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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
VERANDAH**

HYATT & STUBBLEFIELD, P.C.
Attorneys and Counselors
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, Georgia 30303

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

VERANDAH

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this 11 day of December, 2002 by Verandah Development LLC, a Florida limited liability company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

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

Article I Creation of the Community

1.1. Purpose and Intent.

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

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

1.2. Binding Effect.

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

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

1.3. Governing Documents.

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

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

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

Article II Concepts and Definitions

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

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this

Declaration, any Supplemental Declaration, any Covenant to Share Costs, or other applicable covenants, contracts, or agreements.

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

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

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

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

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

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

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

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

"Community Development Districts" or "Community Development District": One or more special service, utility, and taxing districts created as a special purpose unit of local government with jurisdiction within, adjacent to, and in the vicinity of the Properties established in accordance with Chapter 190, Florida Statutes, 1980, which are vested with certain governmental powers and responsibilities within or adjacent to the Properties. The districts may share certain responsibilities within their jurisdiction.

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

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

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

"Declarant": Verandah Development LLC, a Florida limited liability company, or any successor or assign who takes title to any portion of the property described on Exhibits "A" or "B" for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant. The Declarant shall be the "developer" of Verandah as defined in Chapter 720.301, et seq., Florida Statutes.

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

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

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

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

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

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Units, as more particularly described in Section 13.2.

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

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

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

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

Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided in Section 6.4.

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

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

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

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

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

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

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

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

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

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

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

"South Florida Water Management District Environmental Resource Permit": The South Florida Water Management District Environmental Resource Permit for construction and development of the Properties is attached hereto as Exhibit "E." The South Florida Water Management District has the right pursuant to this permit and other state law and regulations to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System facilities or in mitigation or conservation areas under the responsibility or control of the Association.

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

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

"Supplemental Declaration": An instrument filed in the Public Records pursuant to Article IX which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

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

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

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

"Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a subdivision plat or condominium plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the

preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this paragraph.

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

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

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, architecture, and maintenance and repair within Verandah are what give the community its identity and make it a place that people want to call "home." Yet those standards must be more than a static recitation of "thou shalt not's." This Declaration establishes procedures for enacting Use Restrictions as a dynamic process which allows the community standards to evolve as the community changes and grows and as technology and public perception change.

Article III Use and Conduct

3.1. Framework for Regulation.

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

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

3.2. Authority to Enact Use Restrictions.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Use Restrictions. The Board shall send notice by mail to all Owners or broadcast or publish via a medium readily available throughout

the Properties concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Neighborhood Representatives shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

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

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

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

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

(e) Procedures required under this Section shall not apply to enactment and enforcement of Rules and Regulations unless the Board chooses in its discretion to submit to such procedures. Examples of such Rules and Regulations shall include, but not be limited to, administrative procedures, traffic regulations, and parking rules on the Common Area. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such Rules and Regulations.

(f) Nothing in this Article shall limit the Declarant's ability to unilaterally amend this Declaration and the Use Restrictions during the Class "B" membership as provided in Section 19.1. Amendments made under Section 19.1 shall be effective when recorded.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Use Restrictions as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Use Restrictions

may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Use Restrictions may be obtained from the Association.

3.4. Protection of Owners and Others.

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

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

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

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

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

(e) Alienation. No Use Restriction shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 30 days and may limit the number of leases an Owner may enter into within a 12 month period. The Association may require that Owners use lease forms approved by the Association and may impose administrative fees, transfer fees, and reserve assessments on the lease or transfer of any Unit in such amount as may be reasonably determined by the Board and which may be graduated in rates based on length of the lease, type of occupancy, or other factors deemed appropriate by the Board. Additionally, the Association may require the prior payment of a lease deposit to ensure compliance with the Association's Use Restrictions and to constitute liquidated damages in the event of non-compliance or damage to the Common Area. Any Owner that leases his or her Unit shall be presumed to have delegated his or her easements and rights to use the Common Area to his or her tenant or occupant, and such Owner's easements and rights to use shall be suspended during the term of the lease. The use rights and privileges delegated to a guest or tenant may be limited to a

greater extent than the use rights and privileges of an Owner occupying his or her Unit. Such limitations may be enacted by the sole discretion of the Board and may include, without limitation, imposing additional or higher fees and periods of use being reserved or restricted. This subsection shall not apply to any leasing or rental activities conducted by, or on behalf of, the Declarant.

