

**DECLARATION OF CONDOMINIUM**  
**OF**  
**GRAND PALM VILLAGE AT THE VINES, A CONDOMINIUM**

**Article 1. Submission Statement and Phasing Plan**

A. **Submission Statement.** PHH HOMEQUITY CORPORATION, a Delaware corporation, d/b/a PHH ASSET MANAGEMENT (hereinafter called the “Developer”), owns the fee simple title to that certain real property in Lee County, Florida, legally described in Exhibit “A” annexed hereto. Developer does hereby submit said real property, and the improvements thereon and the appurtenances thereto, to condominium ownership pursuant to Chapter 718 of the Florida Statutes and declares same a condominium known as GRAND PALM VILLAGE AT THE VINES, A CONDOMINIUM (the “Condominium”).

All restrictions, reservations, covenants, conditions and easements contained herein shall constitute covenants running with the land or equitable servitudes upon the land, as the case may be, and shall be binding on each unit owner, his heirs, personal representatives, successors and assigns. In consideration of receiving and by acceptance of a grant, devise or mortgage, all grantees, devisees or mortgagees, their successors and assigns, and all parties claiming by, through or under such persons, agree to be bound by the provisions hereof, the Articles of Incorporation and the By-Laws of the Association hereinafter defined. Both the burdens imposed and the benefits provided shall run with the title to each Unit and their appurtenant interests in the Common Elements as defined herein.

B. **Phasing Plan.** This Condominium is a phase condominium as provided for in Florida Statute 718.403. Exhibit “A” to this Declaration is the legal description of Phase 1 of this Condominium. Exhibit “C” to this Declaration is the site plan, boundary survey and typical unit floor plans of the real property submitted to condominium ownership as Phase 1 of the Condominium. Phase 1 is planned for 80 units. The minimum size of each unit type is 1,300 square feet and the maximum size of each Unit type is 1,800 square feet.

The general scheme of phasing the Condominium is the submission of the parcel of property to condominium ownership described as Phase 1 on Exhibit “A” and the proposed addition of a subsequent parcel to condominium ownership with such subsequent parcel becoming part of this Condominium and governed by the same Condominium Association. It is not anticipated that the submission of any additional phase to the Condominium will have significant impact upon any Unit Owner’s rights except as set forth in this Declaration. The addition of a phase to this Condominium, thereby adding additional Units, will reduce the share of Common Elements, Common Surplus and Common Expenses attributable to each previously created Unit, as specifically set forth in Exhibit “G”. The adding of a subsequent phase to this Condominium will not affect the vote of any Unit Owner as a member of the Association. Each

Unit Owner shall continue to have one vote for each Unit in the Condominium owned by such Unit Owner; provided, however, that the total number of votes entitled to be cast will increase by the number of Units contained in the phase so added. The number of Units in this Condominium will be as created by this Declaration and the Owners thereof shall comprise the complete membership of the Association and thereby be entitled to cast 100 percent of the votes of the Association and own 100 percent of the Common Elements.

## **Article 2. Definitions**

As used herein and in the By-Laws attached hereto and in all amendments thereto, unless the context requires otherwise:

A. "Act" means and refers to the Condominium Act of the State of Florida in effect on the date of recordation of this Declaration of Condominium.

B. "Articles" or "Articles of Incorporation" mean the Articles of Incorporation of the Association, as same may be amended from time to time.

C. "Assessment" means a share of the funds required for the payment of Common Expenses which from time to time are assessed against a Unit Owner.

D. "Association" or "Corporation" means Grand Palm Village at the Vines Condominium Association, Inc. a Florida not-for-profit corporation, the entity responsible for the operation of the Condominium.

E. "Board" means the Board of Directors of the Association.

F. "By-Laws" means the By-Laws of the Association, as the same may be amended from time to time.

G. "Condominium Documents" means this Declaration and all Exhibits attached hereto as the same may be amended from time to time.

H. "Condominium Property" means and includes the land and personal property submitted to condominium ownership, whether or not contiguous, all improvements thereon, and all easements and rights appurtenant thereto intended for use in connection with the Condominium.

I. "Condominium Unit" or "Unit" means a portion of the Condominium Property which is subject to exclusive ownership; each Unit is designated as "Condominium Unit" on the Plot Plan, Survey and Graphic Description attached hereto as Exhibits "B", "C", and/or "D".

J. "Common Elements" means the portion of the Condominium Property not included in the Units. The Surface Water Management System as defined hereinafter shall be deemed a Common Element.

K. "Common Expenses" means (1) expenses of administration and management of

the Condominium Property; (2) expenses of maintenance, operation, repair or replacement of Common Elements; (3) expenses declared Common Expenses by the provisions of the Condominium Act, this Declaration or the By-Laws; and (4) any valid expenses or debts against the Condominium as a whole.

L. “Common Surplus” means the excess of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, Assessments, rents, profits and revenues on account of the Common Elements over and above the amount of money expended as Common Expenses.

M. “Condominium” means that form of ownership of real property created pursuant to the provisions of the Act which is comprised of units that may be owned by one or more persons or entities and there is appurtenant to each unit, as part thereof, an undivided share in the Common Elements.

N. “Condominium Building” or “Building” means the structures which comprise that part of the Condominium Property within which the Units are located.

O. “Condominium Parcel” means a Unit together with the undivided share in the Common Elements which is appurtenant to the Unit.

P. “Declaration” or “Declaration of Condominium” means this instrument, and all Exhibits attached hereto, as same may be amended from time to time.

Q. “Institutional Lender” or “Institutional Mortgagee” or “Mortgagee” means a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, the Federal National Mortgage Association or any other generally recognized institutional-type lender or its loan correspondent, or any agency of the United States Government (and such lender’s successors and assigns) or any other lender approved by the Association pursuant to the provisions of Article 17, holding a mortgage encumbering a Condominium Unit.

R. “Insurance Trustee” means that Florida Bank having trust powers, designated by the Board to receive proceeds on behalf of the Association, which proceeds are paid as a result of casualty or fire loss covered by insurance policies.

S. “Limited Common Elements” means those Common Elements which are reserved for the use of a certain Unit or Units to the exclusion of all other Units.

T. “Owner” or “Unit Owner” means that person or entity owning a Condominium Unit.

U. “Special Assessment” means any assessment levied against Unit Owners other than the assessment required by an annual budget.

V. “Surface Water Management System” means the surface water management system for the Condominium Property as permitted by the South Florida Water Management District.

**Article 3. Condominium Units; Appurtenances; Limited Common Elements; Possession and Enjoyment**

A. Each Condominium Unit is identified by a numeric designation as set forth in Exhibit "C" attached hereto. The boundaries of the Unit are as follows:

Lower Boundary - The undecorated, unfinished upper surface of the concrete floor.

Upper Boundary - The undecorated, unfinished lower surface of the ceiling, as extended to the perimetrical boundaries thereof.

Perimetrical Boundaries - The undecorated, unfinished interior surface of the perimeter walls of the Unit extended to their intersection with the upper and lower boundaries. Where a veranda, terrace, loggia, porch, storage room or other portion of the Building has not been declared a Limited Common Element in Paragraph B below, and serves only the Unit being bounded, the perimetrical boundary shall vary with the exterior unfinished surface of any such structure extended in a vertical plane, where necessary, to the horizontal boundary.

Apertures - Where there is an aperture to any perimetrical boundary, including, but not limited to, windows and doors, the vertical boundary shall be extended at all such places at right angles to the dimension of such aperture so that the perimetrical boundary at such places shall be coincident with the exterior unfinished surface of such aperture, including the framework thereof. Exterior surfaces or walls made of glass, or glass fixed to metal framing, exterior windows or frames, exterior glass sliding doors, frames and castings shall be included within the Units and shall not be deemed a Common Element.

Each Unit shall be deemed to exclude the area beneath the unfinished surface of any weight bearing structure, the undecorated and unfinished concrete slab between the first and second story of any second story unit, and shall exclude all pipes, ducts, wires, conduits and other facilities running through any interior wall or partitions for the maintenance of utility services to other Units or Common Elements or Limited Common Elements. Mechanical equipment and appurtenances located within or without any Unit and for the exclusive use of that Unit including, but not limited to, the following shall be considered part of the Unit: air conditioning and heating system (air system), filters, coils, heating strips, water heaters, appliances, range hoods, nonbearing partition walls, outlets, electrical receptacles and outlets, fixtures and cabinets.

B. **Limited Common Elements.** The Limited Common Elements for each Unit are depicted on Exhibit "C" and they shall be maintained as provided herein. All Limited Common Elements shall be an appurtenance to the designated Unit. Any veranda, terrace, loggia, patio, porch, sundeck, foyer, entranceway, courtyard, driveway, whether such areas are screened or open; together with any outside lighting fixtures, stairwell, and any trash enclosures, attached to the Building and serving only a Unit is a Limited Common Element appurtenant to such Unit. Each garage is a Limited Common Element as more particularly described in Paragraph 6C below.

