborhood Association in a capacity other than director.

Section 13. **Committees.** The Board may from time to time appoint such committees and delegate such duties and powers thereto as it may deem advisable.

Section 14. **Attendance by Telephone.** Any member or members of the Board shall be deemed present and voting at a meeting of such Board if said member or members participate in the meeting by means of a conference telephone or similar communications equipment or device enabling all persons participating in the meeting to hear each other.

Section 15. **Action Without Meeting.** Any action required or permitted to be taken at any meeting may be taken without a meeting if written consent to the action signed by all the members of the Board is filed with the minutes of the proceedings of the Board.

Section 16. **Powers.** The Board shall have the powers set forth in the Declaration and the Florida Not-For-Profit Corporation Act, including but not limited to the power to:

(a) adopt and promulgate rules and regulations governing the Neighborhood or contemplated by the Declaration, and to establish penalties for the infraction thereof (a rule shall be deemed promulgated when a copy thereof is furnished to each member in person or mailed to each such member at the address on the records of the Neighborhood Association);

(b) suspend the voting rights and other rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Neighborhood Association. Such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for infraction of promulgated rules and regulations;

(c) exercise for the Neighborhood Association all powers, duties and authority vested in or delegated to this Neighborhood Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration, including the establishment of the assessments provided for in the Declaration; and

(d) employ a manager, or such other independent contractors or employees as they deem necessary, and to prescribe their duties.

Section 17. **Duties.** It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present an oral or written statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by $\frac{1}{4}$ of the Class A members who are entitled to vote;

(b) supervise all officers, agents and employees of the Neighborhood Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the Assessments against each Lot;

(2) exercise the duties of the Board as set forth in the Declaration and enforce the restrictions and covenants contained therein; and

(3) take appropriate and timely action against members whose assessments are in default;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) cause all officers or employees having fiscal responsibilities to be bonded, if such bonding may be deemed appropriate; and

(f) perform such other acts as may be required of a board of directors under the Florida Not-For-Profit Corporation Act.

ARTICLE V **Officers**

Section 1. **First Officers.** In accordance with the Articles of Incorporation, the first officers of the Neighborhood Association named and appointed in such Articles of Incorporation shall serve until their qualified successors are elected by the Board.

Section 2. **Executive Officers.** The executive officers of the Neighborhood Association shall be a president, who shall be a director, a vice president, who shall be a director, a treasurer-secretary and other officers as shall be elected by the Board. Except as provided in Section 1 of this Article, such officers shall be elected annually by the Board. Officers need not be Lot owners and the officers and employees of the Developer may be officers of the Neighborhood Association. The Board from time to time may elect such assistant or other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Neighborhood Association. Each officer shall serve until a qualified successor is elected by the Board. The Board, by a 2/3 affirmative vote, from time to time may remove an officer with or without cause and fill such vacancy so created.

Section 3. **President.** The president shall be the chief executive officer of the Neighborhood Association. He shall have all of the powers and duties that are usually vested in the office of president of an Neighborhood Association, including but not limited to the power to appoint committees from among the members from time to time, as he in his discretion may determine appropriate, to assist in the conduct of the affairs of the Neighborhood Association.

Section 4. **Vice-President.** The vice-president, in the absence or disability of the president, shall exercise the powers and perform the duties of the president. He also shall assist the president generally and exercise such other powers and perform such other duties as shall be prescribed by the directors.

Section 5. **Secretary.** The secretary shall keep the minutes of all proceedings of the directors and members. He shall attend to the giving and serving of all notices to the members and directors and others that are required by law. He shall have custody of the seal of the Neighborhood Association and affix it to any instruments requiring a seal when duly signed. He shall keep the records of the Neighborhood Association including the membership book, except those of the treasurer unless the secretary is also the treasurer of the Neighborhood Association. The secretary shall perform all other

duties incident to the office of secretary of a corporation and as may be required by the Board of Directors or the President. Any assistant secretary elected shall perform the duties of the secretary when the secretary is absent.

Section 6. **Treasurer.** The treasurer shall have custody of all property of the Neighborhood Association including funds, securities and evidences of indebtedness. He shall keep the books of the Neighborhood Association in accordance with good accounting practices, and he shall perform all other duties usually incident to the office of treasurer.

