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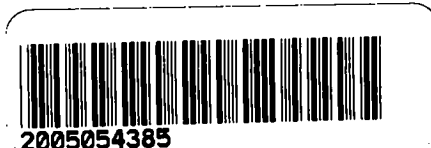
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**DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR SAN PALERMO AT SARASOTA**

✓ Divosta Bldg Corp  
4500 PBA Blvd - Ste 400  
Palm Beach Gardens, FL 33418

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR SAN PALERMO AT SARASOTA**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_ by DIVOSTA HOMES, L.P., a Delaware limited partnership, its successors and assigns ("Declarant"), and is joined in by SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit ("Association").

WHEREAS, Declarant is the owner in fee simple of the real property more particularly described on Exhibit "A" attached hereto and made a part hereof ("Property");

WHEREAS, Declarant desires to develop a planned community to be known as "San Palermo" (as hereinafter defined);

WHEREAS, in order to develop and maintain San Palermo as a planned residential community and to preserve the values and amenities of such community, it is necessary to declare, commit and subject the Property (as hereinafter defined) and the improvements now or hereafter constructed thereon to certain land use covenants, restrictions, reservations, regulations, burdens, liens, and easements; and to delegate and assign to the Association certain powers and duties of ownership, administration, operation, maintenance and enforcement; and

WHEREAS, the Association is joining in this Declaration in order to acknowledge its obligations hereunder.

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns.

**ARTICLE I  
DEFINITIONS**

The terms used in this Declaration shall be defined as set forth herein unless expressly provided otherwise.

Section 1. "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration of Covenants, Conditions, and Restrictions for San Palermo" and each of which shall be properly adopted pursuant to the terms of the San Palermo Documents (as defined herein) and recorded in the Public Records of the County (as defined herein); provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration (as defined herein), as

recorded in the Public Records of the County.

Section 2. "AREAS OF COMMON RESPONSIBILITY" shall mean and refer to those areas, if any, which by contract or agreement with any other Person is or hereafter becomes the responsibility, in whole or in part, of the Association. In addition, any public rights-of-way abutting the Property may (at the election of the Board of Directors) be deemed to be part of the Area(s) of Common Responsibility.

Section 3. "ARTICLES" shall mean the Articles of Incorporation of the Association which have been filed in the Office of the Secretary of State of the State of Florida, a true copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 4. "ASSESSMENT" shall mean assessments for which all Owners are obligated to the Association and includes "Individual Home Assessments" and "Special Assessments" (as such terms are defined in Article VII hereof) and any and all other assessments which are levied by the Association in accordance with the San Palermo Documents.

Section 5. "ASSOCIATION" shall mean and refer to SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC., a not-for-profit Florida corporation, its successors and assigns, existing pursuant to the Articles of Incorporation, filed in the Office of the Secretary of State of the State of Florida on November 29, 2004 as amended by any amendments thereto, and which Association is responsible for the maintenance, preservation and architectural control of San Palermo as provided in this Declaration. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.

Section 6. "ASSOCIATION PROPERTY" shall mean such portions of the Property which are not included in any Lot and which are or shall be owned and maintained by the Association, as set forth in this Declaration, for the common use and enjoyment of the Owners within San Palermo. The term "Association Property" shall also include any personal property acquired by the Association and any easements granted to the Association.

Section 7. "BOARD" shall mean the governing body of the Association.

Section 8. "BYLAWS" shall mean the Bylaws of the Association, which have been or will be adopted by the Board, a copy of which is attached hereto as Exhibit "C" and incorporated herein by this reference, as such Bylaws may be amended from time to time.

Section 9. "COUNTY" shall mean Sarasota County, Florida.

Section 10. "DECLARANT" shall mean and refer to DIVOSTA HOMES, L.P., a Delaware limited partnership, and any successor or assign thereof to which DiVosta Homes, L.P. specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default

or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home, be deemed a successor or assign of Declarant under the San Palermo Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 11. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or amendments thereto, which may be recorded amongst the Public Records.

Section 12. "DIRECTOR" shall mean a member of the Board.

Section 13. "DRAINAGE SYSTEM" shall mean all structures required to collect and convey rainfall runoff from San Palermo. The Drainage System is located upon and adjacent to the Property and designed to serve the Property, as defined and described in Article II, Section 9 hereof, as well as certain other property, all as described in the Drainage Easement(s). The Drainage System is a private drainage system.

Section 14. "DRAINAGE EASEMENT(S)" shall mean and refer to those certain drainage easements set forth in that Declaration of Easements, recorded in Official Records Instrument #2000143508, 26 Pages, all of the Public Records of Sarasota County, Florida, as amended, copies of which are attached hereto and made a part hereof as Exhibit "D" (collectively "Drainage Easement(s)").

Section 15. "HOME" shall mean a residential dwelling unit constructed or to be constructed within San Palermo, which is designed and intended for use and occupancy as a single-family residence. The term Home shall include the Lot as provided in Article I, Section 22.

Section 16. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within San Palermo.

Section 17. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within San Palermo.

Section 18. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home and/or Lot within San Palermo, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any holder of a first mortgage granted by Declarant. Declarant shall also be deemed to be an Institutional Mortgagee should Declarant be the holder of any first mortgage encumbering any Home and/or Lot.



Section 19. "INTEREST" shall mean the maximum nonusurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Section 20. "LEGAL FEES" shall mean reasonable fees for attorney and paralegal services incurred in connection with: (i) negotiation and preparation for litigation, whether or not an action is actually begun, through and including all trial and appellate levels and postjudgment proceedings, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens; and shall also include court costs through and including all trial and appellate levels and postjudgment proceedings.

Section 21. "LOT" shall mean and refer to any parcel of land within San Palermo upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within San Palermo that is declared to be a Lot by a Supplemental Declaration. Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of this Declaration and the San Palermo Documents.

Section 22. "MEMBERS" shall mean and refer to all of the Owners who are also members of the Association, as provided herein.

Section 23 "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in Article IX herein.

Section 24. "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other San Palermo Documents and include, but are not limited to, the costs of maintaining the Common Structural Elements as defined in Article II, Section 5 and the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing the Common Structural Elements, the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing, but not reconstructing, replacing or improving, the Association Property or any portion thereof and Improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other San Palermo Documents. Operating Expenses shall also include, without limitation, any costs and expenses incurred by the Association pursuant to the Drainage Easement(s).

Section 25. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Home and/or Lot within San Palermo, and includes Declarant for as long as Declarant owns fee simple title to a Home and/or Lot, but excluding therefrom those having such interest as security for the performance of an obligation.

Section 26. "PERSON" means a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 27. "PLAT" shall mean and refer to the San Palermo Plat.

Section 28. "PROPERTY" shall mean and refer to that certain real property heretofore described in Exhibit "A" submitted to this Declaration; provided, however, Declarant reserves the right to add to or withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 29. "SAN PALERMO" shall mean that planned residential development located in Sarasota County, Florida, which encompasses the Property together with the Association Property, but is subject to change in accordance with this Declaration.

Section 30. "SAN PALERMO DOCUMENTS" shall mean in the aggregate this Declaration, the Articles and the Bylaws and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s).

Section 31. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant with respect to Declarant's reserved right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects (provided Declarant is the owner thereof), which, when recorded in the Public Records of the County, shall withdraw such property from the provisions of this Declaration, and shall be the only method of withdrawing such property from the provisions of this Declaration. A Supplemental Declaration may also add additional restrictions or declare certain properties to be or not to be Association Property. The Association shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

Section 32. "TURNOVER DATE" shall mean the date upon which "Class A Members" (as defined in Article V.D.1 of the Articles), including Declarant, shall assume control of the Association and elect the Board, as more particularly described in Article V.D.2 of the Articles.

## ARTICLE II DESCRIPTION OF SAN PALERMO

Section 1. GENERAL PLAN OF DEVELOPMENT San Palermo comprises the Property encompassing, or which will encompass, Homes and Association Property, as more particularly defined by this Declaration. The property declared hereunder is described in Exhibit "A" attached hereto. Declarant has reserved the right to modify its plan of development of San Palermo and to add to or withdraw land from San Palermo, and, therefore, the number of Homes within San Palermo may change. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of San Palermo may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to San Palermo.

Declarant expressly reserves the right as to the Property to (i) commence

construction and development of the Property if and when Declarant desires; (ii) develop the Property upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property in such manner as it, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct San Palermo according to the present plan of development.

Section 2. ASSOCIATION PROPERTY. The Association Property shall be used for open space, recreation, parking and ingress and egress purposes as well as other proper purposes, by the Association and the Owners and their family members, guests, invitees and lessees in accordance with the San Palermo Documents. Association Property may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or lessees.

The Association Property shall be used solely in accordance with the covenants impressed upon the Association Property as follows:

(1) Recreation Area. The Recreation Area shall be part of the Association Property and shall be used for recreational purposes by the Association, and the Owners and their family members, guests, invitees and lessees. Such portion, if any, of the Recreation Area upon which Declarant hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Recreation Area shall always be kept and maintained by the Association for recreational uses or beautification and attendant uses and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Recreation Area shall be maintained, administered and ultimately owned by the Association.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Recreation Area and to change the facilities planned for the Recreation Area. Declarant, at its sole discretion, reserves the right to reduce the planned facilities. The decision as to whether to construct additional recreational facilities, to change the planned facilities, or to reduce the planned facilities and the construction thereof shall be in the sole discretion of Declarant.

Notwithstanding anything contained herein, neither Declarant nor the Association makes any representations whatsoever to commence, complete or construct any recreational facilities within any specific time period.

DECLARANT AND THE ASSOCIATION SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE RECREATION AREA. ANY INDIVIDUAL USING THE RECREATION AREA SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

(2) Surface Water and Storm Water Management System and Conservation Easements. Declarant has caused or will cause to be constructed within the geographic area shown on the Plat, drainage canals, lakes and drainage retention/detention ponds. These drainage structures are part of the overall drainage plan for San Palermo. Declarant may create

conservation easements encumbering all or part of the Association Property, and/or portions of the Lots conveyed to Owners to preserve the natural condition of wetlands, uplands or buffer areas. The Association shall have unobstructed ingress to and egress from all retention/detention ponds and lakes as well as all conservation easements at all reasonable times to maintain said ponds, lakes and conservation easements in a manner consistent with its responsibilities. No Owner shall cause or permit any interference with such access and maintenance. No Owner shall utilize, in any way, any of the San Palermo drainage facilities or incorporate such facilities in the Owner's development plans, without the express prior written consent of Declarant and the Association. Further, where an Owner's Lot is contiguous to any of the drainage facilities of San Palermo, such Owner shall prepare his or her site plan so that the utilization of such Owner's Lot will not adversely affect the drainage facilities and structures and so as to be aesthetically compatible with such drainage facilities and structures.

The Association shall maintain, as part of the Association Property, drainage structures for the Property, and comply with conditions of the permits from the Southwest Florida Water Management District ("SWFWMD") for the drainage system, including, without limitation, perpetual maintenance of all signage required by the permit. The Association shall, when requested by Declarant, accept transfer of SWFWMD permits applicable to the Property. The conditions of SWFWMD permits include monitoring and record keeping schedules and maintenance.

Water quality data for the water discharged from the Property or into the surface waters of the state shall be submitted to SWFWMD as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association of Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the Association shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

The Association agrees to operate and maintain the system and has sufficient ownership so that it has control over all water management facilities authorized.

The Association shall hold and save SWFWMD harmless from any and all damages, claims, or liabilities which may arise by reason of the operation, maintenance or use of any facility authorized by the permit.

The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by SWFWMD. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by SWFWMD rules.

The Association specifically agrees to allow authorized SWFWMD personnel, upon presentation of credentials or other documents as may be required by law, access to the Property, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with the permit and SWFWMD regulations, such as:

- a. Having access to and copying any records that must be kept under the conditions of the permit; and
- b. Inspecting the facility, equipment, practices, or operations regulated or required under the permit; and
- c. Sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permit or SWFWMD rules; and
- d. Gathering of data and information.

Reasonable time may depend on the nature of the concern being investigated.

Establishment and survival of littoral areas provided for storm water quality treatment in wet detention systems shall be assured by proper and continuing maintenance procedures designed to promote viable wetlands plant growth of natural diversity and character. Following as-built approval, perpetual maintenance shall be provided for the permitted system.

a. The Association shall submit inspection reports, if required by the SWFWMD, in the form required by SWFWMD, as specified in the permit application.

In the event of a casualty, it shall be the responsibility of each Owner within the Property at the time of construction of a building, residence, or structure, to comply with the construction plans for the Surface Water Management System pursuant to Chapter 40D-4, F.A.C., approved and on file with SWFWMD.

Owners are hereby notified that certain Lots may include, or be adjacent to wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements. It is the Owner's responsibility not to remove native vegetation that becomes established within the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements abutting the Owner's Lot. Removal includes dredging, the application of herbicide and cutting. Owners should address any question regarding authorized activities within detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements to SWFWMD, Surface Water Permitting Department and Sarasota County's Resource Protection office. SWFWMD and Sarasota County Resource Protection may authorize removal of certain exotic or nuisance vegetation upon application by Owners or the Association.

No Owner of a Lot within the Property may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wet detention ponds, jurisdictional wetlands, designated mitigation areas or designated conservation easements described in the approved permit and recorded Plats of the Property, unless prior approval is received from SWFWMD pursuant to Chapter 40D-4, Florida Administrative Code and Sarasota County's Resource Protection office.

In the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water and Storm Water Management System must be transferred to and accepted by an entity which would comply with Section 40C-42.027, Florida Administrative Code, and be approved by SWFWMD prior to such termination, dissolution or liquidation.

It is expected that certain portions of the Surface Water and Storm Water Management System will serve the drainage needs of adjacent lands not owned by Declarant and not within the Property subject to this Declaration. Declarant reserves the right to grant such drainage and/or use easements and rights as Declarant may deem necessary or appropriate for accomplishing the drainage needs of the Property and/or lands owned by others provided that such agreements shall not unreasonably interfere with the use of the system by the Owners or unreasonably increase the cost of maintenance of the system by the Association.

The Surface Water and Storm Water Management System is designed to provide drainage for the Property. Neither the Association nor Declarant shall have any liability whatsoever to any Owner for claims or damages alleged by an Owner due to water levels in the Lakes being below or above normal or otherwise unacceptable to the Owner. Recreational use and aesthetic appearance of the Lakes is secondary to their intended drainage function, and during periods of prolonged drought or other unusual weather events water levels in the Lakes may fluctuate, and neither the Association nor Declarant shall have any liability for such conditions.

Any amendments to the Declaration must have the prior written approval of the County Engineer or his designee. Any revisions of the Storm Water Management System must have the prior written approval of the County Engineer or his designee.

(3) Roads. The "Roads" are those portions of the Association Property which are constructed by Declarant as such. The Roads shall be used as private drives by Declarant, the Association and the Owners, their family members, guests, lessees and invitees in accordance with the provisions of this Declaration. The Roads shall be maintained, administered and ultimately owned by the Association.

(4) Parking Areas. The "Parking Areas" are those portions of the Association Property which are constructed by Declarant as such. The Parking Areas shall be used as guest parking areas by Declarant, the Association and the Owners, their family members, guests, lessees and invitees in accordance with the provisions of this Declaration. The Parking Areas shall be maintained, administered and ultimately owned by the Association.

(5) Landscaped Areas or Grassed Areas. The landscaped areas and grassed areas are those portions of the Association Property upon which Declarant has placed landscaping, including grass, shrubs and trees and are to be used, kept and maintained as such by the Association, and the Owners within San Palermo, their family members, guests, lessees and invitees, in accordance with the provisions of this Declaration. The Landscaped Areas and Grassed Areas shall be ultimately owned by the Association and shall be administered and maintained by the Association in accordance with the requirements of the appropriate governmental agencies.

(6) Street Lights. Any "Street Lights" and any associated facilities placed within the Association Property, shall be repaired, replaced, relocated, maintained and owned by the Association which is also responsible to pay all fees associated with such repair, replacement and maintenance, and for the furnishing of electricity thereto. Notwithstanding the foregoing, the repair, replacement, maintenance and furnishing of electricity of any street light and any associated facilities within the Association Property owned by the electric service provider shall not be the responsibility of the Association to maintain.

(7) Decorative Street Lights. Declarant reserves the right, but shall not be obligated, to install, "Decorative Street Lights" in or near the entranceways and gatehouses to San Palermo. The Decorative Street Lights shall be installed by Declarant, and repaired, replaced, relocated, maintained and owned by the Association. Nothing in this Declaration shall be construed to require Declarant to install Decorative Street Lights within San Palermo.

(8) Entranceways. San Palermo may include one or more entranceways installed by Declarant or the Association. All such entranceway(s) shall be deemed Association Property and shall be maintained, repaired or replaced by the Association and the expense thereof shall be included as an Operating Expense. All other portions of the entranceway(s) shall also be owned and maintained by the Association. All Owners agree to hold Declarant and the Association harmless from any loss or claim arising within the Property from the occurrence of a crime or other act.

(9) Perimeter Walls. The "Perimeter Walls" are those portions of the Property which run along: (a) the outer perimeter of the Property adjacent to Cattlemen Road, and/or any other public or private right-of-way. The Association shall be responsible for all costs associated with all maintenance, repair and replacement of any portion of the Perimeter Walls necessary to maintain the Perimeter Walls in their original condition and use.

(10) Drainage System. The Drainage System within San Palermo is a private drainage system. The Association shall be responsible for all costs associated with all cleaning, maintenance, repair and replacement of any portion of the Drainage System necessary to maintain the system in its original condition, ordinary wear and tear excepted, as well as all costs attributable to the Property pursuant to the Drainage Easement(s).

(11) Right to Add Additional Improvements. Such portions of the Association Property upon which Declarant has constructed, or hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements

located, or to be located, thereon. Declarant reserves the right, but shall not be obligated, to construct additional facilities upon the Association Property. The decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant.

(12) Monument Signs. Declarant shall have the right, but not the obligation, to install street identification and street directional monument signs (individually, a "Monument Sign," and collectively, "Monument Signs") within the Association Property. Any Monument Signs placed within the Association Property shall be in and of such material, color, height, dimension, configuration, content, and location as Declarant shall determine in its sole and absolute discretion and shall be repaired, replaced, relocated, maintained and owned by the Association which is also responsible to pay all fees associated with such repair, replacement and maintenance, and for the furnishing of electricity thereto. Nothing in this Declaration shall be construed to require Declarant to install any Monument Signs within San Palermo.

(13) Recycling Programs. The Board may establish a recycling program and recycling center within San Palermo and in such event, all occupants of Homes shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

Section 3. COSTS. All costs associated with operating, maintaining, repairing and replacing the Association Property shall be the obligation of the Association. The Association Property shall be conveyed to the Association in accordance with the provisions of Article III, Section 2 hereof.

Section 4. PRIVATE USE. For the term of this Declaration, the Association Property is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Association, and the Owners, and their family members, guests, invitees and lessees, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves the right to use the Association Property for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant of Homes in San Palermo and in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings and engaging in sales promotions and related sales and marketing activities.

B. Except to the extent herein provided, the Association Property shall be for the sole and exclusive use of the Owners and residents of San Palermo and their family members, guests, invitees and lessees.

C. The administration, management, operation and maintenance of the Association Property shall be the responsibility of the Association, as provided herein and in the San Palermo Documents.



D. The right to use the Association Property shall be subject to the rules and regulations established by the Association.

Section 5. COMMON STRUCTURAL ELEMENTS.

1. Each building ("Building(s)") containing Homes shall contain Common Structural Elements which include, but are not limited to, the following:

(a) Utility Lines. All utility lines, ducts, conduits, pipes, fire sprinklers, wires and other utility fixtures and appurtenances which are located on or within each Building and which directly or indirectly in any way service more than one (1) Home in such Building.

(b) Party Walls. All division walls ("Party Walls") between two (2) Homes located upon a Lot line between two (2) Homes, provided that the mere fact that such a division wall between two (2) Homes is found to be not on a Lot line shall not preclude that division wall from being a Party Wall. The Owners of the Homes adjacent to a Party Wall shall own such Party Wall as tenants in common.

(c) Bearing Walls. Any and all walls or columns necessary to support the roof structure.

(d) Exterior Finish. Any and all siding, finish, trim, exterior sheathings and other exterior materials and appurtenances on the exterior of each Building.

(e) Flooring. The entire concrete floor slab and all foundational and support structures and appurtenances thereto.

(f) Roofs. The entire roof of a Building.

2. Should the Common Structural Elements or a part thereof extend beyond the Lot, same shall not be deemed to violate the provisions of this Declaration and such easements as may be necessary to accommodate and permit the Common Structural Elements as same shall be constructed are hereby imposed.

Section 6. RULES AND REGULATIONS. The Association shall, from time to time, impose rules and regulations regulating the use and enjoyment of the Association Property, the Homes and Improvements and other portions of the Property. The rules and regulations so promulgated shall, in all respects, be consistent with the provisions of the San Palermo Documents. The rules and regulations shall not apply to Declarant as an Owner unless Declarant consents thereto.

ARTICLE III  
ADDITIONS AND WITHDRAWALS FROM THE PROPERTY  
CONVEYANCE OF ASSOCIATION PROPERTY

Section 1. ADDITION AND WITHDRAWAL. Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to add to or withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder or consent by Owners of Lots upon the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees, or the Association.

Section 2. TITLE TO THE ASSOCIATION PROPERTY. To the extent herein provided, the Association Property is hereby dedicated to the joint and several use in common of the Owners of all Homes that may, from time to time, constitute part of the Property. Upon the Turnover Date, or earlier at Declarant's option exercisable from time to time, as to any portions of the Association Property, Declarant or its successors and assigns shall convey and transfer to the Association, by quit claim deed, the fee simple title to the Association Property free and clear of any liens and the Association shall accept such conveyance, holding title for the Owners as aforesated. Such conveyance shall be subject to any real estate taxes and assessments due with respect to such Association Property from and after the date of recording this Declaration; any covenants, conditions, restrictions, reservations and limitations then of record; the easements herein set out; any zoning ordinances then applicable; and this Declaration, as amended from time to time.

At the time of conveyance of the Association Property or any portion thereof, the Association shall be required to accept such property and the personal property, if any, and Improvements appurtenant thereto. The Association hereby agrees to accept the Association Property and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Association Property or any portion thereof, and the personal property and Improvements appurtenant thereto.

The Association shall accept this conveyance of the Association Property and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way Declarant's rights and easements as set forth in this Declaration.

Commencing upon the date this Declaration is recorded, and notwithstanding that title thereto has not yet been conveyed to the Association, the Association shall be responsible for the maintenance of the Association Property in a continuous and satisfactory manner without cost to the general taxpayers of the County. The Association shall be responsible for the payment of real estate taxes, if any, against the Association Property including taxes on any Improvements and any personal property thereon accruing from and after the date this

Declaration is recorded.

The Owners (including Declarant as to Homes owned by it) shall have no personal liability for any damages for which the Association is legally liable or arising out of or connected with the existence or use of any Association Property or any other property required to be maintained by the Association.

ARTICLE IV  
OWNERS' PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner and family member, guest, lessee, agent or invitee of an Owner shall have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Association Property within the Property, in common with all other Owners, their family members, guests, lessees, agents and invitees, which easement shall be appurtenant to, and shall pass with title to each Owner's Home. This right shall be subject to the following conditions and limitations:

A. The right and duty of the Association to reasonably limit the number of guests, invitees or lessees of an Owner using the Association Property.

B. The right and duty of the Association to levy Assessments against each Home for the purpose of maintaining, repairing and replacing the Association Property and facilities thereon in compliance with the provisions of this Declaration and the restrictions on the Property from time to time recorded by Declarant.

C. The right of the Association to establish uniform rules and regulations pertaining to the use of the Association Property.

D. The right of the Association to establish uniform rules and regulations pertaining to the Homes for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Association in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, to borrow money for the purpose of improving the Association Property and facilities thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners.

F. The right of the Association to dedicate, release, alienate, or transfer all or any part of the Association Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication, release, alienation, or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Association to grant easements, rights-of-way or strips of land, where necessary, for utilities, sewer facilities, cable television, and other services over the

Association Property to serve the Association Property and other portions of the Property without vote of the Owners.

H. The right of Declarant and Declarant's officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Association Property and the facilities thereon, without charge, for sales, display, access, ingress, egress, construction, and exhibit purposes.

I. The right of the Association, by action of the Board, to reconstruct, replace, or refinish any Improvement or portion thereof upon the Association Property, in accordance with the original design, finish, or standard of construction of such Improvement.

J. The right of the Association to replace destroyed trees or other vegetation and plant trees, shrubs, and ground cover upon any portion of the Association Property.

K. The easements provided elsewhere in this Declaration which are the perpetual maintenance obligation of the Association and those set forth in this Article IV.

L. The right of the Association to provide for the maintenance, preservation and architectural control of Homes and other properties as set forth in this Declaration.

M. The right of the Association to take such steps as are reasonably necessary to protect the Association Property against foreclosure.

N. The right of the Association to suspend:

(i) the right of an Owner to use the Recreation Area within the Association Property for any period during which an Assessment or any other charge against such Owner's Home and Lot remains delinquent; and

(ii) the enjoyment rights of any Owner to use the Recreation Area within the Association Property for a period not to exceed thirty (30) days for a single violation, or for a longer period in the case of any continuing violation (other than a delinquent Assessment), of this Declaration, any applicable Supplemental Declaration or Amendment, the Articles, the Bylaws, or the Rules and Regulations of the Association after Notice and Hearing.

O. The right of the Board to post motor vehicle speed limits throughout the Association Property, to enter into agreements with local government traffic enforcement agencies or jurisdictions to enforce traffic laws and to promulgate traffic regulations for the Roads. The Board may also promulgate procedures for the enforcement of the traffic regulations, including, without limitation, the assessment of fines, against Owners who violate the traffic regulations and against Owners whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. The fines will be levied as a special charge upon the Owner who violates the traffic regulation or upon the Owners whose family members, guests, invitees, licensees, employees, or agents violate the traffic regulations. Before any fine shall be effective, the Owner shall be entitled to Notice and Hearing as defined hereinbelow.

P. The easements, dedications and restrictions contained on any plat, or filed separately, with respect to all or any portion of the Property.

Q. All of the provisions of this Declaration, the Articles, and By-Laws of the Association and all exhibits thereto, and all Rules and Regulations adopted by the Association as same may be amended from time to time.

R. In the case of any emergency originating in, or threatening the Property or any Lot, regardless of whether the Owner is present at the time of such emergency, the Board, or any other person authorized by the Board, shall have the right to enter the Property or such Lot for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

S. The right of the Association, acting on behalf of the Owners, to bid on a Home and/or Lot at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

Section 2. DELEGATION OF USE. Any Owner may delegate, in accordance with the Bylaws, such Owner's right of enjoyment to the Association Property to the members of such Owner's family, or to the lessees who reside in such Owner's Home, subject to all of the Rules and Regulations of the Association presently in effect and any which may become effective in the future, and further subject to reasonable regulation by the Board.