C. **Appurtenances.** There shall pass with each Unit as an appurtenance thereto:

- (1) An undivided interest in the Common Elements.
- (2) An undivided share in the Common Surplus.
- (3) An exclusive easement for the use of the air space occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.
- (4) Such other easements, rights or privileges which, pursuant to the provisions to this Declaration and of law, are deemed appurtenances to the Condominium Unit.
- (5) Membership for the Unit Owner in the Association, subject to the rights and obligations of membership therein.
- (6) The benefit, use and enjoyment of the Condominium Property and any improvements thereon, subject to the terms, conditions and limitations of this Declaration.
- (7) The use of assigned Limited Common Elements, subject to the provisions of this Declaration.
- (8) A nonexclusive easement for ingress and egress over the parking tracts, walks and other rights of way of the Common Elements necessary to provide access to the public ways.

D. The Owner of a Unit is entitled to the exclusive possession of his Unit. He shall be entitled to use the Common Elements in accordance with the purposes for which they are intended, but no such use shall hinder or encroach upon the lawful rights of Owners of other Units. There shall be a joint use of the Common Elements (other than Limited Common Elements) and a joint mutual easement for that purpose is hereby created.

E. Each Owner shall pay the cost of maintaining all sliding glass doors or screening (including screening fixtures) contained within his Condominium Unit or any Building, terrace or porch attached to his Unit; the replacement or repair of windows and window operators, screening, balcony screening and screen framing, wiring, electrical outlets and fixtures which are wholly within the Unit; and of ordinary cleaning and maintenance of the balconies and terraces. Each Owner shall also pay the cost of maintaining the water heater and the heating and air conditioning unit servicing his Unit. Rules and regulations regarding the uniform maintenance and appearance of all exterior facing forming part of the improvements may be promulgated by the Association from time to time.

#### **Article 4. Restraint Upon Separation and Partition of Limited Common Elements and Common Elements.**

The appurtenant Limited Common Elements (which are shown on Exhibit "C" attached hereto) and the undivided share in the Common Elements which are appurtenant to the Unit shall not be separated therefrom and shall pass with the title to the Unit, whether or not separately

described.

The share in the Common Elements and Limited Common Elements appurtenant to a Unit cannot be conveyed or encumbered except together with the Unit.

The share in the Common Elements and Limited Common Elements appurtenant to each Unit shall remain undivided, and no action for partition shall lie.

## **Article 5. Common Elements**

Common Elements as defined in paragraph 2J includes within its meaning the following items:

A. All conduits, pipes, ducts, plumbing, wiring and all other facilities for the furnishing of utility services to Units; all structural walls, beams and members located within the Units and easements of support in every portion of a Unit which contributes to the support of the improvements and the pool and cabana.

B. Installations for the furnishing of utility services to more than one Unit or to the Common Elements or to a Unit other than the Unit containing the installation.

C. Easements for encroachments by the perimeter walls, ceilings, and floors surrounding each Condominium Unit caused by minor inaccuracies in construction, reconstruction, repair, shifting, settlement or movement of any portion of the improvements, which now exist or hereafter exist, and such easements shall continue until such encroachment no longer exists.

D. Easements for overhanging troughs or gutters, downspouts, and the discharge therefrom of rainwater and the subsequent flow thereof over Condominium Units or any of them.

## **Article 6. Condominium Property and Identification of Units**

A. Annexed hereto as Exhibit "C" is a sketch of the survey of the land being submitted to condominium ownership, together with a site plan and graphic description of the improvements in which the Units are located.

B. The identification, location and dimensions of each Unit, the Limited Common Elements and the Common Elements appear on Exhibit "C". Each Unit has been given a numeric designation for purposes of identification so that no Unit has the same designation as any other Unit. Each Unit is described in Exhibit "C" in such a manner that there can be determined therefrom the identification, location and approximate dimensions of each Unit and the Limited Common Elements and Common Elements appurtenant thereto. The legend and notes contained in Exhibit "C" are incorporated herein and made a part hereof by reference.

C. Each Condominium Building is adjacent to four enclosed garage areas designated by a number corresponding to said Condominium Building and followed by a letter. Each garage

exists as a Limited Common Element and is identified, described and located on Exhibit "C". The Unit Owner shall have the exclusive right to the use thereof without separate charge by the Association, although nothing herein contained shall be construed as relieving such Unit Owner from any portion of any assessment for Common Expenses made against a Unit, as herein provided, it being the intent that the cost of maintenance and administration of Limited Common Elements shall be included as part of the Common Expense applicable to all Units for purposes of assessments. The parking spaces adjacent to the swimming pool are designated as Guest Parking. No Guest Parking Space may be assigned to a Unit or otherwise transferred unless approved in the same manner as required to amend this Declaration of Condominium as provided in Article 8.

D. Guest Parking Spaces, if any, shall be a part of the Common Elements and shall be under the control and jurisdiction of the Association, except that no Guest Parking Space may be assigned to a Unit or otherwise transferred unless approved in the same manner as required to amend this Declaration of Condominium, as provided in Article 8.

#### **Article 7. Ownership of Common Elements and Shares of Common Surplus**

The Owner of each Unit shall own a share and certain interest in the Condominium Property which is appurtenant to his Unit, including but not limited to the following:

A. **Common Elements.** The undivided shares in the Common Elements appurtenant to each of the Condominium Units are set forth on the schedule attached hereto and made a part hereof as Exhibit "G". Said Exhibit also sets forth the changes in the ownership of Common Elements as subsequent phases may be added.

B. **Common Surplus.** Each Unit Owner shall own any Common Surplus of the Association in the same percentage as the Common Expenses appurtenant to each Unit are shared, as set forth in Exhibit "G". This ownership, however, does not include the right to withdraw or require payment or distribution of said Common Surplus. The percentages of Common Expenses and Common Surplus shall change in the same percentages as changes in the Common Elements as subsequent phases may be added.

#### **Article 8. Amendment to Declaration**

A. Except as herein or elsewhere provided, this Declaration may be amended in the following manner:

1. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered.

2. An amendment may be proposed by either the majority vote of the Board of Directors of the Association, or by members of the Association holding one-third of the total vote of the entire membership. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, provided such approval is delivered to the Secretary within ten days after the meeting. Except as elsewhere

provided, a resolution adopting the proposed amendment must be approved by not less than a majority of the voting interests present in person or by proxy, and voting at a duly noticed meeting of the Association.

B. No amendment shall change any Condominium Parcel nor a Unit Owner's share of the Common Elements, its Common Expense or Common Surplus, nor the voting rights appurtenant to any Unit, unless the record owner(s) thereof and all record owners of mortgages or other liens thereon shall join in the execution of the amendment.

C. No amendment shall be passed which shall impair or prejudice the rights and priorities of mortgagees.

D. Notwithstanding anything to the contrary herein, and unless otherwise prohibited by the Act, the Association shall have the right to amend the Declaration and its Exhibits so as to correct any errors or omissions, or any legal description contained herein, which legal description may have been incorrect by reason of a scrivener's or surveyor's error, so long as such amendments do not increase the maximum number of Units or materially affect the rights of Unit Owners, lienors or Mortgagees. Such amendment need be executed and acknowledged by the Association only, and need not be approved by the Unit Owners, lienors or Mortgagees of Units, whether or not elsewhere required for amendments.

E. In the event it shall appear that there is an error or omission in this Declaration or the Exhibits thereto, as described in Paragraph 8D then and in that event, the Association may correct such error and/or omission by amendment to this Declaration in the following manner:

(1) Notice of the subject matter of a proposed amendment to cure a defect, error or omission shall be included in the notice of any meeting at which such amendment is to be considered.

(2) A resolution for the adoption of such a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association, and members not present in person or by proxy at the meeting considering the amendment may express their approval by writing delivered to the Secretary at or prior to the meeting. Such approvals to amend this Declaration must be either by:

a. Not less than 33-1/3 percent of the entire membership of the Board of Directors and by not less than 10 percent of the votes of the entire membership of the Unit Owners; or

b. Not less than 25 percent of the votes of the entire membership of the Unit Owners; or

c. In the alternative, an amendment may be made by an agreement signed and acknowledged by all Unit Owners in the manner required for the execution of a deed, and such amendment shall be effective when recorded in the Public Records of Lee County, Florida.

F. Notwithstanding anything in the Declaration to the contrary, no amendment

adding a phase to the Condominium shall require the execution of such amendment or any form of consent thereto by Unit Owners, the Association, any Mortgagees of Units, or by any party other than the Developer.

G. Except as otherwise provided in this Declaration, a copy of each amendment shall be attached to a certificate, executed by the officers of the Association, certifying that the amendment was duly adopted. The amendment aforesaid shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Lee County, Florida.

H. Notwithstanding anything in the Declaration to the contrary, no amendment affecting the Surface Water Management System, including the water management portions of the Common Elements, shall be made or shall be effective without the prior written consent of the South Florida Water Management District.