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

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

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

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

Article IV Architecture and Landscaping

4.1. General.

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

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

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

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

4.2. Architectural Review.

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

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

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

The Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this article to (i) a design review committee appointed by the Association's Board of Directors (the "DRC"); or (ii) a committee comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of Declarant to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as the Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by the Declarant.

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

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

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

4.3. Guidelines and Procedures.

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

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

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

(b) Procedures. Prior to commencing any Work within the scope of this article, an Owner shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior

elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

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

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

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

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, the Declarant or any aggrieved Owner.

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

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner

acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application pursuant to this article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design. Neither the Declarant, the Association, the Board, any committee, nor member of any of the foregoing shall be held liable for soil conditions, drainage or other general site work, nor for any defects in plans revised or approved hereunder, nor for any injury, damages, nor loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the DRC and all persons comprising the DRC shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

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

4.8 Construction of Docks within Verandah.

No Owner may apply for, or construct, a single-family dock within the Properties, unless and until the South Florida Water Management District has issued a modification to the South Florida Water Management District Environmental Resource Permit authorizing the construction of such facilities. Any Owner found to be in violation of this section shall be subject to monetary fines and shall be required to remove any dock constructed by such Owner. In the event the Owner fails or refuses to remove his or her dock, the Association shall be authorized to go on such Owner's Unit, remove the dock, and assess the costs for removal as a Specific Assessment against such Owner's Unit. The provisions of this Section shall not apply to the construction, installation, and/or maintenance of observation decks consistent with the South Florida Water Management District Environmental Permit and any Lee County zoning resolutions.

Article V Maintenance and Repair

5.1. Maintenance of Units.

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

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

5.2. Maintenance of Neighborhood Common Area.

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

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

Upon resolution of the Board, the Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, gates, landscaping, entry features, lighting, right-of-way and greenspace between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same.

The Association may, but shall not be obligated to, assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement.

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

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Neighborhood Association in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to, do hereunder).

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

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

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

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

Article VI The Association and its Members

6.1. Function of Association.

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

6.2. Membership.

Every Owner shall be a Member of the Association and may also be a member of a Neighborhood Association. There shall be only one membership in the Association per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

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

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

(b) Class "B". The sole Class "B" member shall be the Declarant. Until the Class "B" membership expires or is terminated, the Class "B" member may appoint all of the members

of the Board of Directors as specified in the By-Laws. Additional rights of the Class "B" member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles.

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

(i) three months after 90% of the maximum number of Units which may be created and developed as part of the Properties under the resolutions of the Lee County Board of County Commissioners, as amended from time to time, have been conveyed to Class "A" members other than Builders. Currently, the maximum number of Units is 1,500, however, the maximum number of Units may increase if Lee County approves an increase in the number of Units that may be created and developed on the property described on Exhibits "A" and "B" or additional property other than the property described on Exhibits "A" and "B" is subjected to this Declaration as provided in Article IX; or

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

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

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

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

6.4. Neighborhoods and Neighborhood Representatives.

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

Any Neighborhood, acting either through a Neighborhood Committee elected as provided in the By-Laws or through a Neighborhood Association, may request that the Association provide a higher level of service than that which the Association generally provides to all

