

IN WITNESS WHEREOF, we have affixed our hands this 28<sup>th</sup>  
day of January, 1999, at Lee County, Florida.

WITNESSES:

*Francis Camacho*  
*Francis Camacho*  
*Francis Camacho*  
*Francis Camacho*

SUNGATE VILLAS CONDOMINIUM  
ASSOCIATION, INC.

BY: *Francis Camacho*  
Francis Camacho, PRESIDENT

ATTEST: *Lillian Camacho*  
Lillian Camacho, SECRETARY

STATE OF FLORIDA:  
COUNTY OF LEE:

(CORPORATE SEAL)

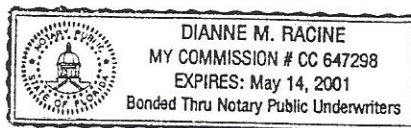
I HEREBY CERTIFY that on this day, before me, an officer duly  
authorized in the State and County aforesaid to take  
acknowledgements, personally appeared Francis Camacho and Lillian  
Camacho, well known to me to be the President and Secretary  
respectively of SUNGATE VILLAS CONDOMINIUM ASSOCIATION, INC. and  
they severally acknowledged executing the same in the presence of  
two subscribing witnesses freely and voluntarily under authority  
duly vested in them by said association.

WITNESS my hand and official seal in the County and State last  
aforesaid this 28<sup>th</sup> day of January, A.D. 1999.

My Commission Expires:

*Dianne M. Racine*  
NOTARY PUBLIC

Prepared by:  
Francis Camacho President  
C/O Benson's, Inc.  
12650 Whitehall Drive  
Fort Myers, FL 33907



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CHARLIE GREEN, CLERK  
LEE COUNTY, FL

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DECLARATION OF CONDOMINIUM

OF

SUNGATE VILLAS AT FOUNTAIN LAKES, A CONDOMINIUM

ESTERO, FLORIDA

KRAUS-ANDERSON DEVELOPMENT AND FINANCE COMPANY, herein called "Developer", on behalf of itself, its successors, grantees and assigns, hereby makes this Declaration of Condominium:

1. SUBMISSION TO CONDOMINIUM - The fee simple title to the lands located in Lee County, Florida and described in attached Exhibit "E" are submitted to the condominium form of ownership.

2. NAME - PLAN OF DEVELOPMENT - Developer has or will construct a total of 23 single family residential units and associated improvements designated Sungate Villas At Fountain Lakes, A Condominium. This will be a statutorily phased condominium pursuant to F.S. 718.403 and will, or may, incorporate 8 phases on 4.45 acres of land as later set forth in this Declaration.

3. NAME - ASSOCIATION - The name of the Condominium Association is Sungate Villas At Fountain Lakes Condominium Association, Inc. This Association is incorporated as a nonprofit Florida corporation.

4. DEFINITIONS - The terms used herein shall have the meanings stated in the Condominium Act (Florida Statutes, Chapter 718) and as follows, unless the context otherwise requires:

4.1. ASSESSMENT - The share of the funds required for the payment of common expenses which from time to time is assessed against a unit owner.

4.2. ASSOCIATION - The Corporation responsible for the operation of the Condominium.

THIS INSTRUMENT PREPARED BY:  
RICHARD D. DEBOEST  
ATTORNEY AT LAW  
P.O. BOX 1450  
FORT MYERS, FLORIDA 33902

4.3. ASSOCIATION PROPERTY - All property, real or personal, owned by the Association.

4.4. BOARD OF DIRECTORS OR DIRECTORS OR BOARD - The Board of Directors responsible for administration of the Association.

4.5. CHARGE OR SPECIAL CHARGE - The obligation of a unit owner to pay or reimburse money to the Association which cannot be secured as an assessment pursuant to F.S. 718.116, but which is secured by a common law lien on the unit and its appurtenances pursuant to this Declaration.

4.6. COMMON ELEMENTS - The portions of the property submitted to condominium ownership and not included in the units as defined in Florida Statute 718.108, including:

4.7. The land.

4.8. All parts of the improvements which are not included within the units.

#### 4.9. Easements.

4.10. Installations for the furnishing of services to more than one unit or to the common elements, such as electricity, water and sewer.

4.11. COMMON EXPENSES - All expenses and assessments properly incurred by the Association for the Condominium and such expenses as may be declared to be common expenses by this Declaration.

4.12. COMMON SURPLUS - The excess of all receipts of the Association over the common expenses.

4.13. CONDOMINIUM DOCUMENTS - This Declaration and its attached exhibits which set forth the nature of the property rights in the Condominium and the covenants running with the land which govern these rights. All the condominium documents shall be subject to the provisions of the Declaration and



their order of precedence shall be as follows: (1) Declaration; (2) Corporate Charter; (3) Bylaws; (4) Rules and Regulations.