### **Article 9. The Association; Its Powers and Responsibilities**

A. The Condominium is governed and administered by Grand Palm Village at The Vines Condominium Association, Inc., a Florida not-for-profit corporation. A copy of the Articles of Incorporation of the Association is annexed hereto and made a part hereof as Exhibit "E". Amendments to the Articles of Incorporation shall be valid when adopted in accordance with its provisions and filed with the Secretary of State or as otherwise required by Chapter 617, Florida Statutes, as same may be amended from time to time. Article 8 of this Declaration, regarding amendments to this Declaration, shall not pertain to amendments to the Articles of Incorporation, the recording of which shall not be required among the Public Records to be effective unless such recording is otherwise required by law. Except as provided above in Paragraph 8, however, no amendment to the Articles of Incorporation shall change any Condominium Parcel or the share of the Common Elements, Common Expenses or Common Surplus attributable to a Unit nor the voting rights appurtenant to a Unit unless the record Owner or Owners thereof and all record owners of mortgages upon such Unit or Units shall join in the execution of such amendment.

B. The powers and duties of the Association shall include those set forth in the By-Laws annexed hereto and made a part hereof as Exhibit "F". No modification of or amendment to these By-Laws shall be deemed valid unless duly adopted as provided in the By-Laws and set forth in or annexed to a duly recorded amendment to this Declaration executed in accordance with the provisions of the Condominium Act. In addition thereto, the Association shall have all of the powers and duties set forth in the Act, as well as all powers and duties granted to or imposed upon it by this Declaration, including:

(1) The irrevocable right to have access to each Unit from time to time during reasonable hours as may be necessary for the maintenance, repair or replacement of any Common Elements therein, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit. In the case of emergency such as, but not limited to, fire or hurricane, entry may be made without notice or permission. Each Unit Owner does hereby appoint the Association as his or her agent for the purposes herein provided and agrees that the Association shall not be liable for any alleged property damage or theft caused to

or occurring on account of any such entry.

(2) The power to levy and collect Assessments from Unit Owners and to lease, maintain, repair and replace the Common Elements.

(3) The duty to maintain accounting records according to good accounting practices, which shall be open to inspection by Unit Owners at reasonable times during normal business hours.

(4) The power to enter into contracts with others, for a valuable consideration, for maintenance and management, including the normal maintenance and repair of the Common Elements. The duty and responsibility to maintain and preserve the landscaping, gardening, painting, repairing and replacement of the Common Elements shall not relieve the Unit Owner of Unit Owner's personal responsibility to maintain and preserve the interior surface of his Unit and the Limited Common Elements appurtenant thereto, and to paint, clean, decorate, maintain and repair his Unit.

(5) The power to adopt reasonable rules and regulations for the maintenance and conservation of the Condominium Property and for the health, comfort, safety and welfare of the Unit Owners, all of whom shall be subject to such rules and regulations.

(6) The power to purchase Units in the Condominium and to acquire, hold, lease, mortgage and convey the same.

(7) The duty to collect from all Unit Owners the annual, special and individual assessments of the Vines Community Association, Inc. and to pay said Association all sums collected on a quarterly basis or as otherwise required.

(8) The power to operate and maintain the Surface Water Management System and to levy and collect assessments there for.

C. The By-Laws may be amended in the manner provided for therein, but no amendment to said By-Laws shall be adopted which would affect or impair the validity or priority of any institutional mortgage covering any Condominium Parcel(s), or which would change the provisions of the By-Laws with respect to the rights of Institutional Mortgagees, without the written approval of all Institutional Mortgagees of record.

D. Each Unit shall be entitled to one vote to be cast in accordance with the provisions of the By-Laws and Articles of Incorporation of the Association.

E. The Association or its designees shall maintain such records as required by Section 718.111, Florida Statutes.

F. In any legal action in which the Association may be exposed to liability in excess of insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to the liability, so that such Unit Owners shall have the right to intervene and defend.

G. No Unit Owner, except an officer or director of the Association, shall have any authority to act for the Association.

## **Article 10. Maintenance, Alterations and Improvements**

The responsibility for the maintenance of the Condominium Property and restrictions upon its alteration and improvement shall be as follows:

A. **Maintenance By the Association.** The Association shall maintain, repair and replace at the Association's own expense:

- (1) All Common Elements.
- (2) All Limited Common Elements, except as otherwise excluded pursuant to Article 10B(1) below or Article 3E above.
- (3) All portions of the Units (except interior wall surfaces) contributing to the support of the Building, which portions shall include, but not be limited to, the outside walls of the Building, and load-bearing columns and walls.
- (4) All conduits, ducts, plumbing, air conditioning, wiring and other facilities for the furnishing of utility services which are contained in the portions of a Unit contributing to the support of the Building or within interior boundary walls, and all such facilities contained within a Unit which service part or parts of the Condominium other than the Unit within which contained.
- (5) All property owned by the Association. Maintenance shall extend to the edge of the pavement of any collector or arterial street that is contiguous to Association property.
- (6) All incidental damage caused to a Unit by such work shall be promptly repaired at the expense of the Association.
- (7) All of the Surface Water Management System, as permitted by the South Florida Water Management District.
- (8) Pursuant to Lee County Ordinance No. 90-6, the Association shall maintain the Condominium Property free of the plant species known as Melaleuca, Australian pine, and Brazilian pepper.

B. **Maintenance By the Condominium Unit Owner.** The responsibilities of the Unit Owner shall be as follows:

- (1) To maintain, repair and replace at Unit Owner's expense all portions of the Unit and/or Limited Common Elements except the portions to be maintained, repaired and replaced by the Association. Included within the responsibility of the Unit Owner shall be the interior of any parking garage, balcony, terrace or porch assigned or attached to a Unit, including sliding glass door assemblies (frame, panes, locks and hardware and screening). Included within

the responsibility of the Unit Owner shall be the screening and screen frames of any balcony, porch or terrace attached to a Unit. All such maintenance, repairs and replacements shall be done without disturbing the rights of other Unit Owners.

(2) To maintain, repair and replace at Unit Owner's expense, Unit Owner's individual air conditioning and heating system inside and outside Unit Owner's individual Condominium Unit.

(3) Within the Unit, to maintain, repair and replace at Unit Owner's expense all fans, stoves, refrigerators, dishwashers, or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, sewage and sanitary service to Unit Owner's Condominium Unit.

(4) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Building, including balconies, patios, terraces or parking garage.

(5) To promptly report to the Association any defects or need for repairs, the responsibility for the remedy of which is that of the Association.

(6) No Condominium Unit Owner shall make any alterations in the portions of the Building and/or parking garage which are to be maintained by the Association, or remove any portion thereof or make any additions thereto or do any work which would jeopardize the safety or soundness of the Building and/or parking garage or impair any easement, without first obtaining approval from the Board of Directors of the Association.

**C. Alteration and Improvement of Common Elements.** There shall be no material alterations or substantial additions to the Common Elements, except as the same are authorized by the Board of Directors and ratified by the affirmative vote of voting members of the Association casting not less than 66-2/3 percent of the total votes of the members of the Association present at any regular or special meeting of the Association called for that purpose. The Vines Community Association, Inc. shall be given notice and a reasonable opportunity to respond to all architectural control matters prior to the approval of such matters by the Board of Directors and the members of the Association. The cost of the foregoing shall be assessed as Common Expenses of the Condominium.

**D. Alteration of Unit.** Except as provided in Article 22 hereinafter, no Owner of a Condominium Unit shall make or cause to be made any structural modifications or alterations or replacements in any Unit Owner's Unit, or the exterior doors of any Unit Owner's Unit, or the parking garage, or in the water, gas, electrical, plumbing, air conditioning equipment or utilities therein, without the consent of the Board of Directors of the Association, which consent may be withheld in the event the Board of Directors determines that such structural alteration, modification or replacement would in any manner endanger the Building. If the modification, alteration or replacement desired by a Unit Owner involves the removal of any permanent interior partition, the Association may permit same if the same is not a load-bearing partition and if the same does not interfere with any common utility source. A Unit Owner making or causing to be made any structural modification, alteration or replacement to Unit Owner's Unit agrees, and shall be deemed to have agreed, to hold the Association and all other Unit Owners harmless

from any liability arising therefrom, notwithstanding the fact that the Association may have consented to the changes. No Unit Owner shall cause any improvements or changes to be made to the exterior of the Building and/or parking garage, including, but not limited to, painting, installation of electrical wires, television antennae, or air conditioning units which may protrude through the walls or roof, or in any manner change the exterior appearance of the Building or any portion of the Building not totally within the Unit or the parking garage, without consent of the Association. No Unit Owner or any other person shall install upon the roof or exterior of the Building, the Condominium Property, the parking garage or upon the Common Elements of the Condominium, any television antennae, radio antennae, electric, electronic or electromechanical device, decorative item or affixed furnishing, without the consent of the Association.

E. **Liability of Unit Owner.** Should a Unit Owner undertake unauthorized additions or modifications to his Unit, or refuse to make repairs as required, or should a Unit Owner cause damage to the Common Elements and/or Limited Common Elements, the Association shall have the right to remove such additions or modifications and/or to repair and replace the same and levy a Special Assessment for the cost thereof against said Unit Owner. Each Unit Owner agrees that the Association shall not be liable for any alleged property damage caused to or occurring on account of any such repairs.