Section 3. RECOGNITION OF EXISTING EASEMENTS. Each Owner, by acceptance of a deed or other instrument of conveyance, recognizes and consents to the easements reserved and/or granted with respect to the Property under this Declaration.

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Association Property reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests; invitees and lessees, Institutional Mortgagees of the Property (or portions thereof), and to the Association, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over any private Roads within or upon the Property.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across any private Roads and driveways within or upon the Property and all other portions of the Property which are necessary or convenient for enabling Declarant to carry on the work referred to in this Declaration, which easements shall be for the use of Declarant, Declarant's employees, contractors and agents, Declarant's successors and assigns, Owners, and the respective lessees, employees, agents, invitees, and licensees of Declarant and Owners.

Section 6. GRANT AND RESERVATION OF EASEMENTS. Declarant hereby reserves and grants the following perpetual, nonexclusive easements over and across the Property as covenants running with the Property for the benefit of the Owners, the Association, and Declarant as hereinafter specified for the following purposes:

A. Utility and Services Easements. All of the Property shall be subject to an

easement or easements to provide for: (a) installation, service, repair and maintenance of the equipment required to provide utility services to the Association Property and the Homes, including, but not limited to, power, lights, telephone, cable television, gas, water, sewer and drainage, and (b) governmental services, including, but not limited to, police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies. The easement described in this Section is intended to provide the right for such utility lines to exist within the Homes.

B. Easement for Encroachment. All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's Home or appurtenant Improvements installed by Declarant such as a fence, stucco, a hedge or underground footer now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner's designees; provided, however, that at no time shall there be any encroachment onto the surface water management system, without the consent of the Southwest Florida Water Management District. In no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, an Owner, occupant, or the Association.

C. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Association, including the Board or the designees of the Board, to enter upon the Lots for the purposes of fulfilling its/their duties and responsibilities of ownership, maintenance and/or repair in accordance with the San Palermo Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Association Property and to maintain any Home in the event the Owner thereof fails to do so.

D. Easement Over Association Property. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and lessees in and to the Association Property which shall be appurtenant to and shall pass with title to every Home, subject to the right of the Association to grant permits, licenses and easements over the Association Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property and all provisions set forth in the San Palermo Documents.

E. Structural Cross Easements. Cross easements of support and use over, upon, across, under, through and into the Common Structural Elements are hereby granted in favor of the Owners or their designees for the continued use, benefit and enjoyment and continued support, service, maintenance, repair and design of all Homes and Common Structural Elements within any portion of the Property.

F. Drainage and Irrigation Easement. An easement for drainage, flowage and irrigation over, under and upon the Property, including each of the Lots, in favor of the Association and each of the Owners, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair

the water drainage system, flowage pipes and irrigation pipes.

G. Drainage System Encroachment Easement. An easement for encroachment over, under and upon the drainage easements located within the Lots, in favor of (i) the Owner of the Lot upon which the drainage easement is located for the existence of any driveway and/or sidewalk or irrigation system or part thereof, and (ii) the Association for reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair any driveway and/or sidewalk, or irrigation system or part thereof installed or located thereon. In the event the Association requires access to any Drainage System improvements within a drainage easement located within a Lot upon which any such driveway and/or sidewalk or irrigation system encroaches, the Association has the obligation, at its own cost and expense, to remove and replace any such encroachment, and to return it to its condition immediately preceding such removal and replacement once access to the drainage easement is no longer required. The flowage easements providing for drainage run between each of the Lots parallel to and over the side lot line thereof, draining from the rear to the front of the Lots.

Section 7. ASSIGNMENTS . The easements reserved hereunder may be assigned by Declarant or the Association in whole or in part to any city, county or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. The Owners hereby authorize Declarant and/or the Association to execute, on their behalf and without further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, all easement rights reserved or granted to Declarant shall terminate upon Declarant no longer holding title to any Home on the Property or holding a leasehold interest in any Home or holding a mortgage on a Home on the Property. In addition, the easement rights granted or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

ARTICLE V  
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;  
BOARD; DURATION OF THE ASSOCIATION

Section 1. MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Member shall be entitled to the benefit of, and be subject to, the provisions of the San Palermo Documents. The voting rights of the Members shall be as set forth in the Articles.

Section 2. BOARD. The Association shall be governed by the Board which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

Section 3. DURATION OF ASSOCIATION . The duration of the Association shall be perpetual, as set forth in the Articles.

ARTICLE VI  
COVENANT TO PAY ASSESSMENTS; ESTABLISHMENT OF LIENS;  
COLLECTION OF ASSESSMENTS; COLLECTION BY DECLARANT;  
CERTAIN RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES

Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS. In order to: (i) fulfill the terms, provisions, covenants and conditions contained in the San Palermo Documents; and (ii) maintain, operate and preserve the Association Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and lessees, there is hereby imposed upon each Completed Home (as herein defined) and Lot and each Owner thereof, the affirmative covenant and obligation to pay to the Association commencing from and after the first conveyance of a Home and Lot from Declarant as evidenced by the recording of a Deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Home Assessments and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Completed Home and Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Association all Assessments in accordance with the provisions of the San Palermo Documents.

The following expenses of the Association are hereby declared to be Operating Expenses which the Association is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the San Palermo Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Association Property or against any and all personal property or Improvements thereon; (2) all charges levied for utilities providing services for the Association Property, such as water, gas, electricity, telephone, cable television, whether bulk rate or otherwise, monitored alarm service, whether bulk rate or otherwise, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed or charged to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability, casualty and directors and officers liability insurance for the Association Property in the event the Association obtains such insurance pursuant to this Declaration, and the fees associated with an Insurance Trustee, if any; (4) any sums necessary for the maintenance and repair of the Association Property and all Improvements located thereon; (5) all costs and expenses in connection with the Drainage Easement(s); (6) administrative and operational expenses; (7) the costs to indemnify Declarant and officers and members of the Board; and (8) any and all expenses deemed to be Operating Expenses by the Association. The Board may, if it so determines, include reserves in the Association's annual budget. In addition, any expense which is required by this Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Association Property or any portion thereof or Improvements thereon; any casualty loss affecting the Association or the Association Property to the extent such loss exceeds the insurance proceeds, if any, receivable by the Association as a result of such loss; any judgment against the Association (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Association therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Association as a result of such judgment, or an agreement by the Association (or such Director or Directors to



whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Association as a result of such settlement agreement; and legal fees and costs (including, without limitation, attorneys and paralegal fees and court costs) incurred by the Association in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Association in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the San Palermo Documents or the enforcement of the use and occupancy restrictions contained in the San Palermo Documents.

The Operating Expenses with respect to the Association Property are payable by each Owner to the Association notwithstanding the fact that Declarant may not have as yet conveyed title to the Association Property to the Association.

Operating Expenses shall include Operating Expenses with respect to the Association Property and the costs of maintaining the Common Structural Elements and the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing the Common Structural Elements in the event the Association performs any such maintenance or repair pursuant to this Declaration.

Section 2. ESTABLISHMENT OF LIENS. Each Assessment against a Home and Lot which has been conveyed by Declarant, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Completed Home and Lot. Any and all Assessments made by the Association in accordance with the provisions of the San Palermo Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Home and Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains title to a Home and Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of title, its successors or assigns, shall not be liable for the share of Assessments pertaining to such Home and Lot or chargeable to the former Owner thereof which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu thereof, unless the Assessment against the Home and Lot in question is secured by a claim of lien for Assessments that is recorded prior to the recordation of the mortgage which was foreclosed or with respect to which a deed in lieu of foreclosure was given.

Section 3. COLLECTION OF ASSESSMENTS. In the event any Owner shall fail to pay any Assessment, or installment thereof, charged to such Owner within fifteen (15) days after the same becomes due, then the Association, through its Board, shall have any and all of the following remedies to the extent permitted by law, which remedies are cumulative and which remedies are not in lieu of, but are in addition to, all other remedies available to the Association:

1. To accelerate the entire amount of any Assessment for the remainder of

the calendar year notwithstanding any provisions for the payment thereof in installments.

2. To advance on behalf of the Owner(s) in default funds to accomplish the needs of the Association up to and including the full amount for which such Owner(s) is liable to the Association and the amount or amounts of monies so advanced, together with Interest and all costs of collection thereof, including, but not limited to, Legal Fees, may thereupon be collected by the Association from the Owner(s) and such advance by the Association shall not waive the default.

3. To file an action in equity to foreclose its lien at any time after the effective date thereof as provided in Section 2 hereinabove. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.

4. To file an action at law to collect said Assessment plus Interest and all costs of collection thereof, including, but not limited to, Legal Fees, without waiving any lien rights or rights of foreclosure in the Association.

5. To charge Interest on such Assessment from the date it becomes due, as well as any late charge as provided herein by the Association to defray additional collection costs.

Section 4. COLLECTION BY DECLARANT. In the event for any reason the Association shall fail to collect the Assessments, Declarant shall at all times have the right (but not the obligation): (i) to advance such sums as the Association could have advanced as set forth above; and (ii) to collect such Assessments and, if applicable, any such sums advanced by Declarant, together with Interest and costs of collection, including, but not limited to, Legal Fees.

Section 5. RIGHTS OF DECLARANT AND INSTITUTIONAL MORTGAGEES TO PAY ASSESSMENTS AND RECEIVE REIMBURSEMENT. Declarant and any Institutional Mortgagee(s) shall have the right, but not the obligation, jointly or individually, and at their sole option, to pay any of the Assessments which are in default and which may or have become a charge against any Completed Home(s). Further, Declarant and any Institutional Mortgagee shall have the right, but not the obligation, jointly or individually, and, at their sole option, to pay insurance premiums or fidelity bond premiums or other required items of Operating Expenses on behalf of the Association in the event the same are overdue and when lapses in policies or services may occur. Declarant and any Institutional Mortgagee paying overdue Operating Expenses on behalf of the Association will be entitled to immediate reimbursement from the Association plus Interest and any costs of collection including, but not limited to, Legal Fees, and the Association shall execute an instrument in recordable form to this effect and deliver the original of such instrument to each Institutional Mortgagee who is so entitled to reimbursement and to Declarant if Declarant is entitled to reimbursement.

Section 6. MONITORED ALARM SYSTEM. The Association shall have the right to enter into an agreement ("Monitored Alarm Agreement") for monitored alarm service ("Monitored Alarm Service") for Homes in San Palermo. Any and all costs and expenses incurred by the Association under or pursuant to any Monitored Alarm Agreement(s) entered into by the

Association for Monitored Alarm Service will be assessed against all Owners. It is contemplated that the Monitored Alarm Service may include features in addition to perimeter monitored alarm services such as, but not limited to, a smoke/heat detection system, push button panels for emergency calls or other features. Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Monitored Alarm Agreement shall be apportioned equally but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Monitored Alarm Agreement except to the extent, if any, that any Owner elects to receive an "Optional Alarm Service" (being a service not automatically received by all Owners entitled to receive Monitored Alarm Service pursuant to the Monitored Alarm Agreement). Each Owner who receives an Optional Alarm Service, if any, shall be responsible for paying for the costs thereof. In addition, each Owner shall be responsible for paying any charges or other costs to register the alarm in such Owner's Home as may be required by any governmental authority. The foregoing shall in no way obligate Declarant or the Association to enter into a Monitored Alarm Agreement.

Section 7. CABLE TELEVISION SYSTEM. The Association shall have the right to enter into an agreement ("Cable Agreement") for cable television service ("Cable Service") for Homes in San Palermo. Any and all costs and expenses incurred by the Association under or pursuant to any Cable Agreement(s) entered into by the Association for Cable Service will be assessed against all Owners of Completed Homes (as hereinafter defined). The Board shall have the right, but not the obligation, to contemplate that the Cable Service may include features in addition to television reception such as, but not limited to, long distance telephone or other features. Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Association under the Cable Agreement shall be apportioned equally, but only amongst those Homes with respect to which the Association is being charged under or pursuant to the Cable Agreement except to the extent, if any, that any Owner elects to receive an "Optional Cable Service" (being a service not automatically received by all Owners entitled to receive Cable Service pursuant to the Cable Agreement). Each Owner who receives an Optional Cable Service, if any, shall be responsible for paying for the costs thereof. The foregoing shall in no way obligate Declarant or the Association to enter into a Cable Agreement.

Section 8. ASSESSMENT CERTIFICATE. The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to any particular Home. Such certificate shall be conclusive evidence of payment to the Association of such Assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed Fifty (\$50.00) Dollars for the issuance of such certificate.

ARTICLE VII  
METHOD OF DETERMINING ASSESSMENTS  
AND ALLOCATION OF ASSESSMENTS

Section 1. DETERMINING AMOUNT OF ASSESSMENTS. The total anticipated Operating Expenses for each calendar year shall be set forth in the budget ("Budget") prepared by the Board as required under the San Palermo Documents. Each Completed Home shall be assessed its pro rata portion of the total anticipated Operating Expenses, which shall be the

"Individual Home Assessment" as to each Completed Home. Operating Expenses for the Association Property shall be divided by the number of Completed Homes. Notwithstanding anything in the San Palermo Documents to the contrary, only a "Completed Home" shall be obligated to pay Assessments. "Completed Home" shall be defined as a Home for which a certificate of occupancy or its equivalent has been issued by the appropriate governmental agency. Further, any Assessment for legal expenses incurred by the Association for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Home Assessment, except the legal fees incurred by the Association in connection with the collection of assessments or other charges which Owners are obligated to pay pursuant to the San Palermo Documents or the enforcement of the use and occupancy restrictions contained in the San Palermo Documents.

Section 2. ASSESSMENT PAYMENTS. Individual Home Assessments shall be payable quarterly, in advance, on the first day of each quarter. Quarterly Assessments not paid within thirty (30) days of their respective due dates will incur a late charge not to exceed thirty (\$30.00) Dollars. Quarterly Assessments not paid within sixty (60) days of their respective due dates will incur a late charge not to exceed fifty (\$50.00) Dollars. Quarterly Assessments not paid within ninety (90) days of their respective due dates will incur a late charge not to exceed seventy (\$70.00) Dollars. Notwithstanding the foregoing, the Board has the right to change the method and frequency of the payments of Individual Home Assessments. Individual Home Assessments, and the quarterly installments thereof, may be adjusted from time to time by the Board due to changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required.

Section 3. SPECIAL ASSESSMENTS. Special Assessments include Assessments designated as Special Assessments in the San Palermo Documents, whether or not for a cost or expense which is included within the definition of "Operating Expenses," and those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Association Property or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Home Assessment. Any Special Assessments assessed against Completed Homes and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner as the Individual Home Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the Turnover Date shall require the affirmative assent of a majority (51%) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. Prior to the Turnover Date, a Declarant-controlled Board may make a Special Assessment without such vote of the Owners. Special Assessments are not included in the guarantee set forth in Section 5 below.

Section 4. LIABILITY OF OWNERS FOR INDIVIDUAL HOME ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Completed Home in the Property, each Owner thereof acknowledges that each Home and the Owners thereof are jointly and severally liable for their own Individual Home Assessments and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable,

as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all Completed Homes for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for himself and his or her heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay his or her Individual Home Assessment or any portion thereof, or his respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Home Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Home Assessment or Special Assessment or other Assessment can and may be enforced by the Association and Declarant in the same manner as all other Assessments hereunder as provided in the San Palermo Documents.

Section 5. GUARANTEED ASSESSMENT DURING GUARANTEE PERIOD. Declarant covenants and agrees with the Association and the Owners that, for the period commencing with the date of recordation of this Declaration and ending on the Turnover Date, ("Guarantee Period"), Declarant shall be excused from payment of its share of the Operating Expenses and Assessments related to its Completed Home and Lots (other than Special Assessments) and, in turn, that the Individual Lot Assessment will not exceed the dollar amount set forth in the Budget of the Association ("Guaranteed Assessment") and that Declarant will pay the difference ("Deficit"), if any, between (a) the Operating Expenses (other than those Operating Expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period (as same may be extended as hereinafter provided), and (b) the sum of (x) the amounts assessed as Guaranteed Assessments against Owners during the Guarantee Period (as same may be extended as hereinafter provided), (y) the "Working Fund Contributions" set forth in Article VII, Section 7 hereof and (z) any other income of the Association during the Guarantee Period. Thus, during the Guarantee Period Owners shall not be obligated to pay Assessments other than the Guaranteed Assessment, Special Assessments, his or her pro rata share of the costs and expenses incurred by the Association in connection with premiums due on policies of insurance, including, but not limited to, liability, casualty, and directors and officers liability insurance for the Association Property, and the Owners' respective Working Fund Contributions. Declarant's obligation set forth in this Section 5 may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination thereof. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination thereof with Declarant or other entities for the payment of some portion of the Operating Expenses. The Deficit, if any, to be paid by Declarant pursuant to this Section 5 shall be determined by looking at the Guarantee Period as a whole, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intraperiod allocations. In that regard, in the event it is determined at the end of the Guarantee Period (as same may be extended as hereinafter provided) that there is a Deficit and Declarant has previously advanced funds to the Association in excess of the Deficit during the Guarantee Period, Declarant shall be entitled to the immediate repayment from the Association of the amount of funds advanced by Declarant in excess of the Deficit. Special Assessments are not included in this guarantee. Special Assessments may include assessments for items such as capital expenditures or amounts needed to supplement repair expenses not covered by insurance. The cost of premiums on policies of insurance, including, but not limited to, liability, casualty,

and directors and officers liability insurance for the Association Property, in the event same is purchased by the Association, are not included in the Guaranteed Assessment. The Budget of the Association shall be based on a full build-out of San Palermo.

After the Guarantee Period terminates, each Owner shall be obligated to pay Assessments as set forth in Article VII, Section 1 hereof, and, commencing at such time, Declarant shall be required to pay Assessments on any Lots it owns in the same manner as all other Owners.

Section 6. DECLARANT'S GUARANTEED ASSESSMENT NOT THE OBLIGATION OF INSTITUTIONAL MORTGAGEES. Notwithstanding anything to the contrary herein contained, it is specifically understood and declared that each Owner, by the acceptance of a deed or other instrument of conveyance of a Lot within the Property, shall be deemed to have acknowledged and agreed that no Institutional Mortgagee (other than Declarant) or any successor or assign of such Institutional Mortgagee, or any person acquiring title to any part of the Property by reason of the foreclosure or otherwise of an Institutional Mortgagee shall be deemed to have made, assumed or otherwise undertaken any covenants or obligations of Declarant: (i) to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the San Palermo Documents; or (ii) to pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the Guarantee Period as may be provided for in any of the San Palermo Documents; provided, however, that an Institutional Mortgagee may, at its option, determine to continue the obligation of Declarant to guarantee the amount of the Assessments as herein provided. Additionally, a successor declarant shall not be deemed to guarantee the level and/or duration of any Guaranteed Assessments provided for under any of the San Palermo Documents or be obligated or pay the difference between the actual Operating Expenses and the Guaranteed Assessments, if any, assessed against Lots and the Owners thereof during the Guarantee Period unless such obligation is assumed in writing by such successor declarant.

Section 7. WORKING FUND CONTRIBUTION. Each Owner who purchases a Lot with a Home thereon shall pay to the Association at the time legal title is conveyed to such Owner, a "Working Fund Contribution." The Working Fund Contribution shall be equal to two month's share of Assessments. The purpose of the Working Fund Contribution is to insure that the Association will have cash available for initial start-up expenses, to meet unforeseen expenditures or to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Individual Home Assessments and shall have no effect on future Individual Home Assessments, nor are they required to be held in reserve. Working Fund Contributions may be used to offset Operating Expenses.

Section 8. WAIVER OF USE. No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Association. No Owner may release the Home owned by him/her from the liens and charges hereof either by waiver of the use and enjoyment of the Association Property and the facilities thereon or by abandonment of his Home.

ARTICLE VIII  
MAINTENANCE AND REPAIR OBLIGATIONS

Section 1. BY THE ASSOCIATION.

A. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Improvements and facilities located upon the Association Property. Should any incidental damage be caused to any Home by virtue of the Association's failure to maintain the Association Property as herein required or by virtue of any work which may be performed or caused to be performed by the Association in the maintenance, repair or replacement of any Association Property, the Association shall, at its expense, repair such incidental damage. The Association shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

B. The Association shall operate, maintain and repair a landscape irrigation system constructed over, through and upon the Association Property and the Lots as it shall deem appropriate. The Association shall be responsible for the costs of operation and maintenance of such irrigation system, including any monthly fees and other costs of water usage and the cost of repair or replacement to all or any part thereof. There is hereby reserved in favor of the Association the right to enter upon the Association Property and any and all Lots for the purpose of operating, maintaining, repairing and replacing a landscape irrigation system over, through and upon the Association Property and the Lots.

The Association shall operate, maintain and repair the Drainage System constructed over, through and upon the Property. There is hereby reserved in favor of the Association the right to enter upon the Association Property and the Lots for the purpose of operating, maintaining, repairing, and replacing the Drainage System, through and upon the Property. The Association shall be responsible for all costs associated with all cleaning, maintenance, repairs and replacement of any portion of the Drainage System and dry retention area necessary to maintain the system in its original condition and use.

C. The Association shall maintain and care for all landscaping and grassed areas encompassed within each Lot and the Association Property. "Maintenance and care" within the meaning of this Subsection C shall include irrigating, fertilizing, spraying and trimming of landscaping and grassed areas and replacement of same, including the replacement of any dead or dying trees, so that, at a minimum, the initial landscaping for the Lot provided by Declarant shall be maintained; provided, however, the Association shall be entitled to conduct selective thinning to maintain a harmonious environment. If an Owner plants trees and/or landscaping on his/her Lot (with the prior written consent of the Association), such Owner shall be responsible for the maintenance, repair and replacement of same.

D. The Association shall be responsible for the maintenance, repair and replacement of all Roads and common parking areas located upon the Association Property and there is hereby reserved in favor of the Association the right to enter upon any and all parts of the Association Property and Lots for such purpose. To the extent permitted by the appropriate governmental authority, the Association may, but shall not be obligated to, also provide maintenance of all city, County, district or municipal properties which are located within or in a

reasonable proximity of the Property to the extent that their deterioration or unkempt appearance would adversely affect the appearance of the Property, including the right to enhance the landscaping in any public right of way.

E. The Association shall be responsible for the maintenance, repair and replacement of any common lighting located in San Palermo; provided, however, the Association shall not be responsible for the maintenance, repair and replacement of any lighting provided by the municipal electric service.

F. The Association may, if the Board so determines, paint the exterior surface of the walls, doors, and window frames of the Homes (using the same colors as originally used by Declarant), and may, if the Board so determines, assume the responsibility to maintain all or a portion of the Common Structural Elements. Any proposed change in the paint scheme of San Palermo shall require the affirmative vote of seventy-five percent (75%) of the Owners. There is hereby reserved in favor of the Association the right to enter upon any and all Lots for the purpose of such maintenance if the Board determines to assume such responsibility.

G. The Association shall be responsible for the maintenance and repair of any Areas of Common Responsibility, if any.

H. The Association shall be responsible for maintenance and repair of the common mailboxes.

I. Pursuant to the terms thereof, Declarant is responsible for any maintenance, service, repair and replacement of storm water drainage system and facilities located on or adjacent to the Property in accordance with the Drainage Easement(s) (i.e., that certain drainage easement set forth and recorded in Official Records Instrument #2000143508, 26 Pages of the Public Records of Sarasota County, Florida, copies of which are attached hereto and made a part hereof as Exhibit "D"). Declarant hereby assigns to the Association all of Declarant's obligations under the Drainage Easement(s), and the Association hereby assumes and agrees to be responsible for all such obligations. All costs associated with such obligations under the Drainage Easement(s) are hereby deemed to be Operating Expenses.

J. The Association, by action of its Board, may make minor and insubstantial alterations and Improvements to the Association Property and/or the Building having a cost not in excess of Four Thousand Hundred Dollars (\$4,000.00). (Such amount is based on the value of the dollar in 2005 and shall be increased each year thereafter based upon increases in the Consumer Price Index.) All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Owners represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Association Property and/or Building which materially and adversely affects the rights of the Owner of any Home to the enjoyment of his Home or the Association Property unless the Owner and all mortgagees holding recorded mortgages on such Home consent thereto in writing.

K. All expenses incurred by the Association in connection with the services and maintenance described in Paragraphs A through J, inclusive, are Operating Expenses,



payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through J of this Section 1 be caused by the negligence of or misuse by an Owner, his/her family, guests, servants, invitees, or lessees, such Owner shall be responsible therefor, and the Association shall have the right to levy an Assessment against such Owner's Home and said Assessment shall constitute a lien upon the appropriate Home with the same force and effect as liens for Operating Expenses.

L. The Association has a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of San Palermo.

Section 2. BY THE OWNERS.

A. The Owner of each Home must keep and maintain his or her Home and the Improvements thereon, including the Common Structural Elements therein which are not maintained by the Association, including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within his or her Home, including the Common Structural Elements therein, which, if omitted, would adversely affect San Palermo, the other Owners or the Association and its Members; however, notwithstanding the foregoing, the Board of Directors, in its sole business discretion, shall have the power and authority to require the Association, rather than of the Owners of each Home, to keep and maintain each Home, and the Improvements thereon, including the Common Structural Elements therein and including equipment and appurtenances, in good order, condition and repair, and to perform all maintenance and repair work within each Home, including the drywalls within the Homes, in which case the maintenance provisions with respect to Association Property would apply.

The Owner of each Home shall be responsible for any damages caused by a failure to so maintain such Home and Common Structural Elements. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited, to the caulking and maintenance of the doors and windows (including glass and frame) of the Home, and the exterior surface of such doors and windows shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Home further agrees that in the event he or she damages any portion of the central irrigation system located upon his or her Lot, the Owner shall be responsible for repairing said damage. The Owner of a Home further agrees to pay for all utilities, such as telephone, cable television, water (including water associated with irrigation), sewer, sanitation, electric, etc., that may be separately billed or charged to his or her Home. The Owner of each Home shall be responsible for insect and pest control within the Home. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at his/her own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association or by the Owner, the proceeds of the insurance received shall be payable to and used by the Association for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to or available for such maintenance, repair or replacement.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, and take necessary measures to retard and prevent mold from accumulating in the Home. Each Owner of a Home shall be responsible for damage to his or her Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold.

B. The Owner of each Home shall keep the sidewalk located on his or her Lot clean and free from any impediments to pedestrian traffic.

C. The Owner of each Home shall be responsible for the painting of the exterior surface of the garage doors and for the maintenance, repair and replacement of any mechanisms associated with the garages located within his or her Home.

D. The Owner of each Home shall wash all windows located within his or her Home.

E. An Owner shall not plant any shrubs, trees and/or landscaping on his or her Lot without the prior written approval of the Association. If an Owner receives such approval and plants any shrubs, trees and/or landscaping on his or her Lot, such Owner shall be responsible for maintaining such shrubs, trees and/or landscaping.