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

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

The Board shall call for the designation of a Neighborhood Representative for each Neighborhood not later than the date upon which the Owners, other than Declarant or Builders, hold record title to 75% of the Units in such Neighborhood. Until such time as Neighborhood Representatives are designated for the Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue requiring a membership vote under the Governing Documents. Unless otherwise provided in the documents governing a Neighborhood Association, each Class "A" member owning a Unit within the Neighborhood shall be entitled to cast one equal vote per Unit owned in Neighborhood elections, and the presence, in person or by proxy, of Class "A" members representing at least 30% of the total Class "A" votes attributable to Units in the Neighborhood shall constitute a quorum at any Neighborhood meeting. Neighborhood Representatives and alternates shall serve a term of one year and until their successors are elected. Any Neighborhood Representative or alternate may be removed, with or without cause, upon the vote or written petition of a majority of the total number of Class "A" votes in the Neighborhood.

Article VII Association Powers and Responsibilities

7.1. Acceptance and Control of Association Property.

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

(b) The Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved,

described on Exhibit "A" or "B." The conveyances of real and personal property may include portions of the Surface Water Management System and Conservation Areas. Common Area conveyed to the Association may be subject to governmental obligations and other encumbrances. The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association. Upon written request by Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

7.2. Maintenance of Area of Common Responsibility.

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

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

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

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

(iv) such portions of the Conservation Areas, Surface Water Management System, signage, landscaping, or other areas assigned to or transferred by agreement between the Association and any of the Community Development Districts which may include, but not be limited to: the flowway as shown in the South Florida Water Management District Permit construction drawings attached hereto as Exhibit "E" and any conservation easement including any preserved, restored, enhanced and/or created wetland areas and upland buffer zones which are to be maintained in compliance with the permit and its conditions. Subject to delegation to a Community Development District as provided in this subsection, the Association is responsible for mitigation, monitoring and financial assurances as provided in the South Florida Water Management District Permit and shall enforce the conditions of the conservation easement and the South Florida Water Management District Permit against Owners and occupants of Units. The elevations and vegetation within the flowway which are to be maintained in order to provide conveyance of flow from the Orange River during certain storm events, including and up to the 100 year, 3 day storm. Vegetation within the flowway is to be maintained to limit friction or roughness. Specifically, trees are not to have limbs from ground level to six-feet above the ground, grass is to be kept cut to less than one-foot high and shrubs should be kept to a minimum or trimmed like trees. The elevations within the flowway section of the golf course are to be maintained pursuant to the South Florida Water Management District Permit. No changes to the design of the improvements within the flowway, including reshaping of any portion of the golf

course within the flowway, may be done without prior authorization from the South Florida Water Management District; and

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

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

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

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration.

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

7.3. Insurance.

(a) Required Coverages. After the termination of the Class "B" membership, the Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect as a Common Expense of the Association the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering the full replacement cost under current building codes and ordinances of all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that the Association has assumed responsibility for repair or replacement in the event of a casualty, regardless of ownership;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

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

In addition, the Association shall, if so specified in a Supplemental Declaration applicable to any Neighborhood, obtain and maintain property insurance on the insurable improvements within such Neighborhood. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Owner of each Unit insured.

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

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Lee County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-

Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefit of the Association and its Members;

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

(iv) contain an inflation guard endorsement;

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

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

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

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

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

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Neighborhood Representatives representing at least 75% of the total Class "A" votes in the Association, and the Class "B" member, if any, decide not to repair or reconstruct. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Neighborhood Representatives, levy Special Assessments to cover the shortfall.

7.4. Compliance and Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.5. Implied Rights; Board Authority.

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

7.6. Indemnification of Officers, Directors and Others.

The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding including settlement of any suit or proceeding, if approved by the then Board of Directors to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and Florida law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association except to the extent that such officers or directors may also be Members of the Association. The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

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

In addition to any other rights:

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

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

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

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

(D) the Association maintained and had in effect, at the time the act or omission of the director or officer occurred and at the time a claim was made, one or more

insurance policies which included coverage for general liability of the Association and individual liability of officers and directors for negligent acts or omissions in that capacity, both in the amount of at least \$1,000,000.00.