F. **Insurance Proceeds.** Whenever any maintenance, replacement or repair of any items for which the Owner of a Unit is responsible is made necessary by any loss covered by insurance maintained by the Association, the proceeds of the insurance received by the Association, or by the Insurance Trustee, shall be used for the purpose of accomplishing such maintenance, repair or replacement. The Unit Owner shall be required to pay all of the costs thereof that exceed the amount of the insurance proceeds.

#### **Article 11. Enforcement of Maintenance**

In the event the Owner of a Unit fails to maintain the Unit and/or Limited Common Elements for which he is responsible and the appurtenances thereto as required above, the Association, or any other Unit Owner shall have the right to proceed in a court of equity to seek compliance with the foregoing provisions or may seek damages or both.

The Association shall have the irrevocable right of access to each Unit and Limited Common Elements during reasonable hours, when necessary for the maintenance, repair or replacement of any Common Elements, the Limited Common Elements or for making emergency repairs which are necessary to prevent damage to the Common Elements, the Limited Common Elements, or to another Unit or Units.

#### **Article 12. Common Expenses**

A. Common Expenses shall include expenses of the operation, maintenance, repair or replacement of the Common Elements, costs of carrying out the powers and duties of the Association, and any other expenses designated as Common Expenses by the Condominium Act, this Declaration and the By-Laws.

B. All costs of water, gas, and sewage service to the Condominium Property shall be a Common Expense of the Condominium.

C. Common Expenses shall be shared by the Unit Owners in accordance with their respective interests in the Common Elements and ownership of Common Surplus, as set forth in Exhibit "G". The foregoing ratio of sharing Common Expenses and Assessments shall remain, regardless of the purchase price of the Condominium Units and regardless of the square footage of the Condominium Units, except as set forth in said Exhibit "G" as Phase 2 to the Condominium may be added.

### **Article 13. Assessments: Liability, Liens. Priority, Interest and Collections**

A. The Association, through its Board of Directors, shall have the power to fix and determine from time to time the sums necessary to provide for the Common Expenses of the Condominium. A Unit Owner, regardless of how title is acquired, shall be liable for all Assessments coming due while the Owner of a Unit. In a voluntary conveyance, the grantee shall be jointly and severally liable with the grantor for all unpaid Assessments against the latter for the latter's share of the Common Expenses up to the time of such voluntary conveyance.

B. The Association shall estimate from time to time the amount of Common Expenses it expects to incur and the period of time involved therein and may assess sufficient monies from Unit Owners to meet this estimate. Assessments for Common Expenses shall be borne by Unit Owners in the proportions or shares set forth in Article 12 hereof pertaining thereto. Assessments shall be payable monthly or in such other installments and at such times as may be fixed by the Board of Directors. The Association shall, if requested by The Vines Community Association, Inc., collect assessments on its behalf and shall remit such assessments directly to The Vines Community Association, Inc.

C. Should the Association, through its Board of Directors, at any time determine that the Assessments made are not sufficient to pay the Common Expenses or, in the event of emergencies, the Board of Directors shall have the authority to levy and collect Special Assessments to meet such needs of the Association, in accordance with the Act.

(1) The Board of Directors of the Association, in assessing for Common Expenses, may include therein a sum to be collected and maintained as a reserve fund for replacement of Common Elements for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may be a portion of the Common Elements.

(2) The Board of Directors of the Association, in assessing for Common Expenses, may include therein a sum to be collected and maintained as a general operating reserve. Such sums may be used to meet deficiencies from time to time existing as a result of delinquent payment of Assessments by Unit Owners or as a result of emergencies.

D. All monies collected by the Association shall, unless the same is collected for the benefit of others, be the separate property of the Association. Such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium

Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of the provisions of this Declaration or the Condominium Act. All monies received from Assessments may be commingled with other monies held by the Association. All Assessments received by the Association shall be held for the benefit of the Unit Owners. No Unit Owner shall have the right to assign, hypothecate, pledge or in any manner transfer his interest therein, except as an appurtenance to his Unit. Such funds shall not be subject to attachment or levy by a creditor or judgment creditor of a Unit Owner. When the Owner of a Unit shall cease to be a member of the Association by the divestment of his ownership of such Unit by whatever means, the Association shall not be required to account to such owner for any share of the funds or assets of the Association.

E. Liability for Assessments may not be avoided by abandonment of a Unit, or by waiver of the use of any Common Elements or other property which an Owner is entitled to use or enjoy.

F. Assessments not paid within ten (10) days of when due shall bear interest from the date when due until paid at the highest rate permitted by law. Additionally, the failure to pay any Assessment within ten (10) days from the date due shall entitle the Association to levy a \$25.00 late charge against the defaulting Unit Owner. Payments made shall be applied to interest first and then to principal. The Association shall furnish to the Mortgagee of any Unit upon its request, written notification of any default in Assessment payments of the Owner whose Unit is encumbered by that mortgage.

G. The Association shall have a lien upon each Condominium Parcel, which lien shall secure the payment of all monies due from each Unit Owner for which he is liable to the Association, including all Assessments, interest, and costs provided for in this Declaration and reasonable attorneys' fees incurred as an incident to the enforcement of said lien. The lien shall be effective, have priority and be collected as provided by the Act unless, by the provisions of this Declaration, such liens would have a greater priority or dignity, in which event the lien right in favor of the Association having the highest priority and dignity shall be the lien of the Association.

H. Liens for Assessments may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property, as more fully set forth in the Act. The Association may bid at any sale and apply as a cash credit against its bid all sums due the Association covered by the lien being enforced. If the Unit Owner remains in possession of the Unit and the claim of lien is foreclosed, the court, in its discretion, may require the Owner to pay a reasonable rental for the Unit, and the Association is entitled to the appointment of a receiver to collect the rent.

I. Where the Mortgagee of any mortgage of record or other purchaser of a Condominium Unit obtains title to the Condominium Unit as a result of foreclosure of the mortgage, or as a result of a deed given in lieu of foreclosure, such acquiror of title, acquiror's successors and assigns, shall not be liable for the share of Common Expenses or Assessments by the Association pertaining to such Condominium Unit or chargeable to the former Unit Owner of such Unit which became due prior to acquisition of title as a result of foreclosure (or acceptance of a deed in lieu thereof), unless such share is secured by a claim of lien for Assessments that is

recorded prior to the recording of the mortgage. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such acquiror, acquiror's successors and assigns. It is understood that such acquiror shall be liable for acquiror's share of Common Expenses or Assessments attributable to acquiror's Condominium Unit from the date of acquiring said Condominium Unit. Except as provided in this Declaration, no Unit Owner may be excused from the payment of Unit Owner's proportionate share of the Common Expenses of the Condominium unless all Unit Owners are likewise proportionately excused from such payment.

J. Nothing contained herein shall abridge or limit the rights and responsibilities of Mortgagees as set forth in the Condominium Act.

#### **Article 14. Limitation of Liability**

A. The liability of the Owner of a Unit for Common Expenses shall be limited to the amounts for which the Unit Owner is assessed from time to time in accordance with the Condominium Act, this Declaration or the By-Laws (including any interest, penalties, costs or fees provided for therein in the event of delinquency).

B. The Owner of a Unit shall have no personal liability for any damages caused by the Association on or in connection with the use of the Common Elements. A Unit Owner shall be liable for injuries or damages resulting from an accident in Unit Owner's Unit to the same extent and degree that the owner of a single-family detached dwelling would be liable for an accident occurring within such owner's single family detached dwelling.

C. In any legal action in which the Association may be exposed to liability in excess of the insurance coverage protecting it and the Unit Owners, the Association shall give notice of the exposure within a reasonable time to all Unit Owners, and they shall have the right to intervene and defend.

#### **Article 15. Liens**

A. With the exception of liens which may result from the initial construction of this Condominium or are provided for in this Article 15, no liens of any nature may be created subsequent to the recording of this Declaration against the Condominium Property as a whole (as distinguished from individual Units) except with the unanimous consent of the Unit Owners.

B. Unless a Unit Owner has expressly requested or consented to work being performed or materials being furnished to Unit owner's Unit, such labor or materials may not be the basis for the filing of a lien against same. No labor performed or materials furnished to the Common Elements shall be the basis for a lien thereon unless authorized by the Association, in which event same may be the basis for the filing of a lien against all Condominium Units in the proportions for which the Owners thereof are liable for Common Expenses.

C. In the event a lien against two or more Condominium Units becomes effective, each Owner thereof may relieve his Condominium Unit of the lien by paying the proportionate

amount attributable to Owner's Condominium Unit. Upon such payment, it shall be the duty of the lienor to release the lien of record against such Condominium Unit.

## **Article 16. Easements**

Each of the following easements is a covenant running with the land of the Condominium, to-wit:

A. **Utility Services; Drainage.** Easements are reserved under, through and over the Condominium Property as may be required for utility services and drainage in order to serve the Condominium. An Owner shall do nothing within or outside Unit Owner's Unit that interferes with or impairs the utility services using these easements. The Board of Directors of the Association or its designee shall have a right of access to each Unit to inspect same, to maintain, repair or replace the pipes, wires, ducts, vents, cables, conduits and other utility service facilities and Common Elements contained in the Unit or elsewhere in the Condominium Property, and to remove any improvements interfering with or impairing the utility services or easements herein reserved; provided that such right of access shall not unreasonably interfere with the Unit Owner's permitted use of the Unit, and entry shall be made on not less than one day's notice, except in the event of an emergency.