F. The Owner of each Home shall be responsible for maintaining in good condition and repair the balconies of his or her home, as well as any sliding doors or screens adjacent to or part of the balcony ("Balcony"). In the event a repair related to the construction of the Balcony is required, the Owner of each Home shall be responsible for such repair. If the Home Owner of the Home installs a covering on the surface of the Balcony, such as but not limited to tile, then the covering shall remain the personal property of such Home Owner. No Owner may install a covering on the surface of the Balcony which will effect the slope or drainage of a Balcony. The Owner of each Home shall be responsible for any painting of the exterior walls of the Balcony unless the Board determines that the Association shall assume this responsibility.

G. If a Home is damaged by fire or other casualty, including the Common Structural Elements therein, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board. Notwithstanding the foregoing, in the event the Board determines that the Association shall assume the responsibility of repairing the Common Structural Elements, the Owner shall be relieved of such responsibility. The Association shall be obligated to notify every Owner of such election in writing.

H. Each Owner shall keep insured the interior portions of his or her Home and his or her personal property (including, but not limited to, all floor, wall, ceiling coverings, electrical fixtures, appliances, air conditioner, or heating equipment, water heaters, water filters,

built-in cabinets and countertops, and window treatments, including curtains, drapes, blinds, hardware, and similar window treatment components, or replacements of any of the foregoing and all air conditioning compressors, whether or not located within the Home boundaries, etc.).

I. The Owner of each Home shall maintain property and casualty insurance on each Building (as well as the Common Structural Elements and the drywall located within the interior portions of a Home) in which Homes are located in accordance with the provisions of Article XI, Section 1 hereof. Evidence of the coverage described in this Paragraph I shall be furnished to the Association promptly upon the Board's request. No Owner shall cancel such insurance without at least thirty (30) days prior written notice to the Association. Notwithstanding the foregoing, in the event the Board elects to purchase casualty insurance for the Common Structural Elements, the Owners shall be relieved of such responsibility. In that event, the insurance proceeds for the repair and rebuilding shall be paid to the Association and not the Owner.

J. If an Owner fails to comply with the foregoing provisions of this Section 2, the Association may proceed in court to compel compliance to cause an Owner to comply. Further, if the failure to comply relates to the Owner's obligations to maintain insurance, the Association shall be entitled, although not obligated, to obtain the required coverage itself and to levy on the offending Owner an Assessment equal to the cost of premiums, and any such Assessment shall constitute a lien upon the applicable Home with the same force and effect as a lien for Operating Expenses.

K. If a failure to comply with the provisions of this Section 2 relates to the Owner's obligation to maintain the Home, landscaping or any other area required to be maintained by the Owner, then, in addition to the exercise of all other remedies, the Association or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the property of the Owner for the purpose of performing the maintenance referred to, set forth and described in the notice. The determination of whether an Owner is failing to properly maintain and care for the property for which he or she has the maintenance responsibility shall be determined in the sole discretion of the Association or Declarant. Further, the Association shall be entitled, but not obligated, to perform such maintenance and care itself and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and any such Assessment shall constitute a lien upon the applicable Home with the same force and effect as a lien for Operating Expenses.

Section 3. DAMAGE TO BUILDINGS. The Owner of any Home which has suffered damage may apply to the Association for approval for reconstruction, rebuilding, or repair of the Improvements therein. The Association shall grant such approval only if, upon completion of the work, the exterior appearance will be substantially similar to that which existed prior to the date of the casualty. If the obligation for repair falls upon the Association, the Association approval will not be required prior to the commencement of such work, so long as the exterior appearance will be substantially similar to that which existed prior to the date of the casualty.

The Owner or Owners of any damaged Building and/or the Association shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction

within one (1) year after the damage occurs, unless prevented by causes beyond his or her or its reasonable control.

Declarant shall be exempt from the provisions of this Section 3, provided that any such reconstruction, rebuilding or repairs made by Declarant shall be consistent, as to the exterior appearance, with the Improvements as they existed prior to the damage or other casualty.

#### ARTICLE IX USE RESTRICTIONS

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Association:

Section 1. ENFORCEMENT. Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the San Palermo Documents, or with any rules and regulations promulgated by the Association, shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof.

Notwithstanding the rights of the Association hereunder to enforce to the terms and provisions of the San Palermo Documents, the Southwest Florida Water Management District shall also have the right to take enforcement action, including a civil action for an injunction and penalties, against the Association to compel the Association to correct any failure by the Association to operate, maintain and repair the Drainage System in accordance with the applicable environmental resource or surface water management permit issued for San Palermo.

In addition to all other remedies, the Association may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, his or her family, guests, invitees, lessees or employees to comply with any of the San Palermo Documents, provided the following procedures are adhered to:

A. Notice. The Association shall notify the Owner in writing of the noncompliance and set forth the corrective action to be taken. A fine or suspension of use rights may not be imposed without notice of at least fourteen (14) days to the Owner sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee of the Association. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. At the Association's option, any fine may be levied on a daily basis in the event of a continuing violation without the necessity of a new hearing and without any limitation on the amount of such fine.

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as

applicable, not later than twenty-one (21) days after said meeting.

C. Payment. A fine shall be paid not later than thirty (30) days after notice of the imposition of the fine.

D. Fines. An Owner shall be responsible for all Legal Fees incurred in connection with the collection of a fine whether or not an action at law to collect said fine is commenced. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

E. Failure to Pay Assessments. Notice and Hearing as provided in Subparagraphs A and B above shall not be required with respect to the imposition of suspension of use rights or fines upon any Owner because such Owner's failure to pay Assessments or other charges when due.

F. Access. Suspension of use rights to Association Property shall not impair the right of an Owner or tenant of a Home to have vehicular and pedestrian ingress to and egress from such Home, including, but not limited to, the right to park.

Section 2. NUISANCES. No obnoxious or offensive activity shall be carried on or about the Lots or in or about any Improvements, Homes, or on any portion of San Palermo nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Notwithstanding anything to the contrary herein, so long as any activity which is carried on a Lot is allowable within applicable zoning regulations, no such activity shall be deemed a nuisance hereunder.

Section 3. PARKING AND VEHICULAR RESTRICTIONS. Vehicles shall be parked only in the garages or in the driveways serving the Homes or Lots or in the appropriate spaces or designated areas in which parking may be assigned, and then subject to the reasonable rules and restrictions adopted by the Board. Vehicles shall not be parked overnight on roads or swales. All commercial vehicles, recreational vehicles, trailers, campers, camper trailers, boats, watercraft, motorcycles, and boat trailers must be parked entirely within a garage unless otherwise approved by the Board. No motorcycle, truck, trailer, boat, van in excess of seventeen (17) feet in length, camper, motor home, bus, commercial vehicle of any type (i.e., any vehicle which has any exterior lettering or logo, or has tools or equipment), non-passenger van (i.e., any van which does not have a rear seat and side windows), or similar vehicle shall be parked on any part of the Property, any driveway, or designated parking space within the Property except: (1) within a garage, (2) commercial vehicles, vans, or trucks delivering goods or furnishing services temporarily during daylight hours, (3) trucks rated not more than one-half ton capacity (i.e., not larger than a Ford F150 or GMC 1500) may park overnight in the driveways serving the Homes or Lots or in the appropriate spaces or designated areas in which parking may be assigned, and (4) upon such portions of the Property as the Board may, in its discretion, allow. Vehicles over eighty (80) inches in height, or those vans or trucks which do not have windows completely circling the vehicle's exterior (similar to windows around a station wagon), and permanent

installed seating for four or more passengers, shall be considered to be a prohibited vehicle, car or truck. The Association shall have the right to authorize the towing away of any vehicles in violation of this rule with the costs and fees, including attorneys' fees, if any, to be borne by the vehicle owner or violator. No Owner shall keep any vehicle on any Lot, except fully enclosed within his or her garage, which is deemed to be a nuisance by the Board.

Section 4.     NO IMPROPER USE. No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereover relating to any Home shall be corrected by, and at the sole expense of, the Owner of the Home.

Section 5.     LEASES. No portion of a Home (other than an entire Home) may be rented. No entire Home may be rented for a term of less than four (4) consecutive months. Not less than 10 days after the effective date of any lease; the Owner shall furnish to the Association a copy of the lease. All leases shall provide that the Association shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Homes. The Owner of a leased Home shall be jointly and severally liable with his or her tenant for compliance with the San Palermo Documents and to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

Section 6.     ANIMALS AND PETS. No animals shall be raised, bred, or kept on any Lot, except that dogs, cats, or other household pets may be kept on the Lot, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by the Board. No Owner shall be permitted to maintain on his or her Lot any dog or dogs of mean or of violent temperament or otherwise evidencing such temperament. Trained seeing-eye dogs will be permitted for those persons holding certificates of blindness and necessity. Other animals will be permitted if such animals serve as physical aides to handicapped persons and such animals have been trained or provided by an agency or service qualified to provide such animals. The guide or assistance animal will be kept in direct custody of the assisted person or the qualified person training the animal at all times when on the Property and the animal shall wear and be controlled by a harness or orange-colored leash and collar. Pets may not be kept, bred or maintained for any commercial purpose. Any pet must be temporarily caged, carried or kept on a leash when outside of a Home. No pet shall be kept tied outside a Home, or on any balcony or patio, unless someone is present in the Home. No dogs will be curbed in any landscaped area or close to any walk, but only in special areas designated by the Board, if any, provided this statement shall not require the Board to designate any such area. An Owner shall immediately pick up and remove any solid animal waste deposited by his or her pet. The Owner shall compensate any person hurt or bitten by his or her pet and shall indemnify the Association and hold it harmless against any loss or liability of any kind or character whatsoever arising from or growing out of having any animal within the Property. If a dog or any other animal becomes obnoxious to other Owners by barking or otherwise, the Owner thereof must cause the problem

to be corrected; or, if it is not corrected, the Owner, upon written notice by the Association, will be required to permanently remove the animal from the Property. The Association will promulgate rules and regulations from time to time designating other rules as necessary to regulate pets.

Section 7. ADDITIONS AND ALTERATIONS. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any improvement, addition, or alteration to the exterior of his or her Home or balcony or patio, if applicable, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, patios, balconies, driveways and walkways, without the prior written approval of the Committee, as hereinbelow defined, which approval may be withheld for purely aesthetic reasons, and all applicable governmental entities. Additionally, no Owner shall make any improvement, addition or alteration to the interior of his or her Home that would affect the fire protection, electric, plumbing or other like system without the prior written approval of the Committee.

Section 8. INCREASE IN INSURANCE RATES. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 9. SLOPES AND TREES. No Owner may engage in any activity which will change the slope or drainage of a Lot. No additional trees or other landscaping are permitted to be planted on the Property without the prior written consent of Committee.

Section 10. SIGNS. No sign (specifically including, but not limited to, for sale signs), display, poster, or other advertising device of any kind may be displayed in public view of any portion of any Building or other Improvement in the Property or in or about an automobile without the prior written consent of the Committee. Signs, regardless of size, used by Declarant, its successors or assigns, for advertising during the construction and sale period of San Palermo or other communities developed and/or marketed by Declarant or its affiliates and other signs authorized by Declarant shall be exempt from this Section. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall be exempt from this Section.

Section 11. TRASH AND OTHER MATERIALS. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Association Property, or other portions of the Property, except in sanitary, self-locking containers located in the garage of each Home or dumpsters designated for such purpose, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Association Property or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant, during construction approved by the Association, or when accumulated by the Association for imminent pick-up and discard). Trash shall be placed in front of each Home or in designated dumpsters no earlier than 5:00 p.m. the night before pick-up

and trash receptacles shall be removed no later than midnight on the day of pick-up.

Section 12. TEMPORARY STRUCTURES. No tent, shack, shed or other temporary building or Improvement, other than separate construction and sales trailers to be used by Declarant, its agents and contractors, for the construction, service and sale of San Palermo or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. No trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

Section 13. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 14. SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any of the Property, provided that a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction over said central system.

Section 15. WATER SUPPLY. No individual water supply system shall be permitted on any of the Property, provided that a central water supply system is being operated in accordance with requirements of the governmental body having jurisdiction over said central system.

Section 16. LANDSCAPING. Any landscaping, artificial vegetation, exterior sculpture and similar items planted or placed upon any Lot must be approved in writing by the Committee prior to installation. The Owner assumes complete responsibility to maintain the landscaping planted by the Owner.

Notwithstanding that an Owner has obtained the approval of the Committee to install landscape materials, as provided hereinabove, such installation shall be at the Owner's sole risk. In the event any construction activity on an adjacent Lot causes damage to or destruction of such Owner's landscape materials or any part thereof, the Owner on whose Lot the landscaping has been damaged shall be required, at the Owner's expense, to repair or replace such landscape materials in conformance with the requirements of the Association's approval of the initial installation of the landscape materials and Declarant shall have no liability for any such damage or destruction. Such repair or replacement shall commence as soon as construction on the adjacent Lot has been completed and shall be pursued with due diligence. For purposes of this paragraph, the term "landscape materials" shall include landscape materials located on or adjacent to any property line of a Lot, including, by way of example and not of limitation, hedges, shrubs and trees.

In addition, the installation of any landscaping placed upon any Lot is subject to easements which run with the land. In the event the grantee of any such easement which runs with the land (i.e., FPL), its successors and/or assigns, requires the removal of any landscaping upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the landscaping. If the grantee of any such easement fails to restore the



removed landscaping, it shall be the Owner's obligation to restore any removed landscaping upon the Lot to at least such condition as originally established by the Declarant. The Owner of a Lot in installing any landscaping upon the Lot shall comply with all valid laws, zoning ordinances and regulations of the city and County governmental bodies, as applicable, in addition to Association approval.

Section 17. ANTENNAE. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Committee, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association is empowered to adopt rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Association may also adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to certain specified locations, not visible from the street and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible dishes or antennae. Any permissible dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible dishes or antennae may, but it not obligated, submit plans and specifications for same to the Association to ensure compliance with the Association's rules, if any, governing the types of permissible antennae and restrictions relating to safety, location and maintenance of antennae. This Section 17 shall not apply to Declarant.

Section 18. GARAGES. No Owner shall enclose any portion of his or her garage or convert his or her garage into living space. No garage shall be altered in such a manner that reduces the number of automobiles that could have reasonably been parked in the garage as originally constructed. When not in use, Owners shall keep their garage doors closed. Each Owner shall keep his or her garage free from clutter so that at all times his or her car can easily be parked in his or her garage.

Section 19. CONVEYANCES, TRANSFER AND ENCUMBRANCES OF HOMES.

(i) Any person who becomes an Owner by gift, devise or conveyance shall within ten (10) days after such transfer furnish the Association with his or her name and such other information as the Association may reasonably require.

(ii) If an Owner should die and the title to his or her Lot shall pass to his or her surviving spouse or to any immediate member of his or her family, such successor in title shall fully succeed to the ownership, rights, duties and obligations of the Owner

(iii) **Rights of Institutional Mortgagees.** The provisions of this Section 19 shall in no way be construed as affecting the rights of an Institutional Mortgagee owning a recorded institutional first mortgage on any Lot and the rights hereinabove set forth shall remain subordinate to any such institutional first mortgage. Further, the provisions of this Section 19 shall not be applicable to purchasers at foreclosure or other judicial sales of Institutional Mortgagees, or to transfers to Institutional Mortgagees or to Declarant.

**Section 20. CLOTHESLINES.** No clothesline or other similar device shall be allowed in any portion of the Property, unless within a Home and concealed from view from all other portions of the Property and from the surrounding public areas. No towels shall be permitted to be hung from the balconies.

**Section 21. GARAGE SALES.** No garage sales, estate sales, yard sales, moving sales, or any other sales that invite the public, shall be carried on in or about San Palermo.

**Section 22. HURRICANE SEASON.** Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Home prior to his or her departure by removing all furniture, potted plants and other movable objects, if any, from his or her balcony, patio, and/or Lot, and designate a responsible firm or individual satisfactory to the Association to care for the Home should the Home suffer hurricane damage. Such person or firm shall also contact the Association for permission to install temporary hurricane shutters, which must be removed when no longer necessary for storm protection. Other than shutters installed by the Declarant, at no time shall permanent hurricane shutter be permanently installed without the prior written approval of the Committee. Storm shutters and panels which are not permanently installed may be put in place or closed not more than seven (7) days before and seven (7) days after a storm event (a "storm event" is defined as a meteorological event in which winds in excess of 50 mph and rainfall has occurred, or is expected to occur).

**Section 23. ENCLOSURES.** No enclosures of any kind, including but not limited to, glass and screen enclosures, shall be constructed or placed on the balconies or patios, if applicable, without the prior written approval of the Committee.

**Section 24. RESIDENTIAL USE.** The Property shall be used only for single family, residential, recreational, and related purposes.

**Section 25. OCCUPANTS BOUND.** All provisions of the San Palermo Documents and of any Rules and Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners, and which provide for sanctions against Owners, shall also apply to all occupants of any Home.

**Section 26. LIGHTING.** Except for seasonal decorative lights, which may be displayed between December 1, and January 10 only, all exterior lights must be approved in writing by the Committee.

**Section 27. LAKES AND WATER BODIES.** All lakes, canals, and water bodies shall be primarily aesthetic amenities and all other uses thereof, including, without limitation, fishing,

boating, swimming, playing, or use of personal flotation devices, shall be subject to the Rules and Regulations promulgated by the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, canals, or water bodies within the Property.

Section 28. WINDOWS. All draperies, curtains, shades, or other window coverings installed in a Home, and which are visible from the exterior of the Home, shall have a white backing, unless otherwise approved in writing by the Committee.

Section 29. POOLS. No above ground pools shall be erected, constructed or installed on any Lot.

Section 30. IRRIGATION. No sprinkler or irrigation systems of any type which draw water from lakes, rivers, ponds, canals or other ground or surface waters within the Property shall be installed, constructed or operated by an Owner with the Property unless prior written approval has been obtained from the Committee.

Section 31. DRAINAGE AND SEPTIC SYSTEMS. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person, other than Declarant, or the Southwest Florida Water Management District, may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves a perpetual easement across the properties for the purpose of altering drainage and water flow. Septic systems are prohibited on the Property.

Section 32. TREE REMOVAL. No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved by the Committee.

Section 33. SIGHT DISTANCE. All property located at street intersections shall be landscaped so as to permit safe sight across street corners. No fence, wall, hedge, shrub, or planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 34. BUSINESS USE. The Lots shall be used solely for single family purposes. Nothing herein shall be deemed to prevent an Owner from leasing a home to a single family, subject to all of the terms, conditions, and covenants contained in this Declaration. The Lots shall not be used in any trade, business, professional, or commercial capacity. Nothing contained herein shall prohibit the Declarant from carrying on any and all types of construction activity necessary to complete San Palermo, including the construction and operation of a sales model and office by the Declarant until all of the Lots have been sold.

Section 35. GOLF CART. All golf carts leased, owned, or otherwise used by Owners may be parked, placed, or stored only in the garages of each Home. No golf cart shall be placed, parked, or stored on the lawn of any Home or on any portion of the Common Areas, unless such area is specifically designated as a golf cart parking area by the Board. No golf cart shall be driven outside the entrance area or boundaries of San Palermo. Owners of golf carts, by

operating same within San Palermo shall be presumed to have released Declarant and the Association of all liability arising from an Owner's use of his or her golf cart. Each year, the owners of golf carts shall provide the Association with proof of liability insurance in connection with the operation of their golf carts, and such insurance shall have such limits as shall be approved by the Association in its sole discretion. Each such insurance policy shall name the Association as an additional insured, and shall provide the Association with thirty (30) days notice prior to its cancellation. An Owner who uses a golf cart shall be held fully responsible for any and all damages resulting from the misuse of a golf cart caused by the owner, his or her family members, guests, licensees, invitees, employees, or agents, and the owner shall reimburse the Association for any and all damages the Association may sustain by reason of such misuse. Such damages shall be collectible as a Special Assessment pursuant to the procedures for such assessments set forth herein.

Section 36. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of that work and the sale, rental and other transfer of Homes is essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners nor the Association shall do anything to interfere with Declarant's activities.

In general, the restrictions and limitations set forth in this Article IX shall not apply to Declarant or to Homes owned by Declarant. Declarant shall specifically be exempt from any restrictions which interfere in any manner whatsoever with Declarant's plans for development, construction, sale, lease, or use of the Property and to the Improvements thereon. Declarant shall be entitled to injunctive relief for any actual or threatened interference with its rights under this Article IX in addition to whatever remedies at law to which it might be entitled.

ARTICLE X  
DAMAGE OR DESTRUCTION TO ASSOCIATION PROPERTY  
AND/OR COMMON STRUCTURAL ELEMENTS

Damage to or destruction of all or any portion of the Association Property and/or Common Structural Elements, in the event the Board elects to have the Association insure same and/or be responsible for the repair and rebuilding of same, shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

A. If insurance proceeds are sufficient to effect total restoration of damaged or destroyed Association Property and/or Common Structural Elements then the Association, shall cause such Association Property and/or Common Structural Elements to be repaired and reconstructed substantially as it previously existed.

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less (Such amount is based on the value of the dollar in 2004 and shall be increased each year

thereafter based upon increases in the Consumer Price Index.), then the Association shall cause the Association Property and/or Common Structural Elements, to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Homes in accordance with the provisions of Articles VI and VII herein.

C. If the insurance proceeds are insufficient to effect total restoration and the cost of restoration of the Association Property and/or Common Structural Elements, exceeds said proceeds by over Twenty-Five Thousand Dollars (\$25,000.00) (Such amount is based on the value of the dollar in 2004 and shall be increased each year thereafter based upon increases in the Consumer Price Index.), then by the written consent or vote of a majority of the voting interests, they shall determine whether: (a) to rebuild and restore either: (i) in substantially the same manner as the Improvements existed prior to the damage or destruction; or (ii) in a manner less expensive, and in the event of (i) or (ii) to raise the necessary rebuilding and restoration funds by levying pro rata restoration and construction Special Assessments against all Homes; or (b) to not rebuild and to retain available insurance proceeds. In the event it is decided that the damaged or destroyed Association Property and/or Common Structural Elements shall not be rebuilt, the remains of any structure or structures shall be torn down and hauled away, so as not to be a safety hazard or visual nuisance, and the land shall be fully sodded and landscaped or otherwise treated in an attractive manner. Notwithstanding anything contained herein to the contrary, any decision not to rebuild or to rebuild in a manner which would result in a change in the Improvements shall not be effective without the prior written approval of Declarant as long as Declarant owns any portion of the Property.

D. Each Owner shall be liable to the Association for any damage to the Association Property and/or Common Structural Elements not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his or her family, lessees, invitees and guests, both minors and adults.

E. In the event that the repairs and replacements were paid for by any Special Assessments as well as insurance proceeds and regular Assessments, then, if after the completion of and payment for the repair, replacement, construction or reconstruction there shall remain any excess in the hands of the Association, it shall be presumed that the monies disbursed in payment of any repair, replacement, construction and reconstruction were first disbursed from insurance proceeds and regular Assessments and any remaining funds shall be deemed to be the remaining Special Assessments which shall be returned to the Owners by means of a *pro rata* distribution in accordance with the collection of such Special Assessments.

#### ARTICLE XI INSURANCE AND CONDEMNATION

The Association shall purchase and maintain the following insurance coverages subject to the following provisions, and the cost of the premiums therefor shall be a part of the Operating Expenses:

Section 1. CASUALTY INSURANCE. Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items

normally excluded from such coverage, of all Improvements and personal property which are owned by the Association and now or hereafter located upon the Association Property. Such property and casualty insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Association Property in developments similar to San Palermo in construction, location and use.

Unless the Board elects to obtain such casualty insurance, the Owner of each Home shall maintain a policy or policies to insure his or her Home from all physical damage and liability losses with such policy naming the Association as an additional insured. Unless the Board has elected to make the Association responsible for the repair and rebuilding of the Common Structural Elements, if a Home is damaged by a casualty, the affected Owner shall promptly have his or her Home repaired and rebuilt substantially in accordance with the architectural plans and specifications of the Home. The Board of Directors may in its sole business discretion establish periodically the minimum physical damage and liability insurance coverage and endorsements to be maintained by each Owner. Each Owner shall provide a certificate of insurance coverage to the Association to evidence compliance with the minimum physical damage and liability coverage and endorsements set by the Board of Directors. Notwithstanding the foregoing, the Board of Directors, in its sole business discretion, shall have the power and authority to require the Association, rather than of the Owners of each Home, to acquire casualty insurance for the Common Structural Elements and the drywalls within the Homes in which case the insurance provisions with respect to Association Property would apply and all insurance proceeds for the repair and rebuilding thereof shall be paid to the Association.

Section 2. PUBLIC LIABILITY INSURANCE. A comprehensive policy of public liability insurance naming the Association as named insured thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Association Property and any Improvements located thereon and use of the balance of the Property, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by one or more persons for any one occurrence; not less than Two Million Dollars (\$2,000,000.00) in total per year; and for not less than Twenty-Five Thousand Dollars (\$25,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Association may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Association is a party, as it may deem desirable.

Section 3. FIDELITY COVERAGE. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Board and all others who handle and are responsible for handling funds of the Association shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

Section 4. DIRECTORS' COVERAGE. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Association is created; provided that prior to the Turnover Date such insurance shall not be required in the sole discretion of the Board.

Section 5. OTHER INSURANCE. The Board may obtain such other forms of insurance as the Board may determine and in such coverage amounts as the Board shall determine to be required or beneficial for the protection or preservation of the Association Property, the balance of the Property and any improvements now or hereafter located thereon or in the best interests of the Association and/or its officers and directors.

Section 6. CANCELLATION OR MODIFICATION. All insurance policies purchased by the Association shall provide that they may not be canceled (including for nonpayment of premiums) or substantially modified without at least ten (10) days prior written notice to the Association and to each first mortgage holder, if any, named in the mortgage clause.

Section 7. FLOOD INSURANCE. If determined appropriate by the Board or if required by an Institutional Mortgagee, a master or blanket policy of flood insurance covering the Association Property and the Buildings on the Property, if available under the National Flood Insurance Program, shall be purchased, which flood insurance shall be in the form of a standard policy issued by a member of the National Flood Insurers Association, and the amount of the coverage of such insurance shall be the lesser of the maximum amount of flood insurance available under such program, or one hundred percent (100%) of the current replacement cost of all Buildings and other insurable property located in the flood hazard area.

Section 8. CONDEMNATION. In the event the Association receives any award or payment arising from the taking of any Association Property or any part thereof as a result of the exercise of the right of condemnation or eminent domain, the net proceeds thereof shall first be applied to the restoration of such taken areas and improvements thereon to the extent deemed advisable by the Board and approved by at least two-thirds (2/3) of the total voting interests, and the remaining balance thereof, if any, shall then be distributed pro rata to Owners and mortgagees of Homes as their respective interests may appear.