(ii) The payment for actual expenses incurred in the execution of his or her duties shall not affect the status of an officer or director as a volunteer.

7.7. Community Activities.

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

7.8. Powers of the Association Relating to Neighborhoods.

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

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

7.9. Provision of Services.

The Association shall be authorized but not obligated to enter into, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association and their guests, lessees, and invitees and to charge use and service fees for such services and facilities. By way of example, some services

and facilities which might be offered include landscape maintenance, pest control service, cable television and communication service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. The cost of such services and facilities may be included as a Common Expense if offered in bulk to all members or as a Neighborhood Assessment or Specific Assessment if offered to Neighborhoods or individuals, as appropriate.

7.10. Cooperation with Community Development Districts.

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

7.11. Relationships With Other Properties.

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

7.12. Relations with Other Entities.

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

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

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

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

Article VIII Association Finances

8.1. Budgeting and Allocating Common Expenses.

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

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

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

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

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

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

8.2. Budgeting and Allocating Neighborhood Expenses.

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

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

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

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

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

8.3. Budgeting for Reserves.

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

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Units within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, after the termination of the Class "B" membership any Special Assessment shall require the affirmative vote or written consent of Neighborhood Representatives (if a Common Expense) or Owners (if a Neighborhood Expense) representing more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments.

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

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

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

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior

written notice to the Owners of Units in, or the Neighborhood Representative representing, the Neighborhood and an opportunity for such Owners or Neighborhood Representative to be heard before levying any such assessment.

8.6. Authority to Assess Owners; Time of Payment.

The Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay Base Assessments, Special Assessments, and Neighborhood Assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later; except as provided in this Section 8.6. For purposes of this Section, a Builder that has purchased a parcel of property that contains several Units for development and resale shall be a "Parcel Builder," and a Builder that has purchased individual Units for development and resale shall be a "Unit Builder." So long as a Unit is held by a Parcel Builder for resale, the Parcel Builder shall pay 50% of the Base Assessment and Neighborhood Assessment levied on the Unit. A Unit Builder shall be obligated to pay the full amount of the Base Assessment and Neighborhood Assessment levied on all Units that such Unit Builder owns. If any dispute arises as to whether a particular Builder is a Parcel Builder or a Unit Builder the Declarant shall make a determination as to whether the Builder qualifies as a Parcel Builder or a Unit Builder. Such determination shall be made in the sole discretion of the Declarant and shall be final and binding on the Builder and the Association. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

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

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

8.7. Obligation for Assessments.

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

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

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

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment that may be relied upon by any Person other than the Owner of the Unit requesting such certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

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

Class "B" membership, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8. Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value and recorded prior to the date the Association perfects its lien. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under Florida law.

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

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.

8.9. Exempt Property.

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

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 7.2;
- (b) Any property dedicated to and accepted by any governmental authority or public utility (e.g., a Community Development District); and
- (c) Neighborhood Common Area.

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

8.10. Capitalization of Association.

Upon acquisition of record title to a Unit by the first Owner thereof other than a Builder or Declarant and upon each subsequent transfer or conveyance of any type whatsoever, a contribution shall be made by or on behalf of the purchaser to the reserves of the Association in an amount established by resolution of the Board of Directors. This amount shall be in addition to, not in lieu of, the annual Base Assessment and shall not be considered an advance payment of such assessment. This amount shall be paid to the Association by separate check upon the closing or other settlement of the transfer or conveyance of the Unit. Any unpaid capitalization assessment shall constitute a lien in favor of the Association against the Unit as provided in this Article.

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

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

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

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

8.11. Transfer Fees.

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

(b) Fee Limit. The Board shall have the sole discretion to determine the amount and method of determining any such transfer fee, which may, but is not required to, be determined