B. **Pedestrian and Vehicular Traffic.** An easement shall exist for pedestrian and vehicular traffic over, through and across sidewalks, paths, walk roads and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and such easements shall be for the use and benefit of Owners, Institutional Mortgagees, or tenants, and those claiming by, through or under the aforesaid. The Common Elements contained within the Condominium Property shall be used in common by Unit Owners in this Condominium and their family members, guests, invitees and tenants for the purpose for which same are intended, subject to the provisions of the Declaration and the By-Laws.

C. **Easement for Unintentional and Non-Negligent Encroachments.** If a Unit shall encroach upon any Common Element, Limited Common Element or upon any other Unit, by reason of original construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, or by the non-negligent or nonpurposeful act of the Unit Owner or Developer, then an easement appurtenant to such encroaching Unit, to the extent of such encroachment, shall exist so long as such encroachment shall exist. If any Common Element or Limited Common Element shall encroach upon any Unit by reason of original construction or the nonpurposeful or non-negligent act of the Association or the Developer, then an easement appurtenant to such Common Element or Limited Common Element, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

D. **Support.** The Association hereby grants to its successors, and assigns, and all third party beneficiaries, including Condominium Unit Owners, their lessees, guests, invitees, servants, and employees, the right of support for all structures on any portion of the real property of the Condominium.

E. **Additional Easements.** The Association shall have the right to grant such additional electric, telephone, gas or other utility easements, and to relocate any existing

easements in any portion of the Condominium Property, and to grant access or other easements and relocate any existing access or other easements in any portion of the Condominium Property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the improvements, or any portion thereof, or for the general health or welfare of the Unit Owner, or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Units for their intended purposes.

F. **Lake Maintenance Easement.** Declarant hereby puts each and every Unit Owner on notice that there shall be created a lake maintenance easement affecting certain land situated within the Condominium Property on the Western and Southern boundary thereof, which easement shall be reflected on a plat to be recorded and shall be dedicated to The Vines Community Association, Inc. Said Association shall be responsible, at its cost and expense, for the sodding, irrigation, and maintenance of the land subject to said easement.

G. **Golf Cart Path Easement.** Declarant hereby puts each and every Unit Owner on notice that there shall be created a golf cart path easement affecting certain land situated within the Condominium Property adjacent to the southeastern boundary thereof, which easement shall be reflected on a plat to be recorded and which shall be in favor of the Vines Country Club, Inc. and its members, guests and permitted invitees. The Vines Country Club, Inc. shall be responsible, at its cost and expense, for the maintenance of the landscaping within said easement area. The Association shall be responsible, at its costs and expense, for the maintenance of the concrete path within said easement area.

H. **Easement of Ingress to Golfers.** An easement shall exist in favor of the members, guests and permitted invitees of the Vines Country Club, Inc. upon such portions of the Common Elements as may be reasonably necessary in connection with the playing of golf on the golf course adjacent to the Condominium, including but not limited to the flight and recovery of golf balls. Provided however, such easement shall not extend more than 25 feet within the boundary of the Condominium Property and the entry onto the Condominium Property must be in such manner as to cause no damage whatsoever to property and a minimum of disturbance to Unit Owners.

I. **Covenant Running With the Land.** All easements, of whatever kind or character, whether heretofore or hereafter created, shall constitute a covenant running with the land, shall survive the termination of the Condominium, and, notwithstanding any other provisions of this Declaration, may not be substantially amended or revoked in a way which would unreasonably interfere with its proper and intended use and purpose. The Unit Owners do hereby designate the Association as their lawful attorneys-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

## **Article 17. Forms of Ownership**

A. **Individual Ownership.** A Unit may be owned by an individual person who has qualified and been approved as elsewhere provided herein.

**B. Co-Ownership.** Co-ownership of Units may be permitted, but all Owners must be members of a single family or living together as a single housekeeping unit. If co-ownership is to be by more than two persons, the Board shall condition its approval upon occupancy only by one approved natural person as “primary occupant”, and the use of the Unit by other persons shall be as if the primary occupant is the actual owner. Any change in the primary occupant shall be treated as a transfer of ownership subject to all the provisions of this Article.

**C. Ownership by Corporations, Trusts or Partnerships.** A Unit may be owned in trust or by a corporation, partnership, or other entity which is not a natural person, if approved in the manner provided for other transfers of title. However, the intent of this provision is to allow flexibility in estate or tax planning, and not to create circumstances in which the Unit may be used as short-term transient accommodations for several individuals or families. The approval as a Unit Owner of a corporation, trustee or any entity which is not a natural person shall be conditioned upon designation of one natural person to be the “primary occupant”, and the use of the Unit by other persons shall be as lessees and as if the primary occupant is the only actual owner. Any change in the primary occupant shall be treated as a transfer of ownership subject to all the provisions of this Article. No more than one such change will be approved in any twelve-month period.

**D. Life Estate.** A Unit may become subject to a life estate, either by operation of law or by approved voluntary conveyance. In that event, the life tenant shall be the only member in the Association from such Unit and occupancy of the Unit shall be as if the life tenant was the only owner. Upon termination of the life estate, the holder of the remainder interest shall have no occupancy right unless separately approved by the Association. The life tenant and remaindermen shall be jointly and severally liable for all assessment and charges against the Unit. The life tenant may, by signed agreement, transfer the right to vote in all Association matters to any one remainderman, subject to approval by the Association of such arrangement. If there is more than one life tenant, they shall be treated as if they were co-owners for purposes of voting and occupancy rights.

## **Article 18. Transfers**

**A. Devise or Inheritance.** If any Unit Owner acquires his title by devise or inheritance, his right to occupy or use the Unit shall be subject to the approval of the Board of Directors of the Association. The approval of the Association shall not be denied to any devisee or heir who was the Owner’s lawful spouse at the time of death, or was related to the Owner by blood or adoption within the first degree.

**B. Other Transfers.** If any Unit Owner shall acquire his title in any manner not considered in the foregoing subsection, his right to occupy or use the Unit shall be subject to the approval of the Board of Directors of the Association under the procedures outlined in Article 19.

**C. Mortgaging of Units.** There shall be no restrictions on the mortgaging of Units. All mortgages, other than a first mortgage of record, shall be subject to and inferior to the Association lien for assessments regardless of when recorded.

## **Article 19. Procedures for Transfers**

### **A. Notice to Association.**

(1) **Sale or Gift.** An Owner intending to make a sale or gift of his Unit or any interest therein shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name and address of the proposed purchaser or donee and such other information as the Board may reasonably require. The Board may require the personal appearance of any purchasers or donee and his spouse, if any, as a condition of approval.

(2) **Devise, Inheritance, or Other Transfers.** The transferee must notify the Association of his ownership and submit to the Association a certified copy of the instrument evidencing his ownership and such other information as the Board may reasonably require. The transferee shall have no occupancy right unless approved by the Board, but may sell or lease the Unit following the procedures provided in this Article and in Article 20.

(3) **Failure to Give Notice.** If no notice is given, the Association at its election may approve or disapprove the transfer without prior notice. If it disapproves, the Association shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request consideration.

**B. Certificate of Approval.** Within fifteen (15) days of receipt of the required notice and all information or appearances requested, whichever occurs last, the Board shall approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in a Certificate of Approval executed by an Officer of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within said fifteen (15) days, such failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval to the transferee.

### **C. Disapproval.**

(1) Approval by the Association shall be denied only if a majority of the whole Board so votes.

(2) If the Board disapproves of the transfer, the Association shall have forty-five (45) days from date of disapproval within which to find an alternate purchaser or to purchase the Unit. In either case, the purchase shall be on the same terms and conditions as contained in the contract of sale, except that the purchase price shall be paid in cash and the closing will take place within forty-five (45) days from the date of disapproval.

If the Association fails to close the purchase within said forty-five (45) day period other than through the fault of the Unit Owner or the Unit Owner's inability to convey clear and marketable title to the Association, the Unit Owner shall be free to sell and convey the Unit to the intended purchaser.

**D. Exception.** The provisions of Articles 18 and 19 are not applicable to the acquisition of title by an Institutional Mortgagee who acquires title through foreclosure of the

mortgage or deed in lieu of foreclosure.

E. **Unapproved Transfers.** The purchaser or transferee of any Unit not approved pursuant to the terms of this Declaration shall have no occupancy right unless subsequently approved in writing by the Board.

F. **Fees for Processing Applications for Approval to Purchase.** Whenever herein the Association's approval is required to allow the sale or other transfer of an interest in a Unit, the Association may charge the Owner a fee for processing the approval, such fee not to exceed \$50.00.

## **Article 20. Leasing of Units**

A copy of any written lease of a Unit shall be delivered to the Board upon commencement of the said lease. A lease must be for no less than a 30-day period, and an owner may not lease his Unit more than three times per year. A lessee is limited to having no more than two persons per bedroom for the term of the lease and lessees may not have pets in the Unit.