Section 9. WAIVER OF SUBROGATION. As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, Declarant and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement of said persons, but only to the extent that such insurance proceeds are received in compensation for such loss.

ARTICLE XII  
ARCHITECTURAL CONTROL

Section 1. MEMBERS OF THE COMMITTEE. The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee," shall be comprised of three (3) or more members as determined initially by Declarant and then by the Board. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as he or she has resigned or has been removed or his or her successor has been appointed, as provided herein. Members of the Committee, other

than those designated by Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by Declarant.

Section 2. REVIEW OF PROPOSED CONSTRUCTION.

A. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, screen doors, brick pavers, stamped concrete, concrete flatwork, basketball goals, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwaves, reception devices, external enclosures (including patio screen enclosures), or landscaping (including hedges and massed plantings) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopy, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home by any Owner other than Declarant, unless such Improvements have been reviewed by and received the written approval of the Committee in accordance with Paragraph B hereinbelow. Any Owner desiring to make Improvements shall submit three (3) complete sets of plans and specifications showing the nature, dimensions, materials and location of the same.

B. The Committee shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue rules or guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Association is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans.

C. The Committee shall have forty-five (45) days after delivery of all required materials to approve or reject any such plans and, if not approved within such forty-five (45) day period, such plans shall be deemed approved, provided that, in any event, no such addition, construction or alteration shall be made by any Owner which is detrimental to or inconsistent with the harmony, appearance or general scheme of San Palermo as a whole.

D. In no event shall any Improvement (including, without limitation, landscaping) be permitted within the Landscaped Areas and Grassed Areas, and any sidewalks and sidewalk easements on Lots.

E. Notwithstanding anything to the contrary in this Declaration, no Improvements (including, with limitation, landscaping) shall be permitted within any Lot that interferes or could interfere with the flow of rainfall runoff to or through the Drainage System.

F. Notwithstanding any provision in this Article XII to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within



any Homes if such additions, changes or alterations are not visible from the outside of such Homes. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, rules and regulations.

G. Notwithstanding anything to the contrary herein contained, no construction, reconstruction, addition or alteration by Declarant shall require the prior approval or any certificate of consent of the Committee.

Section 3. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Section 8 hereinbelow. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

Section 4. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the Committee of any plans and specifications or drawings for any work done or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

Section 5. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 6. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Association or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the Committee or the Association, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for approval, Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid members and representatives of the Committee, Declarant, and the Association generally, from any loss, claim, damage or liability connected with or arising out of the proposed Improvements or alterations. Furthermore, approval by the Committee of any plans and

specifications does not excuse any Owner from also receiving approvals as required by all applicable governmental agencies.

Section 7. VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall be deemed to have occurred with respect to the Improvements for which the variance was granted.

### ARTICLE XIII GENERAL PROVISIONS

Section 1. CONFLICT WITH OTHER SAN PALERMO DOCUMENTS. In the event of any conflict between the provisions hereof and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Association, the provisions of this Declaration shall control.

Section 2. NOTICES. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Association at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Association, certified mail, return receipt requested, at 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418, or such other address as the Association shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418, or such other address or addresses as Declarant shall hereafter notify the Association of in writing, any such notice to the Association of a change in Declarant's address being deemed notice to the Owners.

Section 3. ENFORCEMENT. The covenants and restrictions herein contained may be enforced by Declarant (so long as Declarant holds an equitable or legal interest in any Home), the Association, any Owner and any Institutional Mortgagee holding a mortgage on any portion of the Property in any judicial proceeding seeking any remedy recognizable at law or in equity, including damages, injunction or any other form of relief against any person, firm or entity violating or attempting to violate any covenant, restriction or provision hereunder. The failure by any party to enforce any such covenant, restriction or provision herein contained shall in no event be deemed a waiver of such covenant, restriction or provision or of the right of such party to thereafter enforce such covenant, restriction or provision. The prevailing party in any such litigation shall be entitled to all costs thereof including, but not limited to, Legal Fees.

Section 4. INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of the Association Property and the balance of the Property.

Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

Whenever the context so requires or permits, any pronoun used herein may be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any nouns and pronouns herein may be deemed to mean the corresponding plural form thereof and vice versa.

Section 5. SEVERABILITY. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Association.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Association or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself, and Declarant and its nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside San Palermo, including, but not limited to, the right to maintain a construction and/or sales office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Association Property and show Homes, and Declarant further reserves the right to make repairs to the Association Property and to carry on construction activity for the benefit of the Property. Declarant, and its nominees, may exercise the foregoing rights without notifying the Association. Any such sales and/or construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Association Property and shall remain the property of Declarant. This Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the San Palermo Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6, which

are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the San Palermo Documents, shall terminate upon Declarant no longer owning any portion of the Property (and having any equitable or legal interest therein) or upon such earlier date as Declarant shall notify the Association in writing of Declarant's voluntary election to relinquish the aforesaid rights and privileges.

Declarant shall also have the right, but not the obligation, to conduct inspections and tests from time to time of all or any portion of the Association Property and the Buildings on the Property in order to ascertain the physical condition of the Improvements and to determine if maintenance, repair or replacement of any such Improvement is indicated. If Declarant conducts any such tests or inspections, it shall pay all costs thereof, restore the affected portion of the Property to its condition immediately prior to the inspections and tests, and shall indemnify the Association and Owner(s) of any affected Home(s) from any damages resulting therefrom. Declarant shall have such rights of entry on, over, under, across and through the Property as may be reasonably necessary to exercise the rights described in this Section 6. Declarant's right of inspection shall exist whether or not the Turnover Date has occurred. In the event Declarant exercises its inspection right, it is acknowledged by the Association and all Owners that Declarant is performing any such inspection for its own benefit and not for the benefit of the Association and/or the Owners and further, Declarant shall have no obligation to inform the Association and/or the Owners of the result of any such inspection.

Section 7. DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Property or any portion or portions thereof complies with the covenants, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Board, and a determination rendered by the Board with respect to such dispute shall be final and binding on all parties concerned therewith. Notwithstanding anything to the contrary herein contained, any use by Declarant of the Property shall be deemed a use which complies with this Declaration and shall not be subject to a contrary determination by the Board.

Section 8. AMENDMENT AND MODIFICATION. The process of amending or modifying this Declaration shall be as follows:

1. Until the Turnover Date, all amendments or modifications shall only be made by Declarant without the requirement of the Association's consent or the consent of the Owners so long as such amendments or modifications do not materially impair the common plan of development of San Palermo; provided, however, that the Association shall, forthwith upon request of Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as Declarant shall, from time to time, request.

2. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning a majority of all Homes; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning a majority of the Homes may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Association called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Association.

3. Amendments for correction of scrivener's errors or other nonmaterial changes may be made by Declarant alone until the Turnover Date and by the Board thereafter and without the need of consent of the Owners.

4. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Association or of any Institutional Mortgagee under the San Palermo Documents without the specific written approval of such party affected thereby. Finally, notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XIII and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

5. A true copy of any Amendment to this Declaration shall be sent certified mail by the Association to Declarant and to all Institutional Mortgagees holding a mortgage on any portion of the Property requesting notice. The amendment shall become effective upon the recording amongst the Public Records of the County of said amendment or any Supplemental Declaration to this Declaration which sets forth any amendment or modification to this Declaration.

6. Notwithstanding anything contained herein to the contrary, Declarant may, without the consent of any Owners, file any amendments which may be required by an Institutional Mortgagee for the purpose of satisfying its development criteria or such other criteria as may be established by such mortgagee's secondary mortgage market purchasers, including, without limitation, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation; provided, however, any such Declarant's filed amendments must be in accordance with any applicable rules, regulations and other requirements promulgated by the United States Department of Housing and Urban Development.

7. Any proposed amendment to the Declaration which would affect the Surface Water and Storm Management System, beyond maintenance in its original condition (including environmental conservation areas and the water management portions of the Association Property), shall be submitted to the SWFWMD for a written determination of whether the proposed amendment necessitates a modification of the surface water management permit. This section may not be amended without the consent of the SWFWMD.

Section 9. DELEGATION. The Association, pursuant to a resolution duly adopted by the Board, shall have the continuing authority to delegate all or any portion of its responsibilities for maintenance, operation and administration, as provided herein, to any managing agency or entity selected by the Board from time to time and whether or not related to Declarant.

Section 10. TERM. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Association and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or

any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by Owners owning two-thirds (2/3) of the Homes and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Homes encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Association ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Association Property and the Common Structural Elements in the manner described herein. This provision may not be amended or deleted without the prior written consent of the County and this provision shall survive the termination of this Declaration and shall run with the Property in perpetuity.

Section 11. RIGHTS OF MORTGAGEES.

A. Right to Notice. The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances the San Palermo Documents and the books, records and financial statements of the Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Association. A mortgagee shall be entitled to receive timely written notice of any proposed action that requires the consent of a specified percentage of mortgagees. To be entitled to receive notices under this Section 11, the mortgagee (or mortgage insurer or guarantor) must send a written request to the Association stating both its name and address and the address of the Lot on which it has (or insures or guaranties) the mortgage.

B. Rights of Listed Mortgagee. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor (such holder, insurer or guarantor is herein referred to as a "Listed Mortgagee") of a mortgage encumbering a Lot and the legal description of such Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

(1) Any condemnation, loss or casualty loss which affects any material portion of the Association Property;

(2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot; and

(4) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his or her obligations under the San Palermo Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Association by said Owner where such failure or

delinquency has continued for a period of sixty (60) days.

C. Special FHLMC Provisions. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the Institutional Mortgagees or Members representing at least sixty-seven percent (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

(1) By any act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the real property comprising the Association Property, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Association Property shall not be deemed a transfer within the meaning of this section);

(2) Change the method of determining the obligations, Assessments, or other charges which may be levied against an Owner of a Home (a decision, including contract decisions, by the Board regarding Assessments shall not be subject to this provision where such decision is otherwise authorized by this Declaration);

(3) By act or omission change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of the Homes and of the Association Property (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(4) Fail to maintain insurance, as required by this Declaration; or

(5) Use hazard insurance proceeds for any Association Property losses for other than the replacement or reconstruction of such property.

Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Association Property and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of the Association policy, and Institutional Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

D. Right of Listed Mortgagee to Receive Financial Statement. Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements of the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

Section 12. APPROVAL OF ASSOCIATION LAWSUITS BY OWNERS. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of seventy-five percent (75%) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the San Palermo Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the San Palermo Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Association Property, any Improvements on the Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of seventy-five percent (75%) of the Owners); or
- (e) filing a compulsory counterclaim.

Section 13. COMPLIANCE WITH PROVISIONS. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Home except as elsewhere herein provided does consent and agree to, and shall be conclusively deemed to have consented and agreed to, every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property. Declarant shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than Declarant.

Section 14. COVENANT RUNNING WITH THE LAND. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Declarant and subsequent Owner(s) of the Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, lessees, and occupants of the Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, lessee, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Association, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

Section 15. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Association Property to the public, or for any public use.



Section 16. NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE ASSOCIATION PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

Section 17. ASSOCIATION AND DECLARANT AS ATTORNEY-IN-FACT. Each Owner, by reason of having acquired ownership of a Home, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to San Palermo by Declarant (hereinafter, collectively, "Modifications") and, in respect thereto, each Owner of a Home and occupant of a Home hereby designates the Association to act as agent and attorney-in-fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of acceptance to such Owner's Home, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any government agency to allow Declarant and/or its affiliates to complete the plan of development of San Palermo, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 17 may not be amended without Declarant's prior written consent.

Section 18. SECURITY. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Additionally, NEITHER DECLARANT NOR THE ASSOCIATION MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE. ALL OWNERS AGREE TO HOLD DECLARANT AND THE ASSOCIATION HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE ASSOCIATION AND ITS BOARD AND DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM, IF ANY, DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE

PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE ASSOCIATION AND ITS BOARD AND DECLARANT ARE NOT INSURERS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE ASSOCIATION, ITS BOARD AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

IN WITNESS WHEREOF, this Declaration has been signed by Declarant and joined in by the Association on the respective dates set forth below.

WITNESSES AS TO DECLARANT:

**DECLARANT:**

DIVOSTA HOMES, L.P.,  
a Delaware limited partnership  
By: DIVOSTA HOMES HOLDINGS, LLC  
a Delaware limited liability company, its general partner

Christine Scalomandre  
Print Name: Christine Scalomandre

Jannette R. Bingham  
Print Name: Jannette R. Bingham

By: Harmon D. Smith  
Its: Harmon D. Smith, President  
Date: February 1, 2005

**ASSOCIATION:**

SAN PALERMO AT SARASOTA  
HOMEOWNERS ASSOCIATION, INC, a Florida corporation not for profit

WITNESSES AS TO ASSOCIATION:

Christine Scalomandre  
Print Name Christine Scalomandre

Jannette R. Bingham  
Jannette R. Bingham  
Print Name

By: Jeff Bloch  
Name: Jeff Bloch  
Title: President

Attest: John Olinger  
Name: John Olinger  
Title: Secretary

(SEAL)

STATE OF FLORIDA)

) SS

COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by HARMON D. SMITH, the President of DiVosta Homes Holdings, LLC a Delaware limited liability company and general partner of DiVosta Homes, L.P., a Delaware limited partnership who is personally known to me, ~~or has produced~~ \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 1<sup>st</sup> day of Feb, 2005.



CHRISTINE SCALAMANDRE  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION # DD118351  
EXPIRES 08/31/2006  
BONDED THRU 1-888-NOTARY1

My Commission Expires: 8/31/06

Christine Scalamandre  
Notary Public, State of Florida at Large

Christine Scalamandre  
Typed, Printed or Stamped Name of Notary Public

STATE OF FLORIDA)

) SS

COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Jeff Bloch and John Olinger, the President and Secretary, respectively, of SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in them by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation ✓ is personally known to me, ~~or has produced~~ \_\_\_\_\_ as identification. ✓ is personally known to me, ~~or has produced~~ \_\_\_\_\_ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 1<sup>st</sup> day of February, 2005.



CHRISTINE SCALAMANDRE  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION # DD118351  
EXPIRES 08/31/2006  
BONDED THRU 1-888-NOTARY1

My Commission Expires:

Christine Scalamandre  
Notary Public, State of Florida at Large

Christine Scalamandre  
Typed, Printed or Stamped Name of Notary Public

INSTRUMENT # 2005054385  
121 PGS

**EXHIBIT A**

Legal Description of Property

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, and being more particularly described as follows:

Commence at the Northeast corner of the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, and go N 89° 20' 03" W, 95.00 feet for a Point of Beginning; thence S 00° 13' 01" W, 819.26 feet; thence S 00° 12' 17" W, 518.76 feet; thence S 89° 54' 09" W, 328.45 feet; thence N 00° 12' 17" E, 157.17 feet; thence S 89° 51' 34" W, 641.75 feet to a point on the East boundary line of DEER HOLLOW, PHASE III-B, Plat Book 36, Page 28, of the Public Records of Sarasota County, Florida; thence N 00° 08' 26" W, along the East boundary line of DEER HOLLOW, PHASE III-B, Plat book 36, Page 28, and DEER HOLLOW, UNIT IV A, Plat Book 32, Page 10, of the Public Records of Sarasota County, Florida, 1194.33 feet to the Northeast corner of Tract "S" of the aforementioned DEER HOLLOW SUBDIVISION, UNIT IV A; thence along the North line of the Southeast 1/4 of Section 13, S 89° 20' 03" E, 977.60 feet to the Point of Beginning.

**EXHIBIT B**

INSTRUMENT # 2005054385  
121 PGS

Articles of Incorporation of  
San Palermo Homeowners Association, Inc.

# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on November 29, 2004, as shown by the records of this office.

The document number of this corporation is N04000011070.

INSTRUMENT # 2005054385  
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Given under my hand and the  
Great Seal of the State of Florida  
at Tallahassee, the Capitol, this the  
Thirtieth day of November, 2004



CR2EO22 (2-03)

*Glenda E. Hood*  
Glenda E. Hood  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC.  
(A Florida Corporation Not For Profit)**

In order to form a corporation not for profit under and in accordance with the provisions of Chapters 617 and 720 of the Florida Statutes, the undersigned hereby incorporates this corporation not for profit for the purposes and with the powers hereinafter set forth and, to that end, the undersigned, by these Articles of Incorporation, certifies as follows:

**ARTICLE I  
DEFINITIONS**

The following words and phrases when used in these Articles of Incorporation (unless the context clearly reflects another meaning) shall have the following meanings:

1. "Articles" means these Articles of Incorporation and any amendments hereto.
2. "Assessments" means the assessments for which all Owners are obligated to the Association and includes "Individual Home Assessments" and "Special Assessments" (as such terms are defined in the Declaration) and any and all other assessments which are levied by the Association in accordance with the San Palermo Documents.
3. "Association" means the San Palermo At Sarasota Homeowners Association, Inc., a Florida corporation not for profit. The "Association" is NOT a condominium association and is not intended to be governed by Chapter 718, the Condominium Act, Florida Statutes.
4. "Association Property" means the property more particularly described in Article II of the Declaration.
5. "Board" means the Board of Directors of the Association.
6. "Bylaws" means the Bylaws of the Association and any amendments thereto.
7. "County" means Sarasota County, Florida.
8. "Declarant" means DiVosta Homes, LP, a Delaware limited partnership, and any successor or assign thereof to which DiVosta Homes, LP specifically assigns all or part of the rights of Declarant under the Declaration by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant.

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9. "Declaration" means the Declaration of Covenants, Restrictions and Easements for San Palermo, which is intended to be recorded amongst the Public Records of the County, and any amendments thereto.

10. "Director" means a member of the Board.

11. "Home" means an attached residential dwelling unit constructed within San Palermo, which is designed and intended for use and occupancy as a single-family residence.

12. "HOA Act" means the homeowners' association act, Chapter 720, Florida Statutes as amended through the date of the Declaration amongst the Public Records of the County.

13. "Member" means a member of the Association.

14. "Operating Expenses" means the expenses for which Owners are liable to the Association as described in the Declaration and any other San Palermo Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing, but not reconstructing, replacing or improving, the Association Property and improvements thereon and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other San Palermo Documents.

15. "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Home within San Palermo, and includes Declarant for as long as Declarant owns fee simple title to a Home, but excluding therefrom those having such interest as security for the performance of an obligation.

16. "San Palermo" means that planned residential development located in the County, which will consist of the land set forth in Exhibit "B" of the Declaration and may be expanded or contracted by the recording of one or more Supplemental Declaration(s).

17. "San Palermo Documents" means in the aggregate the Declaration, these Articles and the Bylaws and all of the instruments and documents referred to therein, including, but not limited to, any Amendment(s) and Supplemental Declaration(s).

Unless otherwise defined herein, the terms defined in the Declaration are incorporated herein by reference and shall appear in initial capital letters each time such terms appears in these Articles.

ARTICLE II  
NAME

The name of this corporation shall be SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC., a Florida corporation not for profit, whose principal address and mailing address is 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418.



ARTICLE III  
PURPOSES

The purpose for which the Association is organized is to take title to, operate, administer, manage, lease and maintain the Association Property in accordance with the terms of, and purposes set forth in, the San Palermo Documents and to carry out the covenants and enforce the provisions of the San Palermo Documents.

ARTICLE IV  
POWERS

The Association shall have the following powers and shall be governed by the following provisions:

A. The Association shall have all of the common law and statutory powers of a corporation not for profit.

B. The Association shall have all of the powers granted to the Association in the San Palermo Documents. All of the provisions of the Declaration and Bylaws which grant powers to the Association are incorporated into these Articles.

C. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to, the following:

1. To perform any act required or contemplated by it under the San Palermo Documents.

2. To make, establish, amend and enforce reasonable rules and regulations governing the use of the Association Property.

3. To make, levy and collect Assessments for the purpose of obtaining funds from its Members to pay Operating Expenses and other costs defined in the Declaration and costs of collection, and to use and expend the proceeds of Assessments in the exercise of the powers and duties of the Association.

4. To own, maintain, repair, replace, operate and convey the Association Property in accordance with the San Palermo Documents.

5. To enforce by legal means the obligations of the Members and the provisions of the San Palermo Documents.

6. To employ personnel, retain independent contractors and professional personnel, and enter into service contracts to provide for the maintenance, operation, administration and management of the Association Property and to enter into any other agreements consistent with the purposes of the Association, including, but not limited to, agreements with respect to

professional management of the Association Property and to delegate to such professional manager certain powers and duties of the Association.

7. To enter into the Declaration and any amendments thereto and instruments referred to therein.

8. To provide, to the extent deemed necessary by the Board, any and all services and do any and all things which are incidental to or in furtherance of things listed above or to carry out the Association mandate to keep and maintain San Palermo in a proper and aesthetically pleasing condition and to provide the Owners with services, amenities, controls and enforcement which will enhance the quality of life at San Palermo.

9. To borrow money and to obtain such financing as is necessary to maintain, repair and replace the Association Property in accordance with the Declaration and, as security for any such loan, to collaterally assign the Association's right to collect and enforce Assessments levied for the purpose of repaying any such loan.

10. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of seventy-five percent (75%) of all Members (at a duly called meeting of the Members at which a quorum is present) prior to the engagement of legal counsel by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the San Palermo Documents;
- (c) the enforcement of any applicable use and occupancy restrictions contained in the San Palermo Documents;
- (d) dealing with an emergency when waiting to obtain the approval of the Members creates a substantial risk of irreparable injury to the Association Property or to Member(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of seventy-five (75%) of the Members); or
- (e) filing a compulsory counterclaim.

ARTICLE V  
MEMBERS AND VOTING

The qualification of Members of the Association, the manner of their admission to membership, the manner of the termination of such membership and the manner of voting by Members shall be as follows:

A. Until such time as the first deed of conveyance of a Home from Declarant to an Owner is recorded amongst the Public Records of the County ("First Conveyance"), the membership of the Association shall be comprised solely of Declarant. Until the First Conveyance, Declarant shall be entitled to cast the one (1) and only vote on all matters requiring a vote of the membership.

B. Upon the First Conveyance, Declarant shall be a Member as to each of the remaining Homes until each such Home is conveyed to another Owner, and thereupon and thereafter each and every Owner, including Declarant as to Homes owned by Declarant, shall be a Member and exercise all of the rights and privileges of a Member.

C. Membership in the Association for Owners other than Declarant shall be established by the acquisition of ownership of fee simple title to a Home as evidenced by the recording of an instrument of conveyance amongst the Public Records of the County. Where title to a Home is acquired by conveyance from a party other than Declarant by means of sale, gift, inheritance, devise, judicial decree or otherwise, the person, persons or entity thereby acquiring such Home shall not be a Member unless or until such Owner shall deliver a true copy of a deed or other instrument of acquisition of title to the Association.

D. The Association shall have two (2) classes of voting membership:

1. "Class A Members" shall be all Members, with the exception of Declarant while Declarant is a Class B Member, each of whom shall be entitled to one (1) vote for each Home owned.

2. "Class B Members" shall be Declarant, who shall be entitled to three times the total number of votes of the Class A Members plus one. Class B membership shall cease and be converted to Class A membership upon the earlier to occur of the following events ("Turnover Date"):

(i) Three (3) months after the conveyance of ninety percent (90%) of the Homes by Declarant, as evidenced by the recording of instruments of conveyance of such Homes amongst the Public Records of the County; or

(ii) At such time as Declarant shall designate in writing to the Association.

On the Turnover Date, Class A Members, including Declarant, shall assume control of the Association and elect not less than a majority of the Board.

E. The designation of different classes of membership are for purposes of establishing the number of votes applicable to certain Homes, and nothing herein shall be deemed to require voting solely by an individual class on any matter which requires the vote of Members, unless otherwise specifically set forth in the San Palermo Documents.

F. No Member may assign, hypothecate or transfer in any manner his or her membership in the Association except as an appurtenance to his or her Home.

G. Any Member who conveys or loses title to a Home by sale, gift, devise, bequest, judicial decree or otherwise shall, immediately upon such conveyance or loss of title, no longer be a Member with respect to such Home and shall lose all rights and privileges of a Member resulting from ownership of such Home.

H. There shall be only one (1) vote for each Home, except for the Class B Members as set forth herein. If there is more than one Member with respect to a Home as a result of the fee interest in such Home being held by more than one person, such Members collectively shall be entitled to only one (1) vote. The vote of the Owners of a Home owned by more than one natural person or by a corporation or other legal entity shall be cast by the person named in a certificate signed by all of the Owners of the Home, or, if appropriate, by properly designated officers, partners or principals of the respective legal entity ("Voting Member"), and filed with the Secretary of the Association, and such certificate shall be valid until revoked by a subsequent certificate. If such a certificate is not filed with the Secretary of the Association, the vote of such Home shall not be considered for a quorum or for any other purpose.

Notwithstanding the foregoing provisions, whenever any Home is owned by a husband and wife they may, but shall not be required to, designate a Voting Member. In the event a certificate designating a Voting Member is not filed by the husband and wife, the following provisions shall govern their right to vote:

1. When both are present at a meeting, each shall be regarded as the agent and proxy of the other for purposes of casting the vote for each Home owned by them. In the event they are unable to concur in their decision upon any topic requiring a vote, they shall lose their right to vote on that topic at that meeting, but shall count for purposes of establishing a quorum.

2. When only one (1) spouse is present at a meeting, the person present may cast the Home vote without establishing the concurrence of the other spouse, absent any prior written notice to the contrary by the other spouse. In the event of prior written notice to the contrary to the Association by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

3. When neither spouse is present, the person designated in a "Proxy" (as defined in the Bylaws) signed by either spouse may cast the Home vote, when voting by Proxy is allowed, absent any prior written notice to the contrary to the Association by the other spouse or the designation of a different Proxy by the other spouse. In the event of prior written notice to the contrary to the Association or the designation of a different Proxy by the other spouse, the vote of said Home shall not be considered, but shall count for purposes of establishing a quorum.

I. A quorum shall consist of persons entitled to cast at least thirty percent (30%) of the total number of votes of the Members.

ARTICLE VI  
TERM

The term for which this Association is to exist shall be perpetual. In the event of dissolution of the Association (unless same is reinstated), other than incident to a merger or consolidation, all of the assets of the Association shall be conveyed to a similar homeowners association or a public agency having a similar purpose, or any Member may petition the appropriate circuit court of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and its properties in the place and stead of the dissolved Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties.

ARTICLE VII  
INCORPORATOR

The name and address of the Incorporator of these Articles is as follows:

John Olinger  
4500 PGA Boulevard, Suite 400  
Palm Beach Gardens, FL 33418

ARTICLE VIII  
OFFICERS

The affairs of the Association shall be managed by the President of the Association, assisted by the Vice President(s), Secretary and Treasurer, and, if any, by the Assistant Secretary(ies) and Assistant Treasurer(s), subject to the directions of the Board. Except for officers elected prior to the Turnover Date, officers must be Members, or the parents, children or spouses of Members.