4.14. CONDOMINIUM PARCEL - A unit together with the undivided share in the common elements which is appurtenant to the unit.

4.15. CONDOMINIUM PROPERTY - The lands and personal property, both tangible and intangible, subject to condominium ownership, whether or not contiguous and all improvements thereon and all easements and rights appurtenant thereto.

4.16. DEVELOPER - KRAUS-ANDERSON DEVELOPMENT AND FINANCE COMPANY, the company which has established this Condominium, and the successors and assigns of its development rights.

4.17. THE EXHIBITS TO THIS DECLARATION ARE AS FOLLOWS:

- A. The Association Charter.
- B. The Condominium Plot Plan.
- C. The Association By-laws.
- D. The Rules and Regulations
- E. The legal description of the condominium property.
- F. The percentages of ownership of the common elements.

4.18. FAMILY - means one natural person or a group of two or more natural persons each of whom is related to each of the others by blood, marriage or adoption; or not more than two persons not so related, who reside together as a single housekeeping unit.

4.19. FOUNTAIN LAKES COMMUNITY ASSOCIATION, INC. - The Association which administers the Fountain lakes common facilities according to the Declaration of Protective Covenants and Restrictions for Fountain Lakes and of which all unit owners are automatically members.



4.20. FOUNTAIN LAKES - The planned community located at Estero, Lee County, Florida, within which this condominium is located

4.21. GUEST - means any person who is physically present in or occupies a unit on a temporary basis at the invitation of the unit owner without the payment of consideration.

4.22. INSTITUTIONAL FIRST MORTGAGEE - means the mortgagee (or its assignee) of a first mortgage upon a condominium parcel, which mortgagee is a bank, savings and loan association, mortgage banker, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, any agency of the United States of America and the Developer. The term also refers to any holder of a first mortgage against a condominium parcel which mortgage is guaranteed or insured, as evidenced by a recorded instrument by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4.23. LEASE - means the grant by a unit owner of a temporary right of use of the owner's unit for a valuable consideration.

4.24. LIMITED COMMON ELEMENTS - Those portions of the common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.25. OCCUPANT or OCCUPY - when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.26. OPERATION - The administration and management of the condominium property.

4.27. PERSON - An individual, corporation, trust or other legal entity capable of holding title to real property.

4.28. SINGULAR, PLURAL, GENDER - Whenever the context so permits, the use of the plural shall include the singular, the singular the plural, and use of any gender shall be deemed to include all genders.

4.29. UNIT - A part of the condominium property which is subject to exclusive ownership as described in this Declaration.

4.30. UNIT NUMBER - The letter, number or combination thereof which is designated upon the Condominium Plot Plan and which is used as the identification of a unit.

4.31. UNIT OWNER - The owner of a condominium parcel.

4.32. VOTING INTEREST - means the voting rights distributed to the Association members pursuant to F.S. 718.104(4)(i).

5. UNITS SHALL BE CONSTITUTED AS FOLLOWS:

5.1. REAL PROPERTY - Each unit and all appurtenances thereto, for all purposes, constitute a separate parcel of real property, which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, independently of all other parts of the Condominium property, subject only to the provisions of the Condominium Documents and applicable laws.

5.2. BOUNDARIES - Each unit shall be bounded as to both horizontal and perimetrical boundaries as below defined, whether they exist now or are created by construction, settlement or movement of the buildings, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows and shall be determined in the following manner:

5.3. HORIZONTAL BOUNDARIES - The upper and lower boundaries of the units shall be:

5.4. UPPER BOUNDARY - The planes of the underside of the highest finished undecorated ceilings of the unit, extended to meet the perimetrical boundaries.

5.5. LOWER BOUNDARY - The planes of the upperside of the finished undecorated surface of the floors of the unit, extended to meet the perimetrical boundaries.

5.6. PERIMETRICAL BOUNDARIES - The perimetrical boundaries shall be the finished undecorated interior surfaces of the perimeter walls of the unit as shown on the Condominium Plot Plan and the planes of the interior surfaces of the unit's windows, doors and other openings that abut the exterior of the building or common elements including Limited Common Elements.

5.7. EXCLUSIVE USE - Each unit owner shall have the exclusive use of such owner's unit.

5.8. OWNERSHIP - The ownership of each unit shall carry with it, as appropriate, and whether or not separately described, all of the right, title and interest of a unit owner in the Condominium property which shall include, but not be limited to:

5.9. COMMON ELEMENTS - An undivided share of the common elements.

5