A. **Regulation by Association.** All of the provisions of the Condominium Documents and the Rules and Regulations of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Unit as a lessee or guest to the same extent as against an Owner, and a covenant upon the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the Condominium Documents, and designating the Association as the Owner's agent for the purpose of and with the authority to terminate any such occupancy agreement in the event of a violation by the tenant of such covenants, shall be an essential element of any occupancy agreement, whether oral or written and whether specifically expressed in such agreement or not.

## **Article 21. No Severance of Ownership**

No part of the Common Elements and/or Limited Common Elements may be sold, conveyed or otherwise disposed of, except as an appurtenance to the Unit in connection with a sale, conveyance, or other disposition of the Unit to which such interest is appurtenant, and any sale, conveyance or other disposition of a Unit shall be deemed to include that Unit's appurtenant interest in the Common Elements and Limited Common Elements.

## **Article 22. Obligation of Unit Owners**

In addition to other obligations and duties heretofore set out in this Declaration, each Unit Owner shall:

- A. Promptly pay the Assessments levied by the Association.
- B. Maintain in good condition and repair Unit Owner's Unit and Limited Common Elements to the extent described herein and all interior surfaces within, or surrounding Unit

Owner's Unit and Limited Common Elements (such as the surfaces of the walls, ceilings, floors), whether or not a part of the Unit or Limited Common Elements, and maintain and repair the fixtures therein and pay for any utilities which are separately metered to Unit Owner's Unit.

C. Conform to and abide by the By-Laws and Rules and Regulations adopted from time to time regarding the use of the Unit, the Limited Common Elements and Common Elements.

D. Make no repairs to any plumbing or electrical wiring except within a Unit. Plumbing and electrical repairs within a Unit shall be the financial obligation of the Owner of the Unit and paid for forthwith. The Association shall pay for and be responsible for plumbing repairs and electrical wiring within the Common Elements.

E. Occupy a Unit for single-family residential purposes only.

### **Article 23. Insurance**

A. **Liability Insurance.** The Board of Directors of the Association shall obtain public liability and property damage insurance covering all property owned by the Association and all of the Common Elements and Limited Common Elements of the Condominium, and insuring the Association, Unit Owners and Institutional Mortgagees, as it and their interests may appear, in such amounts as the Board of Directors of the Association may determine from time to time, provided that the minimum amount of coverage shall be at least \$1,000,000.00 per occurrence combined single limit bodily injury and property damage. Said insurance coverage shall include, but not be limited to, water damage, legal liability, hired automobile, nonowned automobile and all premises and operations. All liability insurance shall contain a cross liability endorsement to cover the liability of all the Unit Owners, as a group, to any one Unit Owner. Premiums for the payment of such insurance shall be paid by the Association and charged as a Common Expense.

B. **Casualty Insurance - Purchase of Insurance.** The Association shall obtain "all risk" insurance and vandalism and malicious mischief insurance, insuring all of the insurable improvements within the Condominium, including personal property owned by the Association, in and for the interest of the Association, all Unit Owners and their Mortgagees, as their interests may appear, with a company acceptable to the standards set by the Board of Directors of the Association in an amount equal to the maximum insurable replacement value, as determined annually. Insurable improvements shall not be deemed to include floor coverings, wall coverings or ceiling coverings of a Unit, which shall be the responsibility of the Unit Owner. The premiums for such coverage and other expenses in connection with said insurance placement shall be paid by the Association and charged as a Common Expense. The company or companies with whom the Association shall place its insurance coverage, as provided in this Declaration, must be good and responsible companies authorized to do business in the State of Florida. Insurance shall be obtained from companies whose ratings meet the financial and policy holder's standards of the Institutional Mortgagee having the highest dollar value of mortgages encumbering Units in the Condominium.

## **Article 24. Loss Payable Provisions - Insurance Trustee**

All policies purchased by the Association shall be for the benefit of the Association, all Unit Owners and their Mortgagees, as their interests may appear. Said policies shall provide that all insurance proceeds payable on account of loss or damage shall be payable to any banking institution having trust powers and doing business in the State of Florida (the "Insurance Trustee"). The Insurance Trustee shall be designated by the Board and shall not be liable for the payment of premiums nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds, nor for the form or content of the policies. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners and their respective Mortgagees (sometimes hereinafter collectively referred to as "beneficial owners"), in the following shares, but such shares need not be set forth upon the records of the Insurance Trustee:

(1) **Common Elements and Limited Common Elements.** Proceeds on account of damage to Common Elements and/or Limited Common Elements shall be an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to Unit Owner's Unit.

(2) **Condominium Units.** Proceeds on account of Condominium Units shall be in the following undivided shares:

a. When the Condominium Building is to be repaired and restored, for the Owners of the damaged Units, in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association.

b. When the Condominium Building is not to be restored, as provided hereafter in this Article, for the Owners of all Condominium Units, each Unit Owner's share being in proportion to Unit Owner's share in the Common Elements appurtenant to Unit Owner's Condominium Unit.

(3) **Mortgagees.** In the event a Mortgagee endorsement has been issued to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner, as their interests may appear; provided, however, that no Mortgagee, other than the Institutional Mortgagee having the highest dollar indebtedness secured by mortgages encumbering Units in the Condominium, shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired. No Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except those proceeds paid to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

## **Article 25. Distribution of Proceeds**

Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners and expended or disbursed after first paying or making provision for the payment of the expenses of the Insurance Trustee, in the following manner:

(1) **Reconstruction or Repair.** If the damage for which the proceeds were paid is to be repaired and restored, the remaining proceeds (insurance proceeds less the expenses of the Insurance Trustee) shall be paid to defray the cost thereof, as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to Unit Owners and their Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any Mortgagee. Said remittance shall be made solely to an Institutional Mortgagee, when requested by such Institutional Mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt.

(2) **Failure to Reconstruct or Repair.** If the damage for which the proceeds were paid shall not be repaired and restored, the proceeds remaining after defraying the costs of the Insurance Trustee shall be distributed to the beneficial owners. All remittances to Unit Owners and their Mortgagees shall be payable jointly. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any Mortgagee. Said remittance shall be made solely to an Institutional Mortgagee, when requested by such Institutional Mortgagee, whose mortgage provides that it has the right to require application of the insurance proceeds to the payment of its mortgage debt. In the event of the loss or damage to personal property belonging to the Association, and should the Board of Directors of the Association determine not to replace such personal property as may be lost or damaged, the proceeds shall be disbursed to the beneficial owners as surplus in the manner elsewhere stated.

(3) **Certificate.** In making distribution to Unit Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate of the Association, executed by the President or Vice President and the Secretary of the Association, as to the names of the Unit Owners and their respective shares of distribution. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate. In addition, the Insurance Trustee may rely on such certificate as to whether or not the damaged property is to be repaired and restored and as to the payee and the amount to be paid from said proceeds.

A. **Loss Within a Single Unit.** If damage shall occur to a Unit or Units, without damage to the Common Elements, the insurance proceeds shall be distributed to the beneficial Unit Owner(s) of the damaged Units, remittance by the Insurance Trustee to said Unit Owner(s) and their mortgagee(s) being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by any mortgagee. Said remittance shall be made solely to an Institutional Mortgagee when requested by such Institutional Mortgagee whose mortgage provides that it has the right to require application of the insurance proceeds to the payment or reduction of its mortgage debt. The Unit Owner shall thereupon be fully responsible for the restoration of the Unit.

B. **Loss Less Than “Very Substantial”.** Where a loss or damage occurs to more than one Unit, the Common Elements, and/or the Limited Common Elements, but said loss is less than “very substantial” (as hereinafter defined), it shall be obligatory upon the Association and the Unit Owners to repair, restore and rebuild the damage caused by said loss. Where such loss or damage is less than “very substantial”:

(1) The Board of Directors of the Association shall promptly obtain reliable

and detailed estimates of the cost of repairing and restoration.

(2) If the damage or loss is limited to the Common Elements or the Limited Common Elements, with minimum or no damage or loss to any individual Unit, and such damage or loss to the Common Elements or Limited Common Elements is less than \$5,000.00, the insurance proceeds shall be endorsed by the Insurance Trustee over to the Association, and the Association shall promptly contract for the repair and restoration of the damage.

(3) If the damage or loss involves individual Units encumbered by institutional mortgages, as well as the Limited Common Elements and/or the Common Elements, or if the damage affects only the Limited Common Elements or the Common Elements but is in excess of \$5,000.00, the insurance proceeds shall be disbursed by the Insurance Trustee for the repair and restoration of the property upon the written direction and approval of the Association; provided, however, that upon the request of an Institutional Mortgagee, the written approval shall also be required of the Institutional Mortgagee owning and holding the first recorded mortgage encumbering a Condominium Unit. At such time as the aforesaid Institutional Mortgagee is not the holder of a mortgage on a Unit, then its right of approval and designation shall pass to the Institutional Mortgagee having the highest dollar indebtedness secured by mortgages encumbering Units in the Condominium. Should written approval be required, as aforesaid, it shall be said Mortgagee's duty to give written notice thereof to the Insurance Trustee. The Insurance Trustee may rely upon the certificate of the Institutional Mortgagee's written approval if required, as to the payee and the amount to be paid from said proceeds. All payees shall deliver paid bills and waivers of mechanics' liens to the Insurance Trustee and execute any affidavit required by law or by the Association or the aforesaid Institutional Mortgagee. In addition to the foregoing, the Institutional Mortgagee whose approval may be required under this section, shall have the right to require the general contractor performing the reconstruction to obtain a performance and payment bond in an amount and with a bonding company authorized to do business in the State of Florida, and acceptable to said Mortgagee.