The Board shall elect the President, Secretary and Treasurer, and as many Vice Presidents, Assistant Secretaries and Assistant Treasurers as the Board shall, from time to time, determine. The President shall be elected from amongst the membership of the Board, but no other officer need be a Director. The same person may hold two offices, the duties of which are not incompatible; provided, however, the office of President and a Vice President shall not be held by the same person, nor shall the office of President and Secretary or Assistant Secretary be held by the same person.

ARTICLE IX  
FIRST OFFICERS

The names of the officers who are to serve until the first election of officers by the Board are as follows:

President	-	Jeff Bloch
Vice President	-	Chris Chew
Secretary/Treasurer	-	John Olinger

ARTICLE X  
BOARD OF DIRECTORS

A. The number of Directors on the first Board of Directors of the Association ("First Board") shall be three (3). The number of Directors elected by the Members at the "Initial Election Meeting" (as hereinafter defined) shall be not less than three (3) nor more than five (5), as the Board shall from time to time determine prior to each meeting at which Directors are to be elected. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses or officers or directors of Members. There shall be only one (1) vote for each Director.

B. The names and addresses of the persons who are to serve as Directors on the First Board are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Jeff Bloch	Divosta Homes, L.P. 4500 PGA Blvd, Suite 400 Palm Beach Gardens, FL 33418
Chris Chew	Divosta Homes, L.P. 4500 PGA Blvd, Suite 400 Palm Beach Gardens, FL 33418
John Olinger	Divosta Homes, L.P. 4500 PGA Blvd, Suite 400 Palm Beach Gardens, FL 33418

Declarant reserves the right to replace and/or designate and elect successor Directors to serve on the First Board for so long as the First Board is to serve, as hereinafter provided.

C. Upon the Turnover Date, the Members (including Declarant shall be entitled to elect all the Directors. The election shall occur at a special meeting of the membership to be called by the Board for such purpose ("Initial Election Meeting"). The First Board shall serve until the Initial Election Meeting.

D. The Board shall continue to be so designated and elected, at each subsequent "Annual Members' Meeting" (as defined in the Bylaws).

E. A Director (other than a Declarant-appointed Director) may be removed from office upon the affirmative vote of a majority of the voting interests of Members for any reason deemed to be in the best interests of the Members. A meeting of the Purchaser Members to so remove a Director (other than a Declarant-appointed Director) shall be held upon the written request of ten percent (10%) of the Members. Any such recall shall be effected and a recall election shall be held, if applicable, as provided in the HOA Act.

F. The Initial Election Meeting shall be called by the Association, through the Board, within sixty (60) days after the Members other than Declarant are entitled to elect a majority of Directors as provided in Paragraph C hereof. A notice of meeting shall be forwarded to all Members in accordance with the Bylaws; provided, however, that the Members shall be given at least fourteen (14) days' notice of such meeting. The notice shall also specify the number of Directors which shall be elected by the Members.

G. At the Initial Election Meeting, a "staggered" term of office of the Board shall be created as follows:

1. a number equal to fifty percent (50%) of the total number of Directors rounded to the nearest whole number is the number of Directors whose term of office shall be established at two (2) years and the Directors serving for a two (2) year term will be the Directors receiving the most votes at the meeting; and
2. the remaining Directors' terms of office shall be established at one (1) year.

At each Annual Members' Meeting thereafter, as many Directors of the Association shall be elected as there are Directors whose regular term of office expires at such time, and the term of office of the Directors so elected shall be for two (2) years, expiring when their successors are duly elected and qualified.

H. The resignation of a Director who has been designated by Declarant or the resignation of an officer of the Association who has been elected by the First Board shall be deemed to remise, release, acquit, satisfy and forever discharge such officer or Director of and from any and all manner of action(s), cause(s) of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which the Association or the Members had, now have or will have or which any personal representative, successor, heir or assign of the Association or the Members hereafter can, shall or may have against said officer or Director for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of such resignation, except for such Director's or officer's willful misconduct or gross negligence.

#### ARTICLE XI INDEMNIFICATION

Each and every Director and officer of the Association shall be indemnified by the Association against all costs, expenses and liabilities, including attorney and paralegal fees at all trial and appellate levels and postjudgment proceedings, reasonably incurred by or imposed upon him or her in connection with any negotiation, proceeding, arbitration, litigation or settlement in which he or she becomes involved by reason of his/her being or having been a Director or officer of the Association, and the foregoing provision for indemnification shall apply whether or not such person is a Director or officer at the time such cost, expense or liability is incurred. Notwithstanding the

above, in the event of any such settlement, the indemnification provisions provided in this Article XI shall not be automatic and shall apply only when the Board approves such settlement and reimbursement for the costs and expenses of such settlement as being in the best interest of the Association, and in the event a Director or officer admits that he or she is or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Article XI shall not apply. The foregoing right of indemnification provided in this Article XI shall be in addition to and not exclusive of any and all rights of indemnification to which a Director or officer of the Association may be entitled under statute or common law.

## ARTICLE XII BYLAWS

The Bylaws shall be adopted by the First Board, and thereafter may be altered, amended or rescinded in the manner provided for in the Bylaws. In the event of any conflict between the provisions of these Articles and the provisions of the Bylaws, the provisions of these Articles shall control.

## ARTICLE XIII AMENDMENTS

A. Prior to the First Conveyance, these Articles may be amended only by an instrument in writing signed by the incorporator of these Articles and filed in the Office of the Secretary of State of the State of Florida.

B. After the First Conveyance, and prior to the Turnover Date, these Articles may be amended solely by a majority vote of the Board, without the prior written consent of the Members, at a duly called meeting of the Board.

C. After the Turnover Date, these Articles may be amended in the following manner:

1. (a) The Board shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the Members, which may be at either the Annual Members' Meeting or a special meeting. Any number of proposed amendments may be submitted to the Members and voted upon by them at one meeting.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each Member within the time and in the manner provided in the Bylaws for the giving of notice of meetings.

(c) At such meeting, a vote of the Members shall be taken on the proposed amendment(s). The proposed amendment(s) shall be adopted upon receiving the affirmative vote of a majority of the total voting interests present at such meeting.



2. An amendment may be adopted by a written statement (in lieu of a meeting) signed by all Members and all members of the Board setting forth their intention that an amendment to the Articles be adopted.

D. These Articles may not be amended without the written consent of a majority of the members of the Board.

E. Notwithstanding any provisions of this Article XIII to the contrary, these Articles shall not be amended in any manner which shall prejudice the rights of: (i) Declarant, without the prior written consent thereto by Declarant, for so long as Declarant holds either a leasehold interest in or title to at least one (1) Home; and (ii) any "Institutional Mortgagee" (as such term is defined in the Declaration) without the prior written consent of such Institutional Mortgagee.

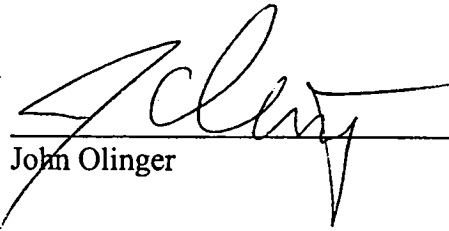
F. Notwithstanding the foregoing provisions of this Article XIII, no amendment to these Articles shall be adopted which shall abridge, amend or alter the rights of Declarant hereunder, including, but not limited to, Declarant's right to designate and select members of the First Board or otherwise designate and select Directors as provided in Article X hereof, nor shall any amendment be adopted or become effective without the prior written consent of Declarant.

G. Any instrument amending these Articles shall identify the particular article or articles being amended and shall provide a reasonable method to identify the amendment being made. A certified copy of each such amendment shall be attached to any certified copy of these Articles, and a copy of each amendment certified by the Secretary of State shall be recorded amongst the Public Records of the County.

ARTICLE XIV  
REGISTERED OFFICE AND REGISTERED AGENT

The street address of the initial registered office of the Association is 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418 and the initial registered agent of the Association at that address shall be John Olinger.

IN WITNESS WHEREOF, the Incorporator has hereunto affixed his signature this 24 day of November, 2004.

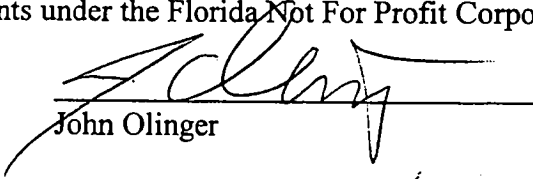
  
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The undersigned hereby accepts the designation of Registered Agent as set forth in Article XIV of these Articles of Incorporation, and acknowledges that he is familiar with and accepts the obligations imposed upon registered agents under the Florida Not For Profit Corporation Act.

  
John Olinger

Dated: November 24, 2004

San Palermo Articles of Incorporation-final.DOC

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**EXHIBIT C**

Bylaws of San Palermo Homeowners Association, Inc.

**BYLAWS  
OF  
SAN PALERMO AT SARASOTA HOMEOWNERS ASSOCIATION, INC.**

**Section 1. Identification of Association**

These are the Bylaws of San Palermo At Sarasota Homeowners Association, Inc. ("Association") as duly adopted by its Board of Directors ("Board"). The Association is a corporation not for profit, organized pursuant to Chapters 617 and 720, Florida Statutes.

1.1. The office of the Association shall be for the present at 4500 PGA Boulevard, Suite 400, Palm Beach Gardens, Florida 33418, and thereafter may be located at any place designated by the Board.

1.2. The fiscal year of the Association shall be the calendar year.

1.3. The seal of the Association shall bear the name of the Association, the word "Florida" and the words "Corporation Not For Profit."

**Section 2. Explanation of Terminology**

The terms defined in the Articles of Incorporation of the Association ("Articles") as well as in the Declaration of Covenants, Conditions, and Restrictions for San Palermo ("Declaration") are incorporated herein by reference and shall appear in initial capital letters each time such terms appear in these Bylaws.

**Section 3. Membership; Members' Meetings; Voting and Proxies**

3.1. The qualification of Members, the manner of their admission to membership in the Association, the manner of termination of such membership and the voting by Members shall be as set forth in the Articles.

3.2. The Members shall meet annually ("Annual Members' Meeting"). The Annual Members' Meeting shall be held at the office of the Association or at such other place in the County as the Board may determine and on such day and at such time as designated by the Board in the notice of such meeting commencing with the year following the year in which the Articles are filed with the Secretary of State. The purpose of the Annual Members' Meeting shall be to hear reports of the officers, elect members of the Board (when that shall be appropriate as determined by the provisions of the Articles) and transact any other business authorized to be transacted at such Annual Members' Meeting.

3.3. Special meetings (meetings other than the Annual Members' Meeting) of the Members shall be held at any place within the County whenever called by the President or Vice

President or by a majority of the Board. A special meeting must be called by such President or Vice President upon receipt of a written request from Members having the right to vote at least ten percent (10%) of the total number of votes entitled to be cast by Members at any such special meeting.

3.4. Except as otherwise provided in the Articles, a written notice of each Members' meeting, whether an Annual Members' Meeting or a special meeting (collectively "Meeting"), shall be given to each Member entitled to vote thereat at his last known address as it appears on the books of the Association and shall be mailed or hand delivered to the said address or electronically transmitted to the location furnished by the Member for that purpose not less than fourteen (14) days nor more than forty-five (45) days prior to the date of the Meeting. Proof of such mailing, delivery or electronic transmission shall be given by the affidavit of the person giving the notice. Any notice given hereunder shall state the time and place of the Meeting and the purposes for which the Meeting is called. The notices of all Annual Members' Meetings shall, in addition, specify the number of Directors of the Association to be designated by Declarant and the number of Directors to be elected by the Members, if applicable. Notwithstanding any provisions hereof to the contrary, notice of any Meeting may be waived before, during or after such Meeting by a Member or by the person entitled to vote for such Member by signing a document setting forth the waiver of such notice.

3.5. The Members may, at the discretion of the Board, act by written response in lieu of a Meeting provided written notice of the matter or matters to be agreed upon is given to the Members or duly waived in accordance with the provisions of these Bylaws. Unless some greater number is required under the San Palermo Documents and except as to the election of Directors, which shall be accomplished by plurality vote, the decision of a majority of the votes cast by Members as to the matter or matters to be agreed or voted upon shall be binding on the Members provided a quorum is either present at such Meeting or submits a response if action is taken by written response in lieu of a Meeting, as the case may be. The notice with respect to actions to be taken by written response in lieu of a Meeting shall set forth the time period during which the written responses must be received by the Association.

3.6. (a) A quorum of the Members shall consist of Members entitled to cast thirty percent (30%) of the total number of votes of the Members. Limited "Proxies" and general "Proxies" (as hereinafter defined in Paragraph 3.10) may be used to establish a quorum.

(b) When a quorum is present at any Meeting and a question which raises the jurisdiction of such Meeting is presented, the holders of a majority of the voting rights present in person or represented by written Proxy shall be required to decide the question. However, if the question is one upon which a vote other than the majority vote of a quorum is required by express provision of the San Palermo Documents or by law, then such express provision shall govern and control the required vote on the decision of such question.

3.7. At any Annual Members' Meeting when elections of Directors are to occur, written ballots are to be supplied to Members for such purposes. Members may vote for Directors by Proxy. Furthermore, at any Annual Members' Meeting at which Directors are to be elected, the

"Chairman" (as hereinafter defined in Paragraph 7.2) shall appoint an "Election Committee" consisting of three (3) Members to supervise the election, count and verify ballots, disqualify votes if such disqualification is justified under the circumstances and certify the results of the election to the Board. The Election Committee shall be able to determine questions within its jurisdiction by plurality vote of all three (3) members, but matters resulting in deadlocked votes of the Election Committee shall be referred to the entire Board for resolution.

3.8. If a quorum is not in attendance at a Meeting, the Members who are present, either in person or by Proxy, may adjourn the Meeting from time to time until a quorum is present with no further notice of such adjourned Meeting being required unless otherwise determined by the Board.

3.9. Minutes of all Meetings shall be kept in a businesslike manner and be available for inspection by the Members and Directors at all reasonable times. The Association shall retain minutes for at least seven (7) years subsequent to the date of the meeting the minutes reflect.

3.10. Voting rights of Members shall be as stated in the Articles with respect to the election of all Boards other than the First Board. Such votes may be cast in person or by proxy. Proxies may be used to vote on other agenda items at meetings at which Directors are to be elected, and may also be used to establish a quorum. "Proxy" is defined to mean an instrument containing the appointment of a person who is substituted in the place and stead of the person or authorized representative of an entity entitled to vote. Proxies shall be in writing signed by the person or authorized representative of an entity giving the same and shall be valid only for the particular Meeting designated therein and, if so stated in the Proxy, any adjournments thereof, provided, however, any proxy automatically expires ninety (90) days after the date of the meeting for which it was originally given. A Proxy must be filed with the Secretary of the Association before the appointed time of the Meeting in order to be valid. Any Proxy may be revoked prior to the time a vote is cast in accordance with such Proxy.

3.11. The voting on any matter at a Meeting shall be by secret ballot upon request of the holders of twenty percent (20%) of the votes represented at such Meeting and entitled to be cast on such matter, if such request is made prior to the vote in question.

#### Section 4. Board; Directors' Meetings

4.1. The business and administration of the Association shall be by its Board.

4.2. The election and, if applicable, designation of Directors shall be conducted in accordance with the Articles. Except for Declarant-appointed Directors, Directors must be Members or the parents, children or spouses of Members.

4.3. (a) Any person elected or designated as a Director shall have all the rights, privileges, duties and obligations of a Director of the Association.

(b) The term of a Director's service shall be as stated in the Articles and, if not so stated, shall extend until the next Annual Members' Meeting and thereafter until his or her successor is duly elected and qualified or until he or she resigns or is removed in the manner elsewhere provided.

4.4. The organizational meeting of a newly elected Board shall be held within ten (10) days of its election at such place and time as shall be fixed by the Directors at the meeting at which they were elected. Provided the organizational meeting is held directly following the Annual Members' Meeting or the Initial Election Meeting, no further notice of the organizational meeting shall be necessary; if not, however, notice of the organizational meeting shall be given in accordance with the HOA Act.

4.5. Regular meetings of the Board may be held at such times and places in the County as shall be determined from time to time by a majority of the Directors. Special meetings of the Board may be called at the discretion of the President or the Vice President. Special meetings must be called by the Secretary at the written request of at least one-third (1/3) of the Directors. Any such special meeting may be held in the County at such time and place as determined by the Directors requesting such meeting or in such other place as all of the Directors shall agree upon.

4.6. Notice of the time and place of regular and special meetings of the Board, or adjournments thereof, shall be given to each Director personally, by mail, telephone or electronically transmitted if correctly directed to an electronic mail address at which the Director has consented to receive notice at least three (3) days prior to the day named for such meeting unless such notice is waived before, during or after such meeting. Any Director may waive notice of the meeting in writing before, during or after a meeting and such waiver shall be deemed equivalent to the receipt of notice by such Director.

4.7. Notice of all Board meetings shall be given to the members in accordance with the HOA Act.

4.8. A quorum of the Board shall consist of the Directors entitled to cast a majority of the votes of the entire Board. Matters approved by a majority of the Directors present at a meeting at which a quorum is present shall constitute the official acts of the Board, except as may be otherwise specifically provided by law, by the Articles or elsewhere herein. If at any meeting of the Board there shall be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any meeting that takes place on account of a previously adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted. In the case of the adjournment of a meeting, no further notice of the adjourned meeting need be given unless otherwise determined by the Board.

4.9. The presiding officer at all Board meetings shall be the President. In the absence of the President, the Directors shall designate any one of their number to preside.

4.10. Directors' fees, if any, shall be determined by the Members.

4.11. Minutes of all meetings of the Board shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times.

4.12. Meetings of the Board shall be open to all Members. The Board may also hold closed meetings to the extent permitted by applicable law, including, by way of example but not by way of limitation, when the discussion at a meeting is governed by attorney-client privilege. Members shall have the right to participate in meetings with reference to all designated agenda items in accordance with the HOA Act and any rules and regulations promulgated by the Association. In the event a Member conducts himself or herself in a manner detrimental to the carrying on of the meeting, then any Director may expel said Member from the meeting by any reasonable means which may be necessary to accomplish said Member's expulsion. Also, any Director shall have the right to exclude from any meeting of the Board any person who is not able to provide sufficient proof that he or she is a Member or a duly authorized representative, agent or proxy holder of a Member, unless said person has been specifically invited by any of the Directors to participate in such meeting.

4.13. Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, specifically setting forth the action to be taken, shall be signed by all the Directors entitled to vote with respect to the subject matter thereof and such consent shall have the same force and effect as a unanimous vote of the Directors, provided, however, whenever assessments are to be considered, they may be considered only at a meeting of the Directors properly noticed in accordance with the HOA Act.

#### Section 5. Powers and Duties of the Board

5.1. All of the powers and duties of the Association shall be exercised by the Board. Such powers and duties of the Board shall include, but not be limited to, all powers and duties set forth in the San Palermo Documents, as well as all of the powers and duties of a director of a corporation not for profit not inconsistent therewith.

5.2. The Association may employ a manager to perform any of the duties, powers or functions of the Association. Notwithstanding the foregoing, the Association may not delegate to the manager the power to conclusively determine whether the Association should make expenditures for capital additions or improvements chargeable against the Association funds. The members of the Board shall not be personally liable for any omission or improper exercise by the manager of any duty, power or function delegated to the manager by the Association.

#### Section 6. Late Fees

Quarterly Assessments not paid within thirty (30) days of their respective due dates will incur a late charge not to exceed thirty (\$30.00) Dollars. Quarterly Assessments not paid within sixty (60) days of their respective due dates will incur a late charge not to exceed fifty (\$50.00) Dollars. Quarterly Assessments not paid within ninety (90) days of their respective due dates will incur a late charge not to exceed seventy (\$70.00) Dollars. Owners shall be responsible to pay all legal fees



(including, but not limited to, attorney and paralegal fees and court costs) incurred in connection with the collection of late Assessments whether or not an action at law to collect said Assessments and foreclose the Association's lien has been commenced. The Board has authorized the following initial schedule of fees for such circumstances:

(a) One Hundred Fifty Dollars (\$150) for a Claim of Lien plus recording costs and sending of Notice of Intention to Foreclose;

(b) One Hundred Fifty Dollars (\$150) for a Satisfaction of Lien plus recording costs; and

(c) Any further action would require an hourly computation of attorney and/or paralegal time spent pursuing collection of such unpaid Assessments.

#### Section 7. Officers of the Association

7.1. Executive officers of the Association shall be the President, who shall be a Director, one or more Vice Presidents, a Treasurer and a Secretary, all of whom shall be elected annually by the Board. Any officer may be removed without cause from office by vote of the Directors at any meeting of the Board. The Board may, from time to time, elect such other officers and assistant officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association. One person may hold any two offices simultaneously, except when the functions of such offices are incompatible, but no person shall hold the office of President and any of the following offices simultaneously: Vice President, Secretary or Assistant Secretary.

7.2. The President shall be the chief executive officer of the Association. He or She shall have all of the powers and duties which are usually vested in the office of the President of an association or a corporation not for profit, including, but not limited to, the power to appoint such committees from among the Members at such times as he or she may, in his or her discretion, determine appropriate to assist in the conduct of the affairs of the Association. If in attendance, the President ("Chairman") shall preside at all meetings of the Board and the Members; provided, however, that the President may appoint a substitute.

7.3. In the absence or disability of the President, the Vice President shall exercise the powers and perform the duties of the President. The Vice President shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Board.

7.4. The Secretary shall keep the minutes of all meetings of the Board and the Members, which minutes shall be kept in a businesslike manner and be available for inspection by Members and Directors at all reasonable times. The Secretary shall have custody of the seal of the Association and affix the same to instruments requiring such seal when duly authorized and directed to do so. The Secretary shall be custodian for the corporate records of the Association, except those of the Treasurer, and shall perform all of the duties incident to the office of Secretary of the

Association as may be required by the Board or the President. The Assistant Secretary, if any, shall perform the duties of the Secretary when the Secretary is absent and shall assist the Secretary under the supervision of the Secretary.

7.5. The Treasurer shall have custody of all of the monies of the Association, including funds, securities and evidences of indebtedness. The Treasurer shall keep the assessment rolls and accounts of the Members and shall keep the books of the Association in accordance with good accounting practices and he or she shall perform all of the duties incident to the office of the Treasurer. The Assistant Treasurer, if any, shall perform the duties of the Treasurer when the Treasurer is absent and shall assist the Treasurer under the supervision of the Treasurer.

7.6. The compensation, if any, of the officers and other employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from hiring a Director as an employee of the Association or preclude contracting with a Director or a party affiliated with a Director for the management or performance of contract services for all or any part of San Palermo.

#### Section 8. Resignations

Any Director or officer may resign his or her post at any time by written resignation, delivered to the President or Secretary, which shall take effect upon its receipt unless a later date is specified in the resignation, in which event the resignation shall be effective from such date unless withdrawn. The acceptance of a resignation shall not be required to make it effective. The conveyance of all Homes owned by any Director or officer (other than appointees of Declarant) shall constitute a written resignation of such Director or officer.

#### Section 9. Accounting Records; Fiscal Management

9.1. The Association shall prepare financial reports and maintain accounting records in accordance with the HOA Act. The accounting records of the Association shall be open to inspection by Members and Institutional Mortgagees or their respective authorized representatives at reasonable times. Such authorization as a representative of a Member must be in writing and signed by the person giving the authorization and dated within sixty (60) days of the date of the inspection. Such records shall include, but not be limited to: (i) a record of all receipts and expenditures; (ii) an account for each Home within San Palermo which shall designate the name and address of the Owner thereof, the amount of Individual Home Assessments and all other Assessments, if any, charged to the Home, the amounts and due dates for payment of same, the amounts paid upon the account and the dates paid, and the balance due; (iii) any tax returns, financial statements and financial reports of the Association; and (iv) any other records that identify, measure, record or communicate financial information.

9.2. The Board shall adopt a Budget (as defined and provided for in the Declaration) of the anticipated Operating Expenses for each forthcoming calendar year (the fiscal year of the Association being the calendar year) at a special meeting of the Board ("Budget

Meeting") called for that purpose to be held no later than the month of November of the year preceding the year to which the Budget applies. Prior to the Budget Meeting, a proposed Budget for the Operating Expenses shall be prepared by or on behalf of the Board. Within thirty (30) days after adoption of the Budget, a copy thereof shall be furnished to each Member, upon request, and each Owner shall be given notice of the Individual Home Assessment applicable to his or her Home(s). The copy of the Budget, if requested, shall be deemed furnished and the notice of the Individual Home Assessment shall be deemed given upon its delivery or upon its being mailed to the Owner shown on the records of the Association at his or her last known address as shown on the records of the Association.

9.3. In administering the finances of the Association, the following procedures shall govern: (i) the fiscal year shall be the calendar year; (ii) any monies received by the Association in any calendar year may be used by the Association to pay expenses incurred in the same calendar year; (iii) there shall be apportioned between calendar years on a *pro rata* basis any expenses which are prepaid in any one calendar year for Operating Expenses which cover more than such calendar year; (iv) Assessments shall be made quarterly in amounts no less than are required to provide funds in advance for payment of all of the anticipated current Operating Expenses and for all unpaid Operating Expenses previously incurred; and (v) items of Operating Expenses incurred in a calendar year shall be charged against income for the same calendar year regardless of when the bill for such expenses is received. Notwithstanding the foregoing, the Assessments for Operating Expenses and any periodic installments thereof shall be of sufficient magnitude to insure an adequacy and availability of cash to meet all budgeted expenses in any calendar year as such expenses are incurred in accordance with the cash basis method of accounting.

9.4. Individual Home Assessments shall be payable as provided in the Declaration.

9.5. No Board shall be required to anticipate revenue from Assessments or expend funds to pay for Operating Expenses not budgeted or which shall exceed budgeted items, and no Board is required to engage in deficit spending. Should there exist any deficiency which results from there being greater Operating Expenses than monies from Assessments, then such deficits shall be carried into the next succeeding year's Budget as a deficiency or shall be the subject of a Special Assessment or an upward adjustment to the Individual Home Assessment.

9.6. The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board in which the monies of the Association shall be deposited. Withdrawal of monies from such account shall be only by checks signed by such persons as are authorized by the Board.

9.7. A report of the accounts of the Association shall be made in compliance with the financial reporting requirements set forth in Chapter 720, Florida Statutes.

#### Section 10. Rules and Regulations

The Board may at any meeting of the Board adopt rules and regulations or amend, modify or

rescind then existing rules and regulations for the operation of San Palermo; provided, however, that such rules and regulations are not inconsistent with the terms or provisions of the San Palermo Documents. Copies of any rules and regulations promulgated, amended or rescinded shall be mailed or delivered to all Members at the last known address for such Members as shown on the records of the Association at the time of such delivery or mailing and shall not take effect until forty-eight (48) hours after such delivery or mailing, or, in the event both forms of notification are used, whichever is later. Notwithstanding the foregoing, when rules and regulations are to regulate the use of a specific portion of the Association Property, same shall be conspicuously posted at such facility and such rules and regulations shall be effective immediately upon such posting. Care shall be taken to insure that posted rules and regulations are conspicuously displayed and easily readable and that posted signs or announcements are designed with a view toward protection from weather and the elements. Posted rules and regulations which are torn down or lost shall be promptly replaced.