Section 7. **Compensation.** No officer shall receive any compensation by reason of his office; provided, however, that nothing herein shall preclude the Board from employing an officer as an employee of the Neighborhood Association or preclude the contracting with an officer for management services.

ARTICLE VI

Fiscal Management

Section 1. **Depositories.** All funds of the Neighborhood Association shall be deposited in the name of the Corporation in such bank, banks or other financial institutions as the Board may from time to time designate, and shall be drawn out on checks, drafts or other orders signed on behalf of the Neighborhood Association by such person or persons as the Board may from time to time designate.

Section 2. **Contracts, Etc.** Except as otherwise specifically provided by these By-Laws, all contracts, agreements, deeds, bonds, mortgages and other obligations and the instruments shall be signed on behalf of the Neighborhood Association by the president or by such other officer, officers, agent or agents as the Board may from time to time by resolution provide.

Section 3. **Budget.** The Board shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the Neighborhood Association expenses and to provide and maintain funds for the appropriate accounts according to good accounting practices. Such budget shall be adopted prior to, and a copy shall be distributed at, the annual members' meeting next preceding the fiscal year for which the budget shall apply.

Section 4. **Assessments.** As more fully provided in the Declaration, each member is obligated to pay to the Neighborhood Association certain assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within 30 days after the due date, the assessment shall bear interest from the date of delinquency at the rate of 15% per annum, or such other rate as may be, from time to time, established by the Board; provided, however, that such rate shall not exceed the maximum rate allowed by the law not constituting usury. The Neighborhood Association may bring an action at law against the Homeowner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Homeowner may waive or otherwise escape liability for the assessments provided for herein.

Section 5. **General Assessment.** The Board shall adopt the General Assessment as provided for in the Declaration. The initial level of the assessment until changed by action of the Board shall be \$414.90 per Lot per quarter. The adoption of these By-Laws is action of the Board to fix and establish the assessment at \$414.90 per Lot per quarter.

Section 6. **Special Assessments.** As contemplated by the Declaration, special assessments may be adopted by the Neighborhood Association to meet expenses which exceed the budget adopted by the Board of Directors. Such special assessments shall be adopted and levied upon approval of a majority of the votes cast by the members present at a special meeting called for that purpose.

Section 7. **Supplemental Lot Landscaping Assessment and Surrounding Landscaping Area Assessment.** Supplemental Lot Landscaping Assessments and Surrounding Landscaping Area

Assessments shall be levied against a Homeowner in accordance with the applicable provisions of the Declaration.

Section 8. **Budget Review by Members.** If the Board-adopted General Assessment against the Lots in any fiscal year exceeds 125% of the General Assessments for the preceding fiscal year, upon written application of 10% of the Homeowners to the Board, a special meeting of the membership shall be called within 30 days upon not less than 10 days' written notice to each Homeowner. At the special meeting, Homeowners shall consider and may enact a budget and General Assessment. The adoption of the budget and General Assessment by the Homeowners shall require a majority of the votes cast at such meeting.

If no new budget and General Assessment are adopted by the Homeowners at such special meeting, then the budget and General Assessment adopted by the Board under Sections 3 and 5 of this Article VI shall stand and constitute the valid budget and General Assessment of the Neighborhood Association.

Section 9. **Financial Report.** The Treasurer of the Neighborhood Association shall report the financial status of the Neighborhood Association to the members 60 days following the end of the fiscal year.

ARTICLE VII **Amendments**

Section 1. These By-Laws may be altered, amended, or rescinded by the affirmative vote of 2/3 of the Board, and after notice to the members, by the total Class A voting interests in the Neighborhood Association, and the unanimous vote of the Class B members, present at any regular or special meeting of the membership.

Notwithstanding the foregoing, (a) no amendment to the By-Laws shall be valid which affects any of the rights and privileges provided to the Developer without the written consent of the Developer as long as Developer shall own any Lots in the Neighborhood, and (b) no amendment which will affect any aspect of the surface water management system located on the Property shall be effective without the prior written approval of the South Florida Water Management District.

ARTICLE VIII **Miscellaneous**

Section 1. The fiscal year of the Neighborhood Association shall commence on December 1 of a particular year and end on November 30 of the next subsequent year.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.