(4) Subject to the foregoing, the Board of Directors shall have the right and obligation to negotiate and contract for the repair and restoration of the premises.

(5) If the net proceeds of the insurance are insufficient to pay for the estimated cost of restoration and repair (or for the actual cost thereof if the work has actually been done), the Association shall promptly, upon determination of the deficiency, levy a special assessment against all Unit Owners in proportion to the Unit Owners' share in the Common Elements, for that portion of the deficiency as is attributable to the cost of restoration of the Limited Common Elements and/or Common Elements, and against the individual Unit Owners for that portion of the deficiency as is attributable to Unit Owner's individual Unit; provided, however, that if the Board of Directors finds that it cannot determine with reasonable certainty the portion of the deficiency as is attributable to specific individually damaged Unit(s), then the Board of Directors shall levy the assessment for the total deficiency against all of the Unit Owners in proportion to the Unit Owner's share in the Common Elements. The special assessment funds shall be delivered by the Association to the Insurance Trustee and shall be added by said Insurance Trustee to the proceeds available for the repair and restoration of the property.

(6) In the event the insurance proceeds are sufficient to pay for the cost of restoration and repair, or in the event the insurance proceeds are insufficient but additional funds are raised by Special Assessment within 90 days after the casualty, so that sufficient funds are available to fully pay for such restoration and repair, then no Mortgagee shall have the right to require the application of insurance proceeds as to the payment of its loan; provided, however, that this provision may be waived by the Board of Directors in favor of any Institutional Mortgagee upon request therefor at any time. To the extent that any insurance proceeds are required to be paid over to such Mortgagee, the Unit Owner shall be obligated to replenish the funds so paid over, and said Unit Owner and Unit Owner's Unit shall be subject to Special Assessment for such sum.

C. **“Very Substantial” Damage.** As used in this Declaration, or any other context dealing with this Condominium, the term “very substantial” damage shall mean loss or damage whereby 75 percent or more of the total Unit space in the Condominium is found by the Board to be rendered untenable, or loss or damage whereby 75 percent or more of the total amount of insurance coverage placed by the Association becomes payable. Should such “very substantial” damage occur, then:

(1) The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost of repair and restoration thereof and the net amount of insurance proceeds available for restoration and repair.

(2) Thereupon, a membership meeting shall be called by the Board of Directors of the Association, to be held not later than 60 days after the casualty, to determine the wishes of the membership with reference to abandonment of the Condominium, subject to the following:

a. If the net insurance proceeds available for restoration and repair, together with the funds advanced by Unit Owners to replace insurance proceeds paid over to Institutional Mortgagees, are sufficient to cover the cost thereof, so that no Special Assessment is required, then the Condominium Property shall be restored and repaired, unless 3/4 of the total votes of the members of the Condominium shall vote to abandon the Condominium, in which case the Condominium Property shall be removed from the provisions of the Act, in accordance with Section 718.117 of the Act.

b. If the net insurance proceeds available for restoration and repair, together with funds advanced by Unit Owners to replace insurance proceeds paid over to Institutional Mortgagees, are not sufficient to cover the cost thereof, so that a Special Assessment will be required, then if a majority of the total votes of the members of the Condominium vote against such Special Assessment and vote to abandon the Condominium then it shall be so abandoned and the property removed from the provisions of the Act in accordance with Section 718.117 of the Act. In the event a majority of the total votes of the members of the Condominium vote in favor of a Special Assessment, the Association shall immediately levy such Assessments, and thereupon, the Association shall proceed to negotiate and contract for such repairs. The Special Assessment funds shall be delivered by the Association to the Insurance Trustee and added by said Insurance Trustee to the proceeds available for the repair and restoration of the property. The proceeds shall be disbursed by the Insurance Trustee for the

repair and restoration of the property, as provided above. To the extent that any insurance proceeds are paid over to such Mortgagee, and in the event it is determined not to abandon the Condominium and to vote a Special Assessment, the Unit Owner shall be obliged to replenish the funds so paid over to his Mortgagee, and said Unit Owner and his Unit shall be subject to Special Assessment for such sum.

c. In the event any dispute shall arise as to whether or not “very substantial” damage has occurred, it is agreed that such a finding made by the Board of Directors of the Association shall be binding upon all Unit Owners.

D. **Surplus.** It shall be presumed that the first monies disbursed in payment of costs of repair and restoration shall be from the insurance proceeds; and if there is a balance in the funds held by the Insurance Trustee after the payment of all costs of the repair and restoration, such balance may be retained as a reserve, or wholly or partly distributed, at the discretion of the Board of Directors, unless the Institutional Mortgagee having the highest dollar indebtedness secured by mortgages encumbering Units in the Condominium shall require distribution. In the event of distribution, then the Insurance Trustee shall distribute any such balance to the beneficial owners of the fund in the manner elsewhere stated.

E. **Plans and Specifications.** Any repair and restoration must be substantially in accordance with the plans and specifications for the original Buildings, or as the Buildings were last constructed, or according to the plans approved by the Board of Directors of the Association, which approval shall not be unreasonably withheld. If any material or substantial change is contemplated, the approval of all Institutional Mortgagees shall also be required. The Insurance Trustee is not obligated or required to inquire into or determine any matters concerning the plans or specifications of any repairs, restorations or rebuilding.

F. **Association’s Power to Compromise Claim.** The Association is hereby irrevocably appointed agent for each Unit Owner for the purpose of compromising and setting claims arising under insurance policies purchased by the Association, and to execute and deliver releases therefor upon the payment of claims.

G. **Worker’s Compensation.** A workmen’s compensation policy shall be obtained by the Association to meet the requirements of applicable law. Such policy shall have a minimum of \$500,000.00 Employer’s Liability Coverage.

H. **Unit Owner’s Responsibility to Insure.** Each individual Unit Owner shall purchase at Unit Owner’s expense, liability insurance to cover accidents occurring within the Unit Owner’s Unit and Limited Common Elements, and shall purchase insurance upon the Unit Owner’s personal property, and living expense insurance, and such insurance, where applicable, shall contain a waiver of subrogation, if available.

I. **Subrogation.** If available, and where applicable, the Board of Directors of the Association shall endeavor to obtain policies which provide that the insurance company waives its right of subrogation as to any claims against Unit Owners, the Association and their respective employees, agents and guests. Each Unit Owner and the Association hereby agree to waive any claim against each other and against other Unit Owners for loss or damage for which

insurance hereunder is carried, provided the coverage is adequate to compensate for the loss, where the insurer has waived its rights of subrogation as aforesaid.

J. **Failure to Insure.** If the Association fails to procure any of the insurance coverages required under this Declaration, and to pay the premiums therefor, the Institutional Mortgagee having the highest dollar value of mortgages encumbering Units in the Condominium shall have the right to obtain and pay for the policies and be subrogated to the assessment and lien rights of the Association with respect to said payments.

## **Article 26. Eminent Domain or Condemnation Proceedings**

The Association is hereby irrevocably appointed agent for each Unit for the purpose of representing the Unit Owners in any condemnation proceedings or in negotiating settlements or agreements with the condemning authority for acquisition of the Common Elements, or part thereof.

If eminent domain or condemnation proceedings are successfully litigated against all or any part of the Common Elements and/or Limited Common Elements, the entire eminent domain or condemnation award is to be paid to the Association and disbursed to Unit Owners and their Mortgagees as their interests appear of record in accordance with their interest in the Common Elements. The Association shall give prompt written notice to each holder of a mortgage of record of any such eminent domain or condemnation proceedings, and shall take no action in any such proceedings that will disturb any mortgagee's lien priority.

## **Article 27. Rules and Regulations**

A. **As to Common Elements and Limited Common Elements.** The Board of Directors may, from time to time, adopt or amend previously adopted Rules and Regulations governing the operation, use, maintenance and control of the Common Elements and Limited Common Elements of the Condominium and any facilities or services made available to the Unit Owners. The Board of Directors shall, from time to time, mail to Owners or post in a conspicuous place on the Condominium Property, a copy of the Rules and Regulations adopted, from time to time, by the Board of Directors.

B. **As to Condominium Units.** The Board of Directors may, from time to time, adopt or amend previously adopted Rules and Regulations governing the use and/or maintenance of the Condominium Unit(s) provided, however, that copies of such Rules and Regulations are furnished to each Unit Owner prior to the time the same become effective, and where applicable or desirable, copies thereof shall be posted in a conspicuous place on the Condominium Property.