#### Section 11. Parliamentary Rules

The then latest edition of Robert's Rules of Order shall govern the conduct of all meetings of the Members and the Board; provided, however, if such rules of order are in conflict with any of the San Palermo Documents, Robert's Rules of Order shall yield to the provisions of such instrument.

#### Section 12. Roster of Owners

Each Owner shall file with the Association a copy of the deed or other document showing his ownership interest in San Palermo. The Association shall maintain such information. The Association may also maintain the electronic mailing addresses and numbers designated by Owners for receiving notices sent by electronic transmission of those Owners consenting to receive notice by electronic transmission. The electronic mailing address and numbers provided by Owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. The Association may rely on the accuracy of such information for all purposes until notified in writing of changes therein.

#### Section 13. Amendment of the Bylaws

13.1. These Bylaws may be amended as hereinafter set forth in this Section 13.

13.2. After the Turnover Date, any Bylaw of the Association may be amended or repealed, and any new Bylaw of the Association may be adopted by either:

(i) a majority vote of the Members at any Annual Members' Meeting or any special meeting of the Members called for that purpose or by majority action of the Members who have acted by written response in lieu of a Meeting as permitted by these Bylaws; or

(ii) by the affirmative vote of a majority of the Directors then in office at any regular meeting of the Board or at any special meeting of the Board called for that purpose or by written instrument signed by all of the Directors as is permitted by these Bylaws, provided that the

Directors shall not have any authority to adopt, amend or repeal any Bylaw if such new Bylaw or such amendment or the repeal of a Bylaw would be inconsistent with any Bylaw previously adopted by the Members.

13.3. Notwithstanding any of the foregoing provisions of this Section 13 to the contrary, until the Turnover Date, all amendments or modifications to these Bylaws and adoption or repeal of Bylaws shall only be made by action of the First Board as described in the Articles, which First Board shall have the power to amend, modify, adopt and repeal any Bylaws without the requirement of any consent, approval or vote of the Members.

13.4. Notwithstanding the foregoing provisions of this Section 13, there shall be no amendment to these Bylaws which shall abridge, amend or alter the rights of: (i) Declarant, without the prior written consent thereto by Declarant for so long as Declarant holds title to at least one (1) Home; or (ii) any Institutional Mortgagee without the prior written consent of such Institutional Mortgagee.

13.5. Any instrument amending, modifying, repealing or adding Bylaws shall identify the particular section or sections affected and give the exact language of such modification, amendment or addition or of the provisions repealed. A copy of each such amendment, modification, repeal or addition attested to by the Secretary or Assistant Secretary of the Association shall be recorded amongst the Public Records of the County.

#### Section 14. Mediation

Pursuant to the HOA Act, mandatory mediation before the Department of Business and Professional Regulation ("Department") shall be required prior to institution of court litigation for disputes involving certain actions or inactions, as described therein.

#### Section 15. Recall of Board Members and Election Disputes

Pursuant to the HOA Act, mandatory binding arbitration before the Department shall be required for election disputes and disputes involving the recall of any member of the Board. Any member of the Board may be recalled and removed from office as provided for and described in the HOA Act.

#### Section 16. Interpretation

In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control; and in the event of any conflict between the Articles and the Declaration, the Declaration shall control.

SAN PALERMO AT SARASOTA  
HOMEOWNERS ASSOCIATION, INC., a  
Florida not-for-profit corporation

By: *Jeffrey Bloch*  
Jeffrey Bloch, President

Attest: *John Olinger*  
John Olinger, Secretary

(SEAL)

INSTRUMENT # 2005054385  
121 PGS

**EXHIBIT D**

Drainage Easement(s)

118.50



INSTRUMENT # 2005054385  
121 PGS

2

This instrument Prepared by and  
Return to: *Allan B. LAVIS Esq.*  
Stephen C. Chumbris  
Holland & Knight LLP  
P.O. Box 8542  
St. Petersburg, FL 33731

RECORDED IN OFFICIAL RECORDS  
INSTRUMENT # 2000143508 26 PGS  
2000 NOV 13 09:32 AM  
KAREN E. RUSHING  
CLERK OF CIRCUIT COURT  
SARASOTA COUNTY, FLORIDA  
DCOURSEY Receipt#088828

DECLARATION OF EASEMENTS Doc Stamp-Deed: 0.70

THIS DECLARATION (the "Declaration") is made this 9 day of NOVEMBER, 2000, by LF INVESTMENTS, INC., a Florida corporation, whose address is 1000 Marlin Lakes Circle, Sarasota, Florida 34232 ("Declarant")

RECITALS

A. Declarant is the owner of a parcel of land more fully described on Exhibit A attached hereto and made a part hereof ("Parcel 1") which parcel of land is improved with a multifamily apartment complex consisting of three hundred fifty-eight (358) dwelling units commonly referred to as "Marlin Lakes"

B. Declarant is the owner of an adjacent and contiguous parcel of land more fully described on Exhibit B attached hereto ("Parcel 2") which is presently undeveloped but which Declarant intends to develop in the future as a two hundred forty (240) unit, more or less, residential project. In furtherance of this plan, Declarant, or its successor, may build and operate the Parcel 2 residential units as apartments and/or townhouses or may record a declaration of condominium covering all of Parcel 2 and then convey individual condominium units located on Parcel 2 to third parties, and cause the title to the common elements of the condominium created on Parcel 2 to be placed in a condominium association to be created at the time that the declaration of condominium is recorded

C. Declarant is the owner of a parcel of land more fully described on Exhibit C attached hereto ("Parcel 3") which is adjacent to and contiguous to Parcel 1 and Parcel 2, is presently undeveloped, and which Declarant is reserving for future purposes.

D There are certain sewer and other improvements located or to be located upon Parcel 1, more particularly described herein, which are needed to service and benefit Parcel 2.



E. There are certain roadway and other improvements located or to be located upon Parcel 2, more particularly described herein, which are needed to service and benefit Parcel 1.

F. There are certain drainage improvements currently located upon Parcel 1, and to be located on Parcel 1, and which are to be located on Parcel 2, more particularly described herein, which are needed to service and reciprocally benefit Parcel 1 and Parcel 2 and the owners of Parcel 1 and Parcel 2.

G. There are certain improvements located and to be located upon Parcel 3 which benefit Parcel 1 and Parcel 2, as more particularly described herein.

H. Declarant desires to create easements that, automatically upon the recording of this Declaration will burden Parcel 1 and benefit Parcel 2, specifically providing for the use and enjoyment of the facilities located or to be located on Parcel 1, as enumerated herein, for the benefit of Parcel 2 as well as any persons now or hereafter owning any interest in Parcel 2 or any condominium units created on Parcel 2 pursuant to a declaration of condominium recorded thereon.

I. Declarant desires to create easements that, automatically upon the recording of this Declaration will burden Parcel 2 and benefit Parcel 1, specifically providing for the use and enjoyment of the facilities located or to be located on Parcel 2, as enumerated herein, for the benefit of Parcel 1 as well as any persons now or hereafter owning any interest in Parcel 1.

J. Declarant desires to create easements that, automatically upon the recording of this Declaration will burden Parcel 3 and benefit Parcel 1, specifically providing for the use and enjoyment of the facilities located or to be located on Parcel 1, as enumerated herein, for the benefit of Parcel 1 as well as any persons now or hereafter owning any interest in Parcel 1.

K. Declarant desires to create easements that, automatically upon the recording of this Declaration will burden Parcel 3 and benefit Parcel 2, specifically providing for the use and enjoyment of the facilities located or to be located on Parcel 2, as enumerated herein, for the benefit of Parcel 2 as well as any persons now or hereafter owning any interest in Parcel 2 or any condominium units created on Parcel 2 pursuant to a declaration of condominium recorded thereon.

L. Declarant has previously recorded a Declaration of Easements on April 10, 2000, as Official Records Instrument #2000045655 25 PGS in the Public Records of Sarasota County, Florida (the "First Declaration"), which Declarant has terminated by and through that certain Termination of Declaration of Easements recorded on 11-13-2000, 2000, as Official Records Instrument # 2000143507

in the Public Records of Sarasota County, Florida. This Declaration is intended to replace in its entirety the First Declaration that has been terminated as aforesaid.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Declarant hereby declares as follows:

1. Easements.

A. Upon the recording of this Declaration by the Declarant, the specifically enumerated portions of Parcel 1, Parcel 2, and Parcel 3 shall automatically be subject to the various easements created in this Declaration. It is the intent of Declarant that although Declarant is presently the owner of Parcel 1, Parcel 2, and Parcel 3, as of the date that this Declaration is recorded, the easements created by this Declaration shall not merge with Declarant's title to Parcel 1, Parcel 2, or Parcel 3. Declarant is making this Declaration with the intention of transferring its ownership interest in and to all or part of Parcel 1, Parcel 2, or Parcel 3, or any one or more of such parcels, to third parties and desires to provide for the orderly use and development of these three parcels in accordance with the terms of this Declaration. It is the intention of the Declarant that the easements created hereunder shall exist in perpetuity and run with the land and, therefore, any reference to the "owner" of Parcel 1, Parcel 2, or Parcel 3 in this Declaration shall include any single or multiple owners of all or any portion or part of Parcel 1, Parcel 2, or Parcel 3 at the time of the recording of this Declaration or at any time thereafter.

B. The non-exclusive rights and easements created by this Declaration are as follows:

1. Ingress-Egress, Utility and Drainage Easement located on Parcel 3 for the Benefit of Parcel 2.

a. A perpetual non-exclusive right and easement is hereby created across, under, through, and over that portion of Parcel 3 described on Exhibit D attached hereto ("Parcel D") for the benefit of Parcel 2, its owners, mortgagees, agents, guests and invitees, for ingress and egress over and across Parcel D for pedestrian, vehicular and bicycle traffic to and from Parcel 2 and the publicly dedicated right-of-way presently designated as "Cattleman Road North", as well as for the installation, maintenance, and repair of drainage and utility improvements. The easement granted herein shall include the right of the owner of Parcel 2 to place signage on the Parcel D in the manner and to the extent provided in subparagraph 1c, below. The right and easement created hereunder benefits Parcel 2 and burdens Parcel 3 and shall run with the land. Declarant, as the owner of Parcel 3, retains, on behalf of itself, its successors, mortgagees, agents, guests or

invitees, the right to use Parcel D in a manner not inconsistent with the easement granted herein.

b. The owner of Parcel 2 shall bear all costs and expenses for any improvements constructed in, on, over, or under Parcel D in order to carry out the easement purposes. The owner of Parcel 2 shall have the sole responsibility and bear all costs for maintenance and/or repair of Parcel D for its intended use as an ingress-egress, drainage and utility easement including, without limitation, any pavement, curbing, landscaping, lighting, utilities, or drainage improvements located now or in the future upon Parcel D.

c. The owner of Parcel 2 shall have the right to place signage on Parcel D identifying the name of the development on Parcel 2 as well as directional information for access to Parcel 2. The owner of Parcel 2 shall pay the cost and expense for the erection, repair, maintenance, and replacement of any such signage.

2. Ingress-Egress, Utility and Drainage Easement located on Parcel 3 for the Benefit of Parcel 1 and Parcel 2.

a. A perpetual non-exclusive right and easement is hereby created across, under, through, and over that portion of Parcel 3 described on Exhibit E attached hereto ("Parcel E") for the benefit of Parcel 1 and Parcel 2, as well as their respective owners, mortgagees, agents, guests and invitees, for ingress and egress over and across Parcel E for pedestrian, vehicular and bicycle traffic to and from Parcel 1 (or an easement for ingress and egress benefiting Parcel 1) and Parcel 2 and the publicly dedicated right-of-way presently designated as "Cattleman Road North", as well as for the installation, maintenance and repair of drainage and underground utility improvements. Further, any drainage improvements which would interfere with ingress and egress shall be installed underground. The right and easement created hereunder benefits Parcel 1 and Parcel 2 and burdens Parcel 3 and shall run with the land. Declarant, as the owner of Parcel 3, retains, on behalf of itself, its successors, mortgagees, agents, guests or invitees, the right to use Parcel E in a manner not inconsistent with the easement granted herein.

b. The owner of Parcel 2 shall pay the cost for installation of any improvements on Parcel E for its intended use as an ingress-egress easement. Once installed, the owners of Parcel 1 and Parcel 2 shall share the cost for maintenance, and/or repair of improvements on Parcel E for its intended use as an ingress-egress easement including, without limitation, any pavement, curbing, landscaping, and lighting, located or to be located upon Parcel E. The owner of Parcel 2 shall bear the initial responsibility, costs and expenses for any such maintenance, and/or repair and shall seek reimbursement from the owner of Parcel 1 as set forth in subparagraph 2d, below, by providing the owner of Parcel 1 with a

detailed invoice setting forth the costs and expenses incurred. Upon any failure of the owner of Parcel 2 to carry out its maintenance, and/or repair responsibilities hereunder, the owner of Parcel 1 may undertake to carry out such responsibilities after having provided the owner of Parcel 2 written notice of the maintenance and/or repair that needs to be undertaken and the failure of the owner of Parcel 2 to cause the commencement of said maintenance, and/or repair within twenty (20) days after receipt of said notice. The owner of Parcel 2 shall pay its share of reimbursement for any costs and expenses which the owner of Parcel 1 incurs for any repair, or maintenance undertaken by it hereunder in the manner set forth in subparagraph 2d, below, by providing the owner of Parcel 2 with a detailed invoice setting forth the costs and expenses incurred.

c Any drainage or utility improvements located or placed on Parcel E by the owner of either Parcel 1 or Parcel 2 shall be constructed, repaired and maintained at the cost and expense of the property owner for whom the utility or drainage improvements are designed and intended to benefit. In the event that any drainage or utility improvements located or to be located on Parcel E benefit both Parcel 1 and Parcel 2, then the responsibility for installation, repair and maintenance shall be as set forth in subparagraph 2b, above, with the sharing of expenses as set forth in subparagraph 2d, below.

d. The cost for any maintenance, or repair of improvements on Parcel E for ingress-egress purposes, and for drainage or utility improvements jointly benefiting Parcel 1 and Parcel 2 shall be shared between the owners of Parcel 1 and Parcel 2 such that the owner of Parcel 1 shall pay 59.87% and the owner of Parcel 2 shall pay 40.13% of any such cost and expense. All payments required herein shall be made within thirty (30) days following receipt of a detailed invoice setting forth the reasonable costs and expenses incurred with independent third parties. In the event that a homeowners' association or condominium association is created for either of the parcels, the homeowner's or condominium association shall initially bear the responsibility of paying the proportionate share of the cost of installation, maintenance, or repair assigned to that parcel for which the association was created and shall then collect the amount so paid from the individual owners who are members of that association based upon their pro rata ownership interests in the parcel for which the homeowners' association or condominium association has been created.

e. In carrying out any installation, maintenance or repair responsibilities under this easement, the party performing such work shall restore any ground surface to the condition in which it existed prior to any disturbance resulting from the performance of any such work and every effort must be made so that ingress and egress shall not be denied during the performance of any such work.

3. Waterline Easement located on Parcel 3 for the Benefit of Parcel 2.

a. A perpetual non-exclusive right and easement is hereby created across, under, through, and over a portion of Parcel 3 for the benefit of Parcel 2, its owners, mortgagees, agents, guests and invitees, for the installation, maintenance and repair of a subsurface potable waterline on Parcel 3. The exact location of the waterline on Parcel 3 shall be determined by the owner of Parcel 2, in its sole discretion, and upon such establishment the extent of the easement granted herein shall be limited to five (5) feet on each side of the centerline of the waterline so installed for a total easement width of ten (10) feet. This easement may be relocated upon Parcel 3 as required by the owner of Parcel 2 but in no event shall the easement exceed a total width of ten (10) feet. The easement granted herein shall include the right of the owner of Parcel 2 to enter upon Parcel 3 to the extent necessary in order to install, repair and maintain the waterline. The right and easement created hereunder benefits Parcel 2 and burdens Parcel 3 and shall run with the land. Declarant, as the owner of Parcel 3, retains, on behalf of itself, its successors, mortgagees, agents, guests or invitees, the right to use Parcel 3 in a manner not inconsistent with the easement granted herein.

b. The owner of Parcel 2, and its successors in title, shall have the sole responsibility and shall bear the sole cost for installation, maintenance, repair, or replacement of the potable waterline located in this easement and shall at its expense restore any area on Parcel 3 excavated or disturbed in order to carry out such rights and responsibilities to the condition in which it existed prior to any such excavation or disturbance.

4. Drainage Easement located on Parcel 3 for the Benefit of Parcel 1 and Parcel 2.

a. A perpetual non-exclusive right and easement is hereby created across, under, through, and over that portion of Parcel 3 described on Exhibit F attached hereto ("Parcel F") for the benefit of Parcel 1 and Parcel 2, their respective owners, mortgagees, and agents, for the installation maintenance and repair of drainage improvements. The easement granted herein shall include the right of the owners of Parcel 1 and Parcel 2 and their agents to enter upon Parcel 3 to the extent necessary to install, maintain or repair the drainage improvements now or to be located on Parcel F. The right and easement created hereunder benefits Parcel 1 and Parcel 2 and burdens Parcel 3 and shall run with the land. Declarant, as the owner of Parcel 3, retains, on behalf of itself, its successors, mortgagees, agents, guests or invitees, the right to use Parcel F in a manner not inconsistent with the easement granted herein.

b. The owner of Parcel 2 shall bear the cost for construction of improvements on Parcel F for its intended use as a drainage easement including, without limitation, the cost of installation of drainage improvements required by the Southwest Florida Water Management District Permit described in subparagraph 7a of Section 1B of this Declaration and defined therein as the "SWFWMD Permit". Any improvements now or hereafter installed on Parcel F shall be done so in strict conformity with the SWFWMD Permit and once installed, shall not be removed, relocated or altered except in strict conformity with the SWFWMD Permit or any permitted modification or amendment to the SWFWMD Permit. Upon any failure of the owner of Parcel 2 to carry out its installation responsibilities hereunder, the owner of Parcel 1 may undertake to carry out such responsibilities after having provided the owner of Parcel 2 written notice and the failure of the owner of Parcel 2 to cause the commencement of said installation of improvements within twenty (20) days after receipt of said notice. The owner of Parcel 2 shall reimburse the owner of Parcel 1 for any costs or expenses incurred by the failure of the owner of Parcel 2 to carry out its installation responsibilities hereunder within thirty (30) days of receiving an invoice for said costs and expenses from the owner of Parcel 1.

c. In light of the fact that the improvements located on Parcel F are part of the requirements of the SWFWMD Permit, the maintenance, repair and replacement responsibilities for any such improvements shall be undertaken in the manner provided in subparagraph 7e of Section 1B of this Declaration.

d. In carrying out any installation, maintenance or repair responsibilities under this easement, the party performing such work shall restore any ground surface to the condition in which it existed prior to any disturbance resulting from the performance of any such work.

5. Ingress-Egress, Drainage and Utility Easement located on Parcel 2 for the Benefit of Parcel 1.

a. A perpetual non-exclusive right and easement is hereby created across, under, through, and over that portion of Parcel 2 described on Exhibit G attached hereto ("Parcel G") for the benefit of Parcel 1, its owners, mortgagees, agents, guests and invitees, for ingress and egress over and across Parcel G for pedestrian, vehicular and bicycle traffic to and from Parcel 1 and the publicly dedicated right-of-way presently designated as "Cattleman Road North", to connect to the easement created in subparagraph 2a of this Declaration, and for the installation, maintenance, repair, and replacement of drainage and/or utility improvements thereon. The easement granted herein shall include the right of the owner of Parcel 1 to place signage on Parcel G in the manner and to the extent provided in subparagraph 5e, below. The right and easement created hereunder benefits Parcel 1 and burdens Parcel 2 and shall run with the land. Declarant, as

the owner of Parcel 2, on behalf of itself, its successors, mortgagees, agents, guests or invitees, retains the right to use Parcel G for any purposes not inconsistent with the easement granted herein, including without limitation, the right to ingress and egress, to place signage, and to locate drainage and utility improvements on Parcel G.

b. The owners of Parcel 1 and Parcel 2 shall share the cost for installation, maintenance, and/or repair of improvements on Parcel G for its intended use as an ingress-egress easement including, without limitation, any pavement, curbing, landscaping, and lighting, located or to be located upon Parcel G. The owner of Parcel 2 shall bear the initial responsibility, costs and expenses for any such installation, maintenance, and/or repair and shall seek reimbursement from the owner of Parcel 1 as set forth in subparagraph 5d, below, by providing the owner of Parcel 1 with a detailed invoice setting forth the costs and expenses incurred. Upon any failure of the owner of Parcel 2 to carry out its installation, maintenance, and/or repair responsibilities hereunder, the owner of Parcel 1 may undertake to carry out such responsibilities after having provided the owner of Parcel 2 written notice of the installation, maintenance and/or repair that needs to be undertaken and the failure of the owner of Parcel 2 to cause the commencement of said installation, maintenance, and/or repair within twenty (20) days after receipt of said notice. The owner of Parcel 2 shall pay its share of reimbursement for any costs and expenses which the owner of Parcel 1 incurs for any installation, repair, or maintenance undertaken by it hereunder in the manner set forth in subparagraph 5d, below, by providing the owner of Parcel 2 with a detailed invoice setting forth the costs and expenses incurred.

c. Any drainage or utility improvements located or placed on Parcel G by the owner of either Parcel 1 or Parcel 2 shall be constructed, repaired and maintained at the cost and expense of the property owner for whom the utility or drainage improvements are designed to benefit. (i) In the event that any drainage or utility improvements located or to be located on Parcel G benefit both Parcel 1 and Parcel 2, then the responsibility for installation, repair and maintenance shall be as set forth in subparagraph 5b, above, with the sharing of expenses as set forth in subparagraph 5d, below. (ii) Notwithstanding anything otherwise provided, no drainage improvements shall hereafter be located on Parcel G which would materially adversely interfere with ingress or egress to Parcel 1 or to Parcel 2.

d. The cost for any installation, maintenance, or repair of improvements on Parcel G for ingress-egress purposes, and for drainage or utility improvements jointly benefiting Parcel 1 and Parcel 2 in the manner set forth in subparagraph 5c, above, shall be shared between the owners of Parcel 1 and Parcel 2 so that the owner of Parcel 1 shall pay 59.87% and the owner of Parcel 2 shall pay 40.13% of any such cost and expense. All payments required herein shall be made

within thirty (30) days following receipt of an invoice from the party initially undertaking such installation, repair, and/or maintenance responsibility under subparagraph 5b, above. In the event that a homeowners' association or condominium association is created for either of the parcels, the homeowner's or condominium association shall initially bear the responsibility of paying the proportionate share of the cost of installation, maintenance, or repair assigned to that parcel for which the association was created and shall then collect the amount so paid from the individual owners who are members of that association based upon their pro rata ownership interests in the parcel for which the association was created.

e. The owners of Parcel 1 and Parcel 2 shall have the right to place signage on Parcel G identifying the name of their respective developments on Parcel 1 and Parcel 2 as well as directional information for access to Parcel 1 and Parcel 2. Any such signage shall be placed in such a manner that it shall not block vehicular ingress and egress over and across any of the paved portions of Parcel G. The owner of Parcel 1 or Parcel 2 shall pay their respective cost and expenses for the erection, repair, maintenance, and replacement of any such signage and shall keep such signage in good repair. In the event that the owners of Parcel 1 and Parcel 2 determine to erect joint signage on Parcel G, they shall install, maintain, repair, and replace such signage in the manner set forth in subparagraph 5b above, and shall share in the cost and expense for the installation, repair, maintenance, and replacement of any such signage in the manner set forth in subparagraph 5d, above.

f. The owners of Parcel 1 and Parcel 2 shall not have the right to unilaterally install mechanical entry gates on Parcel G. The owners of Parcel 1 and Parcel 2 shall have the right to install mechanical entry gates on their respective properties adjacent to Parcel G. Each owner shall bear its costs and expenses associated with its installation, maintenance and repair of any such gates on its property. Notwithstanding the foregoing, the owners of Parcel 1 and Parcel 2 may jointly install mechanical entry gates at one or more locations upon Parcel G to be used by the owners of Parcel 1 and Parcel 2, and their guests and invitees. In the event that the owners of Parcel 1 and Parcel 2 determine to erect a joint entry gate on Parcel G, they shall install, maintain, repair, and replace such entry gate in the manner set forth in subparagraph 5b above, and shall share in the cost and expense for the installation, repair, maintenance, and replacement of any such entry gate in the manner set forth in subparagraph 5d, above. At the time that this Declaration is being recorded an entry gate exists on Parcel G which shall be deemed to be a joint entry gate subject to the provisions of this easement.

g. The existing entry gate located on Parcel G on the date that this Declaration is recorded may be removed by the owner of Parcel 2 at its sole cost and expense at any time. Between the date that this Declaration is recorded and



the date that the existing entry gate on Parcel G is removed, the owner of Parcel 2 shall ensure that the gate remains open so that the owner of Parcel 1 may utilize Parcel G for the purposes of ingress and egress without impediment.

h. In carrying out any installation, maintenance or repair responsibilities under this easement, the party performing such work shall restore any ground surface to the condition in which it existed prior to any disturbance resulting from the performance of any such work and every effort must be made so that ingress and egress shall not be denied during the performance of any such work.