C. **Rules and Regulations.** The Rules and Regulations shall be deemed in effect until amended by the Board of Directors, and shall apply to and be binding upon all Unit Owners. The Unit Owners shall obey said Rules and Regulations and shall use their best efforts to see that they are faithfully observed by their families, guests, invitees, servants, lessees and persons over whom they exercise control or supervision. In order to amend and/or adopt Rules and Regulations, a 51 percent vote or consent of the Board of Directors shall be required;

however, no vote of the membership is required. The amendment or adoption of a Rule and Regulation does not require an amendment to the Declaration of Condominium or of the By-Laws. The Rules and Regulations in full force and effect as of the date of this Declaration are attached hereto as Exhibit "H" and made a part hereof as though set out in full.

#### **Article 28. Maintenance Contracts**

Upon resolution of a majority of Unit Owners at a meeting of the Association at which a quorum is present, the Association may enter into maintenance contract(s) for appliances and/or air-conditioning compressors serving individual Condominium Units. The cost of such maintenance contracts shall be a Common Expense. If the Association determines to enter into such maintenance contract(s) for the benefit of only those Unit Owners who elect to be included in the program, then consent of the membership shall not be required as aforesaid, and the cost of such contract(s) shall be borne exclusively by the Unit Owners electing to be included in the program, and shall not be a Common Expense, but the Association may collect such costs from the Owners electing to be included.

#### **Article 29. Management Agreement**

The Board of Directors of the Association may enter into a contract with any firm, person or corporation for the management, maintenance and repair of the Condominium Property.

#### **Article 30. Termination of Condominium**

The Condominium may be terminated in the following manner:

A. **Destruction.** If it is determined in the manner provided in Article 24 that the Condominium Property shall not be reconstructed, the Condominium will be terminated.

B. **Agreement.** As provided in Section 718.117 of the Act, the Condominium may be terminated at any time by the approval in writing of all Unit Owners and all holders of recorded liens affecting any of the Units.

If the proposed termination is submitted to a meeting of the Association, and if the approval of 75 percent of the Owners and their Mortgagees is obtained in writing, not later than sixty (60) days from the date of such meeting, then the approving Unit Owners (through the Association) shall have an option to buy all of the Units of the disapproving Unit Owners for a period of 120 days from the date of such meeting. The vote of those Unit Owners approving the termination shall be irrevocable until the expiration of the option. Any Unit Owner voting against the termination, or not voting, may within fifteen (15) days from the date the vote was taken, change or cast his vote in favor of termination by delivering written notification thereof to the Secretary of the Association. The options shall be on the following terms:

(1) **Exercise of Option.** The option shall be exercised by delivery, or the mailing by registered mail, of an agreement to purchase, signed by the Association, to each of

the disapproving Unit Owners. The agreement to purchase shall be subject to the purchase of all Units owned by Unit Owners not approving the termination.

(2) **Price.** The sales price for each Unit shall be the fair market value as determined between the seller of a Unit and the Association within thirty (30) days from the delivery of said agreement. In the absence of agreement on the price of any Unit, the price shall be determined by an appraiser appointed by the Chairman of the Local Board of Realtors. A judgment specifically enforcing the sale, at the price determined by the appraiser, may be entered by any court of competent jurisdiction.

(3) **Payment.** The purchase price shall be paid in cash.

(4) **Form.** The agreement to purchase shall be in the form of the Florida Bar approved Contract for Sale and Purchase.

(5) **Closing.** The sale of said Units shall be closed within thirty (30) days following the determination of the sales price of the last Unit to be purchased.

C. **Certificate.** The termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association, executed by its President and Secretary, certifying the fact of the termination, which shall become effective upon the certificate being recorded in the Public Records of Lee County, Florida.

D. **Shares of Owners After Termination.** After termination of the Condominium, the Unit Owners shall own the Condominium Property and all assets of the Association as tenants in common in the same undivided shares as each Owner previously owned in the Common Elements. If the Condominium is terminated, the Owners of the Units shall continue to be responsible for their share of the Common Expenses.

E. **Amendment.** This Article 30 concerning termination cannot be amended without the written consent of all Unit Owners, all record owners of mortgages upon the Units and the Developer (so long as it holds at least one Unit in the Condominium for sale in the ordinary course of business).

F. **Surface Water Management System.** As a condition of termination of the Condominium, there shall be imposed a Declaration of Restrictions incorporating all terms and conditions contained herein relating to the Surface Water Management System which shall be subject to the approval of the South Florida Surface Water Management District. Said Declaration of Restrictions shall be a covenant running with the land, binding upon all Unit Owners and their successors in interest, and shall be effective for a term of 25 years from the date of recordation, and shall be automatically renewed for successive 25 year terms unless consent to terminate same shall be given by the South Florida Water Management District.

### **Article 31. No Time-Share Estates**

No time-share estates shall exist nor will be permitted to be created in any Unit of this Condominium.

### **Article 32. Remedies**

A. **Relief.** Each Unit Owner and the Association shall be governed by and shall comply with the provisions of this Declaration as they may exist from time to time. A violation thereof shall entitle the appropriate party to the following relief: an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, or any other action available pursuant to the Act, or at law or in equity. Suit may be brought by the Association, the management firm, or, if appropriate, by one or more Unit Owners, and the prevailing party shall be entitled to recover reasonable attorneys' fees.

B. **Costs and Attorneys' Fees.** In any proceeding arising because of an alleged violation of the Declaration or its Exhibits, the Association (if it is not a Defendant) or any management firm, whichever is appropriate, shall be entitled to recover the costs of the proceeding, including reasonable attorneys' fees.

C. **No Waiver.** The failure of the Association, any management firm or Unit Owners to enforce any right, provision, covenant or condition created or granted by this Declaration, the Act, the Articles of Incorporation, the By-Laws and/or the Rules and Regulations shall not constitute a waiver of the right of said party to enforce such right, provision, covenant or condition in the future.

D. **Rights Cumulative.** All rights, remedies and privileges granted to the Association, any management firm, the Developer and Unit Owners pursuant to the provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

E. **Venue.** Every Unit Owner or occupant and all persons claiming any interest in a Unit do hereby agree that in any suit or proceeding brought pursuant to the provisions of this Declaration, such suit shall be brought in the Circuit Court of the 20th Judicial Circuit, in and for Lee County, Florida or the United States District Court, District of Florida, as the same is now constituted or any court in the future that may be the successor to the courts contemplated herein.

F. **Appointment of Agent.** Should suit be instituted, the Unit Owners or occupants do hereby irrevocably appoint the Secretary of State of the State of Florida as their agent for the acceptance of service of process should, at the time of such service of process, any such person not be residing in Lee County, Florida.

### **Article 33. Ownership in The Vines Community Association, Inc.**

Grand Palm Village at the Vines, a Condominium, comprises a portion of the residential development known as The Vines Country Club which is subject to the Amended and Restated Declaration of the community Association for the Vines Country Club. By taking title to a Unit, each Owner becomes subject to the terms and conditions of said Declaration filed in Official Records Book 2088, Page 3269 of the Public Records of Lee County, Florida, as amended. Said Declaration provides that an Owner shall become a member of The Vines Community

Association, Inc.; shall acquire certain property rights to common areas within The Vines Country Club and shall become subject to the assessments of The Vines Community Association, Inc. Copies of all amendments to this Declaration of Condominium and/or the Exhibits thereto, the Articles of Incorporation and By-Laws of the Association shall be forwarded to The Vines Community Association, Inc., prior to recordation.

**Article 34. Additional Provisions**

A. Should any dispute or litigation arise between any of the parties whose rights and/or duties are affected or determined by this Declaration or any of the Exhibits attached hereto, said dispute or litigation shall be determined pursuant to the laws of the State of Florida.

B. In the event that any of the terms, provisions or covenants of this Declaration or any of the Exhibits attached hereto are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holdings will not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions or covenants hereof or the remaining portions of any terms, provisions or covenants held to be partially invalid or unenforceable herein.

C. Notwithstanding anything to the contrary herein contained, unless Institutional Mortgagees have given their prior written approval, the Association shall not be entitled to: (1) change the prorata interest or obligations of any Unit with respect to Assessments, Common Elements and Common Surplus; (2) partition or subdivide any Unit, the Common Elements or the Limited Common Elements; nor (3) by act or omission seek to abandon the Condominium regime, except as may be provided by statute in case of substantial loss to the Units and Common Elements.

D. Notwithstanding anything to the contrary herein, nothing shall prevent the combining of Units in the Condominium, by appropriate amendment to the Declaration, and said combined Units shall have the aggregate of the original appurtenant shares of each Unit in the Common Elements, Common Expenses, Common Surplus and voting rights.

E. Whenever the context so permits, the use of the plural shall include the singular, and any gender shall be deemed to include all genders.

F. Captions used in these documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the documents.

G. Upon written request, Institutional Mortgagees shall have the right to examine the books and records of the Association.

H. Each purchaser shall upon acquisition of the unit contribute to the Association an amount equal to one half of the annual maintenance fee at the time of closing. Such amount shall be held by the Association as a special reserve account for the purpose of defraying unforeseen expenditures and capital outlays. This contribution shall not constitute a prepayment to the regular quarterly assessment or be used to fund routine budgeted expenses prior to the expiration of the period of the guaranteed assessment levels as provided in this section.