6. Sanitary Sewer Easement located on Parcel 1 for the Benefit of Parcel 2.

a. A perpetual non-exclusive right and easement is hereby created over, under, across and through that portion of Parcel 1 described on Exhibit H attached hereto ("Parcel H") for the benefit of Parcel 2, its owners, mortgagees, and agents, for the purpose of the disposal of sanitary sewage from Parcel 2 to and through a lift station located on Parcel 1 by way of one or more pipes and related improvements now or hereafter located under the Parcel H. The easement created herein shall include the right of the owner of Parcel 2, at its sole cost and expense, to attach sanitary sewer lines now or to be located on Parcel 2 to existing sanitary sewer lines located under Parcel H. The right and easement created hereunder benefits Parcel 2 and burdens Parcel 1 and shall run with the land. The Declarant, as owner of Parcel 1, retains the right, on behalf of itself, its successors, mortgagees, agents, guests or invitees, to use Parcel H for the disposal of sanitary sewage from Parcel 1 to and through the aforesaid lift station via the underground pipes and related improvements now or hereafter located on Parcel H. The Declarant, as the owner of Parcel 1, its successors, mortgagees, agents, guests and invitees, retains the right to use the surface of Parcel H for parking and other uses that do not interfere with the easement created herein. The easement created herein includes the right of the owner of Parcel 2, and its agents and representatives, to enter upon the Parcel 1 for the purpose of installation, maintenance, repair, or replacement of the pipes and related improvements located on and under the Parcel H including the right to excavate the Parcel H in order to obtain access to the underground sanitary sewer pipes and related improvements. Any work performed on the Parcel H area shall be undertaken expeditiously so as to minimize any disturbance to the remainder of Parcel 1. The owner of Parcel 2 shall restore Parcel 1 to the condition in which it existed prior to any such entry thereon by the owner of Parcel 2.

b. The sanitary sewer pipes now or hereafter located under Parcel H shall be used by the owners of both Parcel 1 and Parcel 2 for sanitary sewer disposal from their respective parcels. The owner of Parcel 2 shall bear the sole cost and expense of installing or replacing any underground pipes on Parcel H,

beyond those that presently exist in order to utilize this easement for the purposes intended. Once installed, the owners of Parcel 1 and Parcel 2 shall share the costs and responsibility of maintenance, and/or repair of the pipes and related improvements located on and under Parcel H. The owner of Parcel 1 shall bear the initial responsibility and pay the initial costs and expenses for any such maintenance, and/or repair and shall seek reimbursement from the owner of Parcel 2 as set forth in subparagraph 6c, below, by providing the owner of Parcel 2 with a detailed invoice setting forth the costs and expenses incurred. Upon any failure of the owner of Parcel 1 to carry out its maintenance and/or repair responsibilities hereunder, the owner of Parcel 2 may undertake to carry out such responsibilities after having provided the owner of Parcel 1 written notice of the installation, maintenance, and/or repair that needs to be undertaken and the failure of the owner of Parcel 1 to cause the commencement of said maintenance and/or repair within twenty (20) days after receipt of said notice. The owner of Parcel 2 shall be entitled to reimbursement for the costs and expenses for any repair or maintenance undertaken by it hereunder from the owner of Parcel 1 as set forth in subparagraph 6c, below, by providing the owner of Parcel 1 with a detailed invoice setting forth the costs and expenses incurred. The cost for maintenance and repair of improvements on Parcel H shall include restoration of any surface improvements located upon Parcel H to the condition in which they existed prior to any maintenance or excavation of Parcel H. Notwithstanding anything otherwise provided in this Paragraph 6, there will be no right to have any additional sewer lines installed on Parcel H following the date of this Declaration without express written consent of the Owner of Parcel 1 and recordation of such consent.

c. The cost for any maintenance or repair of Parcel H shall be shared between the owners of Parcel 1 and Parcel 2 such that the owner of Parcel 1 shall pay 59.87% and the owner of Parcel 2 shall pay 40.13% of any such costs and expenses. All payments required herein shall be made within thirty (30) days following receipt of an invoice from the party initially undertaking such installation, repair and/or maintenance responsibility under subparagraph 6b, above. In the event that a homeowners' association or condominium association is created for either of the parcels, the homeowners' or condominium association shall initially bear the responsibility for paying the proportionate share of the cost of maintenance or repair assigned to that parcel for which the association was created and shall then collect the amount so paid from the individual owners who are members of that association based upon their pro rata ownership interests in the parcel for which the association was created. The owner of Parcel 2 shall have no responsibility for sharing in the cost of replacement of any surface improvements over Parcel H which do not directly arise out of maintenance or excavation performed on the Parcel H for the purposes of this easement.

7. Reciprocal Drainage Easements located on Parcel 1 and Parcel 2 for the Reciprocal Benefit of Parcel 1 and Parcel 2.

a. Certain drainage improvements have been constructed on Parcel 1 under and by virtue of that certain Southwest Florida Water Management District Permit Number 4010177.000 issued to Declarant which improvements are more particularly described in the aforesaid permit (the "Parcel 1 Drainage Improvements"). Declarant has applied for and obtained a Southwest Florida Water Management District Permit Number 4010177.001 which modifies Permit Number 4010177.000 to provide for certain drainage improvements to be constructed on Parcel 2 which are more particularly described in Permit Number 4010177.001 (the "Parcel 2 Drainage Improvements"). Permit Number 4010177.001 further requires some modifications to the Parcel 1 Drainage Improvements to coincide with the construction of the Parcel 2 Drainage Improvements ("Parcel 1 Drainage Improvement Modifications"). The Parcel 1 Drainage Improvement Modifications shall be constructed at the sole cost and expense of the owner of Parcel 2. Upon the construction of the Parcel 1 Drainage Improvement Modifications by the owner of Parcel 2, said improvements shall be included within the definition of the "Parcel 1 Drainage Improvements". The Parcel 1 Drainage Improvements and the Parcel 2 Drainage Improvements are interconnected and subject to the same SWFWMD Permit No. 4010177.001 (the "SWFWMD Permit") and as such must be installed and maintained as a unified drainage system for the use and benefit of each parcel owner as contemplated by the SWFWMD Permit.

b. A perpetual non-exclusive right and easement is hereby created by the Declarant as owner of Parcel 1 over, under, across and through the Parcel 1 Drainage Improvements for the benefit of Parcel 2, its owners, successors, mortgagees, and agents, for the purpose of the drainage of surface and storm water from all portions of Parcel 2 across and through the Parcel 1 Drainage Improvements. The easement granted herein includes the right of the owner of Parcel 2 to access Parcel 1 for the purpose of installation, maintenance, and/or repair of the Parcel 1 Drainage Improvements and the Parcel 1 Drainage Improvement Modifications. The Declarant, as owner of Parcel 1 reserves for itself and its successors in title to Parcel 1 the right to construct improvements of any type or kind on Parcel 1 notwithstanding the existence of this easement so long as any such improvements do not interfere with the Parcel 1 Drainage Improvements or the easement granted herein. The owner of Parcel 1 shall not alter or modify any of the Parcel 1 Drainage Improvements without modification of the SWFWMD Permit and the consent to such modification by the owner of Parcel 2. The grant of this easement shall burden Parcel 1 and benefit Parcel 2 and shall run with the land.

c. A perpetual non-exclusive right and easement is hereby created by the Declarant as owner of Parcel 2 over, under, across and through the Parcel 2 Drainage Improvements for the benefit of Parcel 1, its owners, successors, mortgagees, and agents, for the purpose of the drainage of surface and storm water from all portions of Parcel 1 across and through the Parcel 2 Drainage Improvements. The Declarant, as owner of Parcel 2 reserves for itself and its

successors in title to Parcel 2 the right to construct improvements of any type or kind on Parcel 2 notwithstanding the existence of this easement so long as any such improvements do not interfere with the Parcel 2 Drainage Improvements or the easement granted herein. The grant of this easement shall burden Parcel 2 and benefit Parcel 1 and shall run with the land.

d. The owner of Parcel 2 shall bear the sole responsibility and cost for constructing the Parcel 2 Drainage Improvements to carry out the intended use of this easement and comply with the conditions of the SWFWMD Permit as they apply to the Parcel 2 Drainage Improvements. The owner of Parcel 2 shall not alter or modify any of the Parcel 2 Drainage Improvements without modification of the SWFWMD Permit and the consent to such modification by the owner of Parcel 1. The owner of Parcel 2 shall, further, bear the sole cost of constructing the Parcel 1 Drainage Improvement Modifications required by the SWFWMD Permit and is granted access to Parcel 1 for the purpose of carrying out such right and responsibility. The owner of Parcel 2 agrees to restore Parcel 1 to the condition in which it existed prior to any such construction activity to create the Parcel 1 Drainage Improvement Modifications.

e. Repair, maintenance and replacement of the Parcel 1 Drainage Improvements, the Parcel 2 Drainage Improvements, and those drainage improvements constructed under subparagraphs 4a and 4b of Section 1B of this Declaration shall be carried out in accordance with the requirements of the SWFWMD Permit. The owner of Parcel 2 shall bear the responsibility of ensuring compliance with all terms of the SWFWMD Permit and shall have the initial responsibility for all repair, maintenance and replacement of the Parcel 1 Drainage Improvements, the Parcel 2 Drainage Improvements and those drainage improvements created under subparagraphs 4a and 4b of Section 1B of this Declaration. The maintenance responsibilities of the owner of Parcel 2 hereunder shall not include grass cutting or other routine landscape maintenance on any part of the foregoing drainage improvements which shall be the sole responsibility of the owner of the parcel upon which the drainage improvements are located. The owner of Parcel 2 shall be partially reimbursed by the owner of Parcel 1 for any costs or expenses of complying with the SWFWMD Permit including the cost of repair, maintenance and replacement of the Parcel 1 Drainage Improvements, the Parcel 2 Drainage Improvements, and those drainage improvements constructed under subparagraphs 4a and 4b of Section 1B of this Declaration such that the owner of Parcel 1 shall pay 59.87% and the owner of Parcel 2 shall pay 40.13% of any such costs and expenses. All reimbursements required herein shall be made by the owner of Parcel 1 within thirty (30) days following receipt of an invoice from the owner of Parcel 2. In the event that a homeowners' association or condominium association is created for either of the parcels, the homeowners' or condominium association shall initially bear the responsibility for paying the proportionate share of the cost of maintenance, repair or replacement assigned to that parcel for which the association was created and shall then collect the amount so paid from the

ownership interests in the parcel for which the association was created. The owner of Parcel 1 shall not, however, be required to reimburse the owner of Parcel 2 for any installation of the Parcel 1 Drainage Improvement Modifications, the Parcel 2 Drainage Improvements or the drainage improvements installed under subparagraphs 4a and 4b of Section 1B of this Declaration.

f. In the event that a homeowners association or condominium association is created for Parcel 2, the installation, maintenance, and repair responsibilities, as well as the SWFWMD Permit obligations of the owner of Parcel 2 set forth in subparagraphs 7c, 7d or 7e, above, as applicable, shall be borne and held by the homeowners association or condominium association formed for Parcel 2.

g. Notwithstanding anything otherwise provided, in no event shall any vertical improvements on Parcel 1 be disturbed on account of Parcel 1 Drainage Improvements. Further in carrying out any installation, maintenance, or repair responsibility under the easements created by subparagraph 7, the party performing such work shall restore any ground surface to the condition in which it existed prior to any disturbance resulting from the performance of any such work, and every effort must be made so that ingress and egress shall not be denied during the performance of any such work.

**2. Lien for Failure to Pay Pro Rata Share of Maintenance or Repair.**

A. In the event that the owner of Parcel 1 or Parcel 2 shall be required to pay its pro rata share of the costs and expenses of maintenance or repair of any improvements located upon any of the easements described in this Declaration, it shall do so within thirty (30) days following receipt of an invoice for its share of any such costs and expenses. Upon failure by any parcel owner to pay its pro rata share in full within such required period of time, it shall be deemed to be a defaulting party. In such event the non-defaulting party shall be entitled to recover the amount owed by the defaulting party, together with interest thereon at the maximum rate allowed by law from the date due until paid, as well as costs and reasonable attorneys' fees for collection thereof (collectively all of such expenses, interest, costs, and reasonable attorneys' fees are referred to as "Assessments") against the defaulting party's real property which is subject to this Declaration which shall be a continuing lien thereon as more particularly described herein. The lien shall relate back to and be effective from the date on which this Declaration is recorded. The Assessments shall also be the personal obligation of the defaulting party who was the owner of the real property subject to this Declaration at the time when the Assessments were incurred but shall not be a personal obligation of successors in title unless expressly assumed by them. No action shall be brought to foreclose the lien for Assessments herein created unless at least thirty (30) days has expired following the date a Notice of Lien is deposited in the United States

mail, certified or registered, postage prepaid, or overnight courier service addressed to the defaulting party and a copy thereof has been recorded by non-defaulting party in the public records of Sarasota County, Florida. The Notice of Lien must recite the legal description of the defaulting party's real property, the record owner thereof, and the amount claimed by the non-defaulting party. Filing of the Notice of Lien shall not be a prerequisite to creating the lien (which is created by this Declaration) nor shall the lien's priority be established by such Notice of Lien (priority being based on the date of recording this Declaration). The lien shall continue until fully paid or otherwise satisfied. The lien so claimed may be enforced in any manner allowed by law, including without limitation, suit in the nature of a suit to foreclose a mortgage or mechanic's lien under the applicable provisions of the law of the State of Florida.

B. The lien securing Assessments shall be subordinate to the lien of any Mortgage made in good faith by to an unrelated party for value which has been recorded prior to the date on which a Notice of Lien is recorded. "Mortgage" shall mean any bona fide first mortgage made in favor of a bank, savings bank, life insurance company, federal or state savings and loan association, credit union, or union pension fund authorized to do business in the United States, real estate or mortgage investment trust or other lender who makes mortgage loans in the ordinary course of its business and is generally recognized in the community as an institutional lender. The sale or transfer of the real property subject to the Assessments shall not affect the Assessments lien. However, the sale or transfer of the real property pursuant to foreclosure of the Mortgage or deed in lieu thereof (if the Mortgage was recorded prior to the recording of a Notice of Lien) shall extinguish the lien of such Assessments as to installments and other sums which become due prior to such sale or transfer. However, no sale or transfer shall relieve the parcel from liability for any installments of Assessments thereafter becoming due or from the lien thereof.

### 3. General Effect of Easements.

A. None of the easements granted by this Declaration are intended nor shall any of them be construed as a dedication of any portion of Parcel 1, Parcel 2, or Parcel 3 for public use.

B. This Declaration and the easements, terms, and conditions hereof shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the owners of Parcel 1, Parcel 2, or Parcel 3, as expressed herein, their heirs, personal representatives, successors and assigns.

C. Subject to the terms and conditions of this Declaration, the owner of Parcel 1, Parcel 2, or Parcel 3 may develop, reconstruct, install or modify improvements on its parcel in any manner it deems necessary or convenient,

without the consent or approval of the owner of the other parcel, subject to applicable governmental regulations.

D. Notwithstanding anything set forth herein to the contrary, no owner of any parcel shall be required to reimburse any other owner for any existing improvements located within any of the easements created by this Declaration as of the date its of recordation, notwithstanding that such improvements may benefit another parcel owner or that any future installation, repair or maintenance of such or similar improvements within an easement parcel may be shared by more than one parcel owner.

4. Subordination of Mortgages to Declaration. Subject to the provisions of paragraph 2B of this Declaration, in the event that the owner of Parcel 1, Parcel 2, or Parcel 3 or the owner of any part or portion of Parcel 1, Parcel 2, or Parcel 3 shall place a mortgage lien on their respective parcels or any portion or part of the aforesaid parcels, the interest of such mortgagee shall be subordinate to the terms and conditions of this Declaration and the easements herein created, and the mortgagee, if it obtains title to Parcel 1, Parcel 2, or Parcel 3 or any portion thereof, shall be subject to the terms, conditions and limitations of this Declaration.

5. Amendment. This Declaration may be amended by the Declarant, without the required consent or joinder of any other person or mortgagee for so long as Declarant, or its successors or assigns is the owner of all of Parcel 1, Parcel 2, and Parcel 3 in their entirety. Otherwise, any amendment of this Declaration that affects any parcels or the rights and responsibilities of the owners of any parcel shall be made only upon written approval of the owners of the parcels or the owners so affected and their respective mortgagees.

6. Costs of Enforcement. In the event that any owner of any portion or part of Parcel 1, Parcel 2, or Parcel 3 is required to bring a legal action to enforce the terms of this Declaration, the prevailing party shall be entitled to receive and recover its costs and reasonable attorneys' fees incurred before or at trial, on appeal, in bankruptcy or in post judgment collection.

7. Effect of Condominium or Homeowners' Association. In the event that a condominium or homeowners' association is formed for either Parcel 1 or Parcel 2, any rights or obligations which this Declaration places upon the owner of Parcel 1 or Parcel 2 shall pass to and be borne by the condominium or homeowners' association formed for said parcel.

8. General. The terms and conditions of this Declaration shall be construed under Florida law.

INSTRUMENT # 2005054385  
121 PGS

OFFICIAL RECORDS INSTRUMENT # 2000143508 26 PGS

[SIGNATURE OF DECLARANT APPEARS ON NEXT PAGE]



INSTRUMENT # 2005054385  
121 PGS

OFFICIAL RECORDS INSTRUMENT # 2000143508 26 PGS

IN WITNESS WHEREOF, the undersigned sets its hand and seal as of the date first above written.

Signed, sealed and delivered  
In the presence of:

LF INVESTMENTS, INC., a Florida  
corporation

Print Name [Signature]

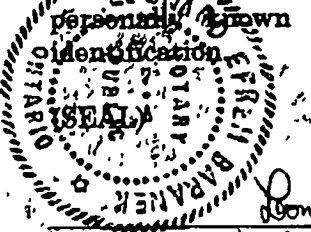
By: [Signature]  
Jack Frieberg  
Vice President

Print Name ITA KLEINER

[CORPORATE SEAL]

PROVINCE OF ONTARIO  
COUNTRY OF CANADA

The foregoing instrument was acknowledged before me this 6th day of March, 2000, by Jack Frieberg, Vice President of LF INVESTMENTS, INC., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced \_\_\_\_\_ as



Donald Efer Bark  
Print Name L. BARK  
Notary Public  
Commission Number: \_\_\_\_\_

STP1 #382490 v2

INSTRUMENT # 2005054385  
121 PGS

OFFICIAL RECORDS INSTRUMENT # 2000143508 26 PGS

EXHIBIT "A"

A parcel of land lying on the Southeast 1/4 of Section 13, Township 36 South, Range 18 East and the Northeast 1/4 of Section 24, Township 36 South, Range 18 East, Sarasota County, Florida, more particularly described as follows:

Commence at the Northeast corner of the Southeast 1/4 of Section 13,, Township 36 South, Range 18 East, Sarasota County, Florida, and go N.89°20'03"W., 95.00 feet, thence S.00°13'01"W., 819.26 feet; thence S.00°12'17"W., 518.76 feet for a Point of Beginning; thence continuing S.00°12'17"W., 406.80 feet; thence S.01°28'37"W., 860.87 feet; thence S.05°28'37"W., 108.99 feet, to a point on the north right-of-way line of Richardson Road; thence along said north right-of-way line N 72°09'38"W., 244.89 feet; thence along a curve to the left that has a radius of 869.34 feet, an arc length of 276.88 feet, a chord length of 275.71 feet and a chord bearing of N.81°17'05"W.; thence S 89°35'28"W., 426.49 feet; thence leaving said right-of-way line, N.00°08'26"W., along the east boundary line of Deer Hollow, Unit IA, Plat Book 30, Page 5 and Deer Hollow, Phase III-B, Plat Book 36, Page 28, of the Public Records of Sarasota County, Florida, 1417.17 feet; thence N.89°51'34"E., 641.75 feet; thence S.00°12'17"W., 157.17 feet; thence N.89°54'09"E., 328.45 feet to the Point of Beginning.

Containing, 1,330,827 square feet or 30.552 acres more or less.

STP1 #376603 v1

INSTRUMENT # 2005054385  
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OFFICIAL RECORDS INSTRUMENT # 2000143508 26 PGS

**EXHIBIT "B"**

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, more particularly described as follows.

Commence at the Northeast corner of the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, and go N.89°20'03"W, 95.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) for a Point of Beginning; thence along said west right-of-way line the following courses and distances, S.00°13'01"W., 819.26 feet; thence S.00°12'17"W, 361.34 feet; thence, leaving the west right-of-way line of Cattleman Road North, S.89°51'34"W., 970 21 feet to a point on the east boundary line of DEER HOLLOW, PHASE III-B, Plat Book 36, Page 28 of the Public Records of Sarasota County, Florida, thence N.00°08'26"W., along the east boundary line of DEER HOLLOW, PHASE III-B, Plat Book 36, Page 28, and DEER HOLLOW, UNIT IV A, Plat Book 32, Page 10, of the Public Records of Sarasota County, Florida, 1194.33 feet to the Northeast corner of Tract "S" of the aforementioned DEER HOLLOW SUBDIVISION, UNIT IV A; thence along the north line of the Southeast 1/4 of Section 13, S.89°20'03"E., 977.60 feet to the Point of Beginning.

Containing 26.547 acres more or less.

**TOGETHER WITH:**

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, being described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 13, and go N.89°20'03"W., 35.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) as it now exists; thence S.00°13'01"W., along said west right-of-way line, 818.94 feet; thence, continuing along said west right-of-way line, S.00°12'17"W., 360.82 feet; thence, leaving said right-of-way line, S.89°51'34"W, 60.00 feet for a Point of Beginning; thence S.00°12'17"W., 157 42 feet; thence, S.89°54'09"W., 328.45 feet; thence N.00°12'17"E., 157.17 feet; thence N.89°51'34"E., 328.46 feet to the Point of Beginning.

STP1 #376804 v1

SECTIONS 13 & 24, TOWNSHIP 36 SOUTH, RANGE 18 EAST

DESCRIPTION:

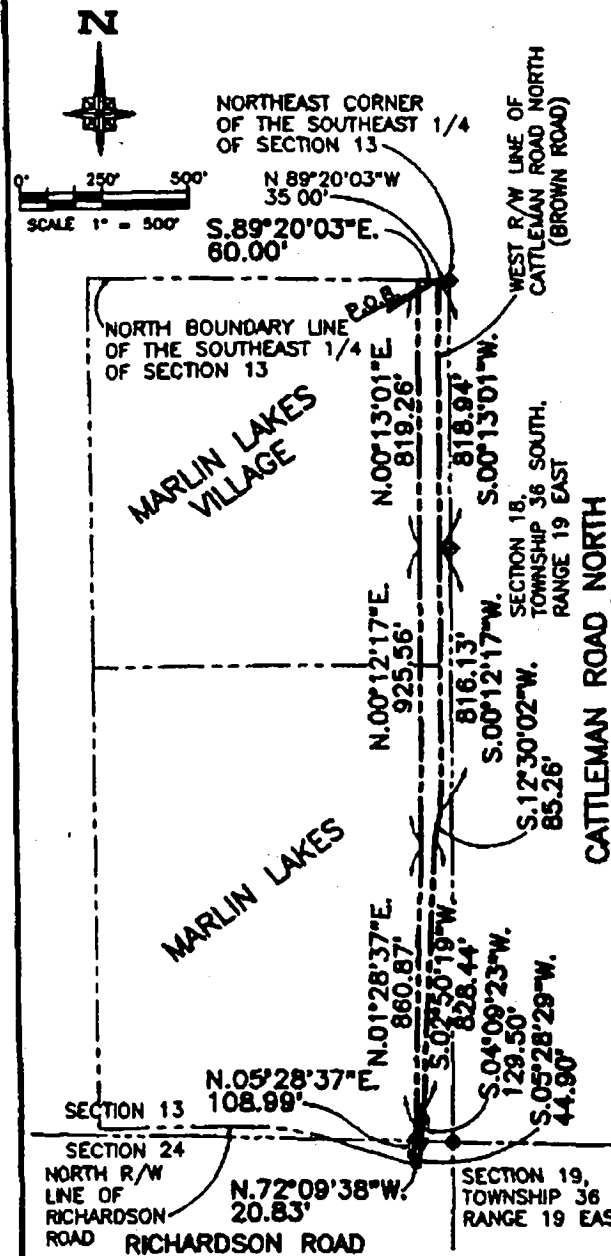
A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East and the Northeast 1/4 of Section 24, Township 36 South, Range 18 East, Sarasota County, Florida, more particularly described as follows:

Commence at the Northeast corner of the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, and go N.89°20'03"W., 35.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) for a Point of Beginning; thence along said west right-of-way line the following six (6) courses and distances, (1)S.00°13'01"W., 818.94 feet; thence (2)S.00°12'17"W., 816.13 feet, thence (3)S.12°30'02"W., 85.26 feet; thence (4)S.02°50'19"W., 828.44 feet; thence (5)S.04°09'23"W., 129.50 feet; thence (6)S.05°28'29"W., 44.90 feet, to a point on the north right-of-way line of Richardson Road; thence, along said north right-of-way line, N.72°09'38"W., 20.83 feet; thence, leaving the said north right-of-way line of Richardson Road, N.05°28'37"E., 108.99 feet; thence N.01°28'37"E., 860.87 feet; thence N.00°12'17"E., 925.56 feet; thence N.00°13'01"E., 819.26 feet to the north boundary line of the Southeast 1/4 of said Section 13; thence S.89°20'03"E., along said north boundary line, 60.00 feet to the Point of Beginning.

Containing 3.025 acres more or less.

**MARLIN LAKES APARTMENTS/  
MARLIN LAKES VILLAGE  
CATTLEMAN ROAD NORTH PARCEL**

**BOUNDARY PLAN AND DESCRIPTION**



APPROVED BY:

*[Signature]*  
S. SANDY LLOVERAS  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER No. 151782  
THIS IS NOT A BOUNDARY SURVEY.

**LLOVERAS, BAUR & STEVENS**

ENGINEERS - SURVEYORS - PLANNERS

PLS 0000208

29228 U.S. HIGHWAY 18 N

CLEARWATER, FLORIDA 33781

Phone (727) 784-3988

Fax (727) 784-8183

REVISIONS	DRAWN BY: GOM/GAL	JOB No <b>26486</b>
	CHECKED BY: R.D.	
	APPROVED BY: <i>[Signature]</i>	
	DATE: MARCH 9, 2000	
	SCALE 1" = 500'	

**BOUNDARY PLAN AND DESCRIPTION**

EXHIBIT "D"

SECTION 13, TOWNSHIP 36 SOUTH, RANGE 18 EAST

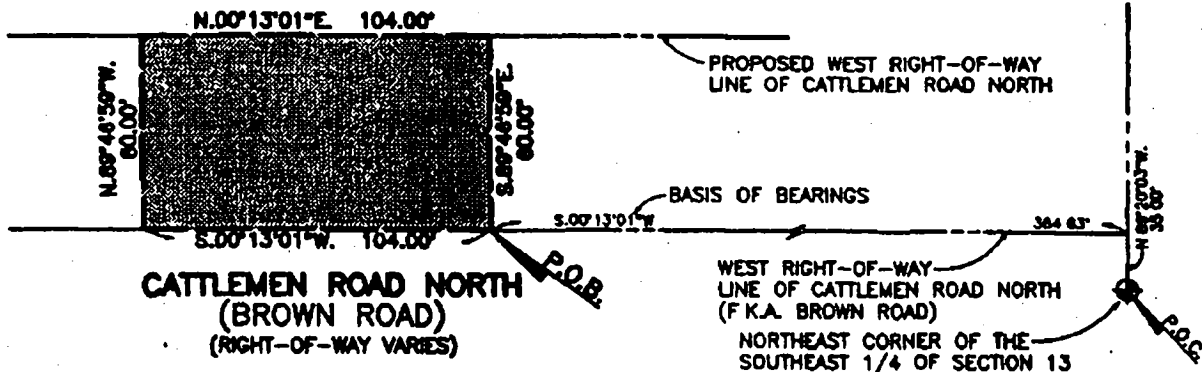


INGRESS, EGRESS, DRAINAGE  
AND/OR UTILITY EASEMENT "A"  
DESCRIPTION:

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, being described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 13, and go N 89°20'03"W., 35.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) as it now exists; thence S.00°13'01"W., along said west right-of-way line, 364.63 feet for a Point of Beginning; thence, continuing along said west right-of-way line, S 00°13'01"W., 104.00 feet; thence, leaving said right-of-way line, N 89°46'59"W., 60.00 feet; thence N 00°13'01"E., 104.00 feet; thence S.89°46'59"E., 60.00 feet to the Point of Beginning

MARLIN LAKES VILLAGE



MARLIN LAKES VILLAGE

INGRESS, EGRESS, DRAINAGE  
AND/OR UTILITY EASEMENT "A"  
BOUNDARY PLAN AND DESCRIPTION

PREPARED FOR:  
MR. LOU FRIEBERG  
1031 MARLIN LAKES CIR.  
SARASOTA, FLORIDA 34232

ABBREVIATION LEGEND

P.O.C. = POINT OF COMMENCEMENT  
P.O.B. = POINT OF BEGINNING

APPROVED BY:

S. SANDY LLOVERAS  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER No. LS1782  
THIS IS NOT A BOUNDARY SURVEY

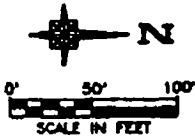
LLOVERAS, BAUR & STEVENS

ENGINEERS - SURVEYORS - PLANNERS  
P.L.B. 0000208  
29228 U.S. HIGHWAY 19 N.  
CLEARWATER, FLORIDA 33781  
Phone: (727) 794-3888 Fax: (727) 794-8153

REVISIONS	DRAWN BY: GOM	JOB No.
	CHECKED BY: R.D.	26486
	APPROVED BY: [Signature]	1 OF 1
	DATE: MARCH 9, 2000	
	SCALE: 1" = 50'	

BOUNDARY PLAN AND DESCRIPTION

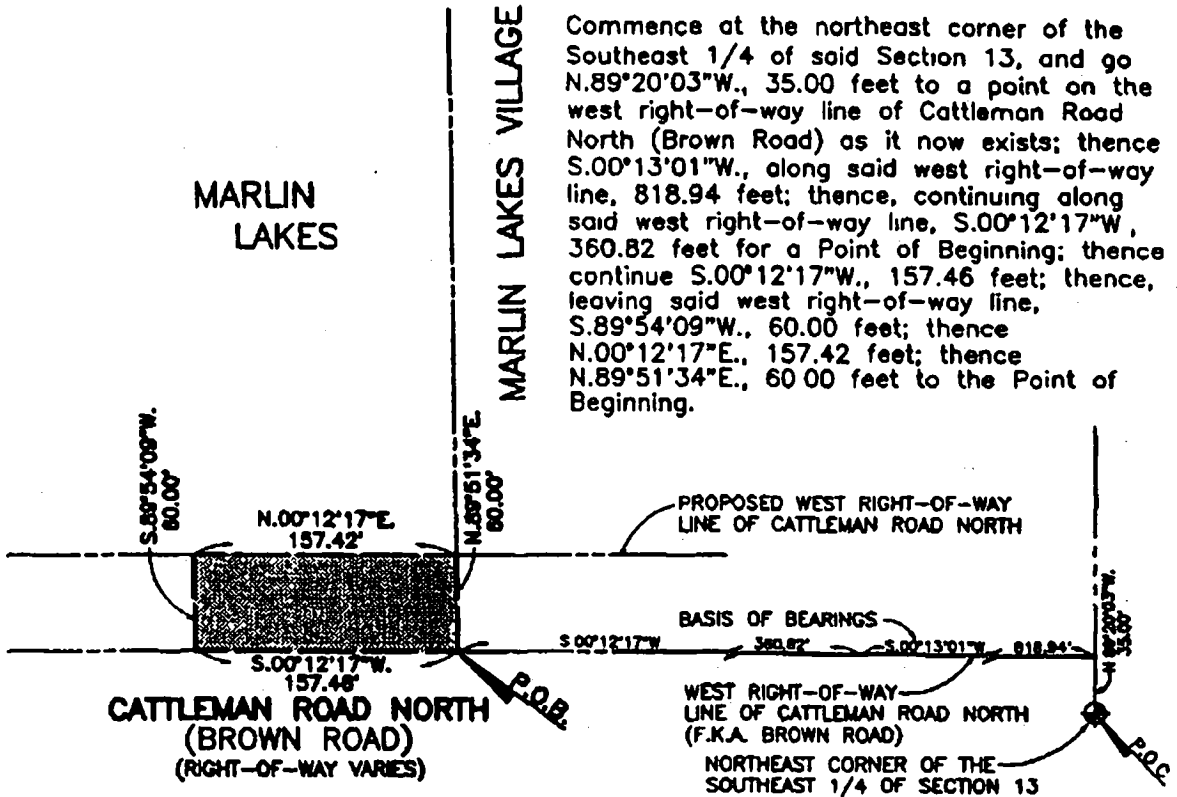
SECTION 13, TOWNSHIP 36 SOUTH, RANGE 18 EAST



INGRESS, EGRESS, DRAINAGE  
AND/OR UTILITY EASEMENT "B-1"  
DESCRIPTION:

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, being described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 13, and go N.89°20'03"W., 35.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) as it now exists; thence S.00°13'01"W., along said west right-of-way line, 818.94 feet; thence, continuing along said west right-of-way line, S.00°12'17"W., 360.82 feet for a Point of Beginning; thence continue S.00°12'17"W., 157.46 feet; thence, leaving said west right-of-way line, S.89°54'09"W., 60.00 feet; thence N.00°12'17"E., 157.42 feet; thence N.89°51'34"E., 60.00 feet to the Point of Beginning.



**MARLIN LAKES VILLAGE**

INGRESS, EGRESS, DRAINAGE  
AND/OR UTILITY EASEMENT "B-1"  
BOUNDARY PLAN AND DESCRIPTION

PREPARED FOR:  
MR. LOU FRIEBERG  
1031 MARLIN LAKES CIR.  
SARASOTA, FLORIDA 34232

ABBREVIATION LEGEND	
P.O.C.	= POINT OF COMMENCEMENT
P.O.B.	= POINT OF BEGINNING

APPROVED BY:

*[Signature]*  
SANDY LLOVERAS  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER No. LS1782  
THIS IS NOT A BOUNDARY SURVEY.

**LLOVERAS, BAUR & STEVENS**  
ENGINEERS - SURVEYORS - PLANNERS  
FLB 0000208  
29228 U.S. HIGHWAY 19 N.  
CLEARWATER, FLORIDA 33761  
Phone: (727) 784-3885 Fax: (727) 784-8153

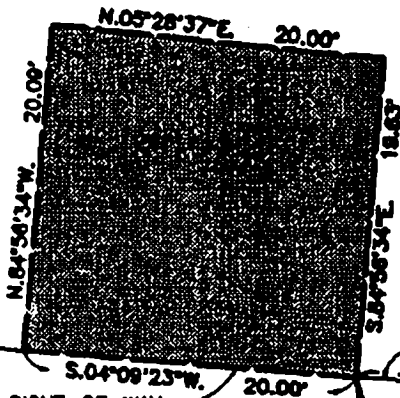
REVISIONS	DRAWN BY: GOM	JOB No. <b>26486</b> <b>1 OF 1</b>
	CHECKED BY: R.G.	
	APPROVED BY: <i>[Signature]</i>	
	DATE: MARCH 9, 2000	
SCALE: 1" = 100'		

**BOUNDARY PLAN AND DESCRIPTION**

SECTION 24, TOWNSHIP 36 SOUTH, RANGE 18 EAST



MARLIN LAKES



WEST RIGHT-OF-WAY LINE OF CATTLEMAN ROAD NORTH (F.K.A. BROWN ROAD)

CATTLEMAN ROAD NORTH (BROWN ROAD) (RIGHT-OF-WAY VARIES)

NORTHEAST CORNER OF THE NORTHEAST 1/4 OF SECTION 24

DRAINAGE EASEMENT DESCRIPTION:

A parcel of land lying in the Northeast 1/4 of Section 24, Township 36 South, Range 18 East, Sarasota County, Florida, being described as follows:

Commence at the northeast corner of the Northeast 1/4 of said Section 24 and go N.88°44'56\"/>

NORTH BOUNDARY LINE OF SECTION 24, TOWNSHIP 36 SOUTH, RANGE 18 EAST

SOUTH BOUNDARY LINE OF SECTION 13, TOWNSHIP 36 SOUTH, RANGE 18 EAST

P.O.B. 97.76 FEET OF BROWN ROAD

MARLIN LAKES APARTMENTS/ MARLIN LAKES/MARLIN LAKES VILLAGE

DRAINAGE EASEMENT BOUNDARY PLAN AND DESCRIPTION

PREPARED FOR: MR. LOU FRIEBERG 1031 MARLIN LAKES CIR. SARASOTA, FLORIDA 34232

ABBREVIATION LEGEND table with entries: P.O.C. - POINT OF COMMENCEMENT, P.O.B. - POINT OF BEGINNING

APPROVED BY:

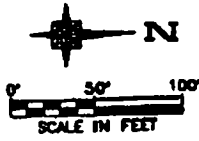
Signature of Sandy Lloveras, Florida Professional Surveyor and Mapper No. LS1782. THIS IS NOT A BOUNDARY SURVEY

LLOVERAS, BAUR & STEVENS ENGINEERS - SURVEYORS - PLANNERS 29229 U.S. HIGHWAY 19 N. CLEARWATER, FLORIDA 33781 Phone: (727) 784-3885 Fax: (727) 784-8153

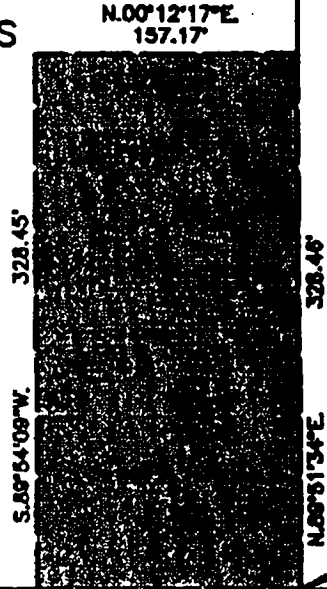
Table with columns: REVISIONS, DRAWN BY: DOM, CHECKED BY: PLO, APPROVED BY: [Signature], DATE: MARCH 9, 2000, SCALE: 1" = 10', JOB No. 26486, 1 OF 1

BOUNDARY PLAN AND DESCRIPTION

SECTION 13, TOWNSHIP 36 SOUTH, RANGE 18 EAST



MARLIN LAKES

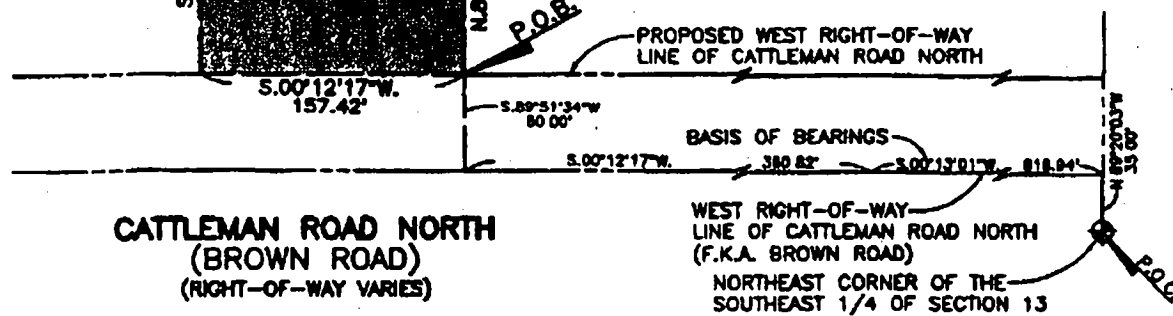


MARLIN LAKES VILLAGE

INGRESS, EGRESS, DRAINAGE AND/OR UTILITY EASEMENT "B-2" DESCRIPTION:

A parcel of land lying in the Southeast 1/4 of Section 13, Township 36 South, Range 18 East, Sarasota County, Florida, being described as follows:

Commence at the northeast corner of the Southeast 1/4 of said Section 13, and go N.89°20'03"W, 35.00 feet to a point on the west right-of-way line of Cattleman Road North (Brown Road) as it now exists, thence S.00°13'01"W., along said west right-of-way line, 818.94 feet, thence, continuing along said west right-of-way line, S.00°12'17"W, 360.82 feet; thence, leaving said right-of-way line, S89°51'34"W., 60.00 feet for a Point of Beginning; thence S.00°12'17"W., 157.42 feet, thence, S89°54'09"W., 328.45 feet; thence N.00°12'17"E., 157.17 feet; thence N.89°51'34"E., 328.45 feet to the Point of Beginning.



CATTLEMAN ROAD NORTH (BROWN ROAD) (RIGHT-OF-WAY VARIES)

**MARLIN LAKES VILLAGE**

INGRESS, EGRESS, DRAINAGE AND/OR UTILITY EASEMENT "B-2" BOUNDARY PLAN AND DESCRIPTION

PREPARED FOR:  
MR. LOU FRIEBERG  
1031 MARLIN LAKES CIR  
SARASOTA, FLORIDA 34232

**ABBREVIATION LEGEND**

P.O.C. = POINT OF COMMENCEMENT
P.O.B. = POINT OF BEGINNING

APPROVED BY:

S. SANDY LLOVERAS  
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER No. LS1762  
THIS IS NOT A BOUNDARY SURVEY

**LLOVERAS, BAUR & STEVENS**  
ENGINEERS - SURVEYORS - PLANNERS

2922B U.S. HIGHWAY 19 N.  
CLEARWATER, FLORIDA 33781  
Phone: (727) 784-3885 Fax: (727) 784-8183

REVISIONS	DRAWN BY: COM	JOB No.
	CHECKED BY: R.D.	26486
	APPROVED BY: [Signature]	1 OF 1
	DATE: MARCH 23, 2000	
	SCALE: 1" = 100'	

BOUNDARY PLAN AND DESCRIPTION





INSTRUMENT # 2005054385  
121 PGS

**EXHIBIT E**

Southwest Florida Water Management District Permit

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
GENERAL CONSTRUCTION MODIFICATION  
PERMIT NO. 44010177.002

INSTRUMENT # 2005054385  
121 PGS

**Expiration Date: November 17, 2009**

PERMIT ISSUE DATE: November 17, 2004

This permit is issued under the provisions of Chapter 373, Florida Statutes (F.S.), and the Rules contained in Chapters 40D-4 and 40, Florida Administrative Code (F.A.C.). The permit authorizes the Permittee to proceed with the construction of a surface water management system in accordance with the information outlined herein and shown by the application, approved drawings, plans, specifications, and other documents, attached hereto and kept on file at the Southwest Florida Water Management District (District). Unless otherwise stated by permit specific condition, permit issuance constitutes certification of compliance with state water quality standards under Section 401 of the Clean Water Act, 33 U.S.C. 1341. All construction, operation and maintenance of the surface water management system authorized by this permit shall occur in compliance with Florida Statutes and Administrative Code and the conditions of this permit.

**PROJECT NAME:** San Palermo (F.K.A. Marlin Lakes Village)

**GRANTED TO:** DiVosta Homes  
4500 P.G.A. Boulevard, Suite 400  
Palm Beach Gardens, FL 33418

**ABSTRACT:** This permit is a formal modification of the existing Environmental Resource Permit (ERP) No. 44010177.001 to allow the construction of 160 multiple family units within the previously approved San Palermo (previously Martin Lakes Village) project (ERP No.44010177.001).

The significant modifications to the original surface water management system are as follows:

- a. Construction of 160 multiple-family units on 21.16 acres with 13.45 acres of impervious area just north of the existing Marlin Lakes Apartments.
- b. Construction of two new ponds with a total area of 1.43 acres (at top of the bank) noted on the construction plans as Lake No. 1025 (0.84 acre) and Lake No. 1046 (0.59 acre).
- c. Reconfiguration and resizing of two of the existing lakes, Lake Nos. 2, (3.14 acres) and 5, (0.51 acre) at top of bank.
- d. Lowering the attenuation weir of both existing lakes, Lake Nos. 1 and 4 from elevation 29.00 feet to elevation 28.90 feet.
- e. Modification of the sizes of the attenuation weirs. The weir for Lake No. 4 will be narrowed from 116.6 inches to 67 inches, the weir for Lake No. 1 will be narrowed from 76 inches to 24 inches.

The project area contains approximately 5.61 acres of wetland that extends offsite to the north. This project does not propose impacts to the on-site wetland. All environmental and wetland acreages previously permitted in ERP No. 44010177.001, issued January 6, 2000, and entitled "Marlin Lakes Village" remain as permitted.

All other terms and conditions of ERP No. 44010177.001 entitled Martin Lakes Village and issued on January 8, 2000 apply.

**OP. & MAINT. ENTITY:** San Palermo Homeowners Association

**COUNTY:** Sarasota  
**SEC/TWP/RGE:** 13/36S/18E  
**TOTAL ACRES OWNED OR UNDER CONTROL:** 27.73  
**PROJECT SIZE:** 21.16 Acres  
**LAND USE:** Residential  
**DATE APPLICATION FILED:** August 2, 2004  
**AMENDED DATE:** N/A

INSTRUMENT # 2005054385  
 121 PGS

I. Water Quantity/Quality:

POND NO.	AREA ACRES @ TOP OF BANK	TREATMENT TYPE
2 **a	3.14	Wet Detention
5 **a	0.51	Wet Detention
1025	0.84	Wet Detention
1046	0.59	Wet Detention
<b>TOTAL</b>	<b>5.08</b>	

4 Comments: Water Quality Treatment and Attenuation is also provided in existing Ponds 1, 3 and approved under ERP No. 44010177.000.

\*\*a. Ponds 2 and 5 are existing ponds that will be reconfigured.

A mixing zone is not required.  
 A variance is not required.

II. 100-Year Floodplain:

There is no FEMA floodplain within the project area.

III. Environmental Considerations:

Comments: The project area contains approximately 5.61 acres of Palustrine emergent wetland, referenced as Wetland A, which extends off-site to the north. This project does not propose impacts to the on-site Wetland A. All environmental and wetland acreages previously permitted in ERP No. 4401077.001, issued January 6, 2000, and entitled "Marin Lakes Village" remain as permitted.

Watershed Name: South Coastal Drainage

A regulatory conservation easement is not required.

A proprietary conservation easement is not required.

INSTRUMENT # 2005054385  
121 PGS

**SPECIFIC CONDITIONS**

1. If the ownership of the project area covered by the subject permit is divided, with someone other than the Permittee becoming the owner of part of the project area, this permit shall terminate, pursuant to Section 40D-1.6105, F.A.C. In such situations, each land owner shall obtain a permit (which may be a modification of this permit) for the land owned by that person. This condition shall not apply to the division and sale of lots or units in residential subdivisions or condominiums.
2. Unless specified otherwise herein, two copies of all information and reports required by this permit shall be submitted to:

Sarasota Regulation Department  
Southwest Florida Water Management District  
6750 Fruitville Road  
Sarasota, FL 34240-9711

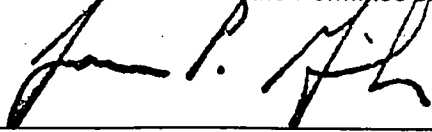
The permit number, title of report or information and event (for recurring report or information submittal) shall be identified on all information and reports submitted.

3. The Permittee shall retain the design engineer, or other professional engineer registered in Florida, to conduct on-site observations of construction and assist with the as-built certification requirements of this project. The Permittee shall inform the District in writing of the name, address and phone number of the professional engineer so employed. This information shall be submitted prior to construction.
4. Within 30 days after completion of construction of the permitted activity, the Permittee shall submit to the Sarasota Service Office a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the required Statement of Completion and Request for Transfer to Operation Entity form identified in Chapter 40D-1.659, F.A.C., and signed, dated and sealed as-built drawings. The as-built drawings shall identify any deviations from the approved construction drawings.
5. The District reserves the right, upon prior notice to the Permittee, to conduct on-site research to assess the pollutant removal efficiency of the surface water management system. The Permittee may be required to cooperate in this regard by allowing on-site access by District representatives, by allowing the installation and operation of testing and monitoring equipment, and by allowing other assistance measures as needed on site.
6. The operation and maintenance entity shall submit inspection reports in the form required by the District, in accordance with the following schedule.  
  
For systems utilizing retention or wet detention, the inspections shall be performed two (2) years after operation is authorized and every two (2) years thereafter.
7. The removal of littoral shelf vegetation (including cattails) from wet detention ponds is prohibited unless otherwise approved by the District. Removal includes dredging, the application of herbicide, cutting, and the introduction of grass carp. Any questions regarding authorized activities within the wet detention ponds shall be addressed to the District's Surface Water Regulation Manager, Sarasota Service Office.
8. This permit is issued based upon the design prepared by the Permittee's consultant. If at any time it is determined by the District that the Conditions for Issuance of Permits in Rules 40D-4.301 and 40D-4.302, F.A.C., have not been met, upon written notice by the District, the Permittee shall obtain a permit modification and perform any construction necessary thereunder to correct any deficiencies in the system design or construction to meet District rule criteria. The Permittee is advised that the correction of deficiencies may require re-construction of the surface water management system and/or mitigation areas.

INSTRUMENT # 2005054385  
121 PGS

**GENERAL CONDITIONS**

1. The general conditions attached hereto as Exhibit "A" are hereby incorporated into this permit by reference and the Permittee shall comply with them.

A handwritten signature in black ink, appearing to be "J. P. [unclear]", written over a horizontal line.

Authorized Signature

EXHIBIT "A"

INSTRUMENT # 2005054385  
121 PGS

1. All activities shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications, shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. For general permits authorizing incidental site activities, the following limiting general conditions shall also apply:
  - a. If the decision to issue the associated individual permit is not final within 90 days of issuance of the incidental site activities permit, the site must be restored by the permittee within 90 days after notification by the District. Restoration must be completed by re-contouring the disturbed site to previous grades and slopes re-establishing and maintaining suitable vegetation and erosion control to provide stabilized hydraulic conditions. The period for completing restoration may be extended if requested by the permittee and determined by the District to be warranted due to adverse weather conditions or other good cause. In addition, the permittee shall institute stabilization measures for erosion and sediment control as soon as practicable, but in no case more than 7 days after notification by the District.
  - b. The incidental site activities are commenced at the permittee's own risk. The Governing Board will not consider the monetary costs associated with the incidental site activities or any potential restoration costs in making its decision to approve or deny the individual environmental resource permit application. Issuance of this permit shall not in any way be construed as commitment to issue the associated individual environmental resource permit.
4. Activities approved by this permit shall be conducted in a manner which does not cause violations of state water quality standards. The permittee shall implement best management practices for erosion and a pollution control to prevent violation of state water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
5. Water quality data for the water discharged from the permittee's property or into the surface waters of the state shall be submitted to the District as required by the permit. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by the American Public Health Association or Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the permittee shall provide data as required on volumes of water discharged, including total volume discharged during the days of sampling and total monthly volume discharged from the property or into surface waters of the state.

6. District staff must be notified in advance of any proposed construction dewatering. If the dewatering activity is likely to result in offsite discharge or sediment transport into wetlands or surface waters, a written dewatering plan must either have been submitted and approved with the permit application or submitted to the District as a permit prior to the dewatering event as a permit modification. A water use permit may be required prior to any use exceeding the thresholds in Chapter 40D-2, F.A.C.
7. Stabilization measures shall be initiated for erosion and sediment control on disturbed areas as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 7 days after the construction activity in that portion of the site has temporarily or permanently ceased.
8. Off-site discharges during construction and development shall be made only through the facilities authorized by this permit. Water discharged from the project shall be through structures having a mechanism suitable for regulating upstream stages. Stages may be subject to operating schedules satisfactory to the District.
9. The permittee shall complete construction of all aspects of the surface water management system, including wetland compensation (grading, mulching, planting), water quality treatment features, and discharge control facilities prior to beneficial occupancy or use of the development being served by this system.
10. The following shall be properly abandoned and/or removed in accordance with the applicable regulations:
  - a. Any existing wells in the path of construction shall be properly plugged and abandoned by a licensed well contractor.
  - b. Any existing septic tanks on site shall be abandoned at the beginning of construction.
  - c. Any existing fuel storage tanks and fuel pumps shall be removed at the beginning of construction.
11. All surface water management systems shall be operated to conserve water in order to maintain environmental quality and resource protection; to increase the efficiency of transport, application and use; to decrease waste; to minimize unnatural runoff from the property and to minimize dewatering of offsite property.
12. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District a written notification of commencement indicating the actual start date and the expected completion date.
13. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the occupation of the site or operation of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of that phase or portion of the system to a local government or other responsible entity.
14. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual as authorized by law, utilizing the required Statement of Completion and Request for Transfer to Operation Entity form identified in Chapter 40D-1, F.A.C. Additionally, if deviation from the approved drawings are discovered during the certification process the certification must be accompanied by a copy of the approved permit drawings with deviations noted.



15. This permit is valid only for the specific processes, operations and designs indicated on the approved drawings or exhibits submitted in support of the permit application. Any substantial deviation from the approved drawings, exhibits, specifications or permit conditions, including construction within the total land area but outside the approved project area(s), may constitute grounds for revocation or enforcement action by the District, unless a modification has been applied for and approved. Examples of substantial deviations include excavation of ponds, ditches or sump areas deeper than shown on the approved plans.
16. The operation phase of this permit shall not become effective until the permittee has complied with the requirements of the conditions herein, the District determines the system to be in compliance with the permitted plans, and the entity approved by the District accepts responsibility for operation and maintenance of the system. The permit may not be transferred to the operation and maintenance entity approved by the District until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall request transfer of the permit to the responsible operation and maintenance entity approved by the District, if different from the permittee. Until a transfer is approved by the District, the permittee shall be liable for compliance with the terms of the permit.
17. Should any other regulatory agency require changes to the permitted system, the District shall be notified of the changes prior to implementation so that a determination can be made whether a permit modification is required.
18. This permit does not eliminate the necessity to obtain any required federal, state, local and special District authorizations including a determination of the proposed activities' compliance with the applicable comprehensive plan prior to the start of any activity approved by this permit.
19. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40D-4 or Chapter 40D-40, F.A.C.
20. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the activities authorized by the permit or any use of the permitted system.
21. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding unless a specific condition of this permit or a formal determination under section 373.421(2), F.S., provides otherwise.
22. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of the permitted system or the real property at which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rule 40D-4.351, F.A.C. The permittee transferring the permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to such sale, conveyance or other transfer.
23. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with District rules, regulations and conditions of the permits.
24. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the District and the Florida Department of State, Division of Historical Resources.
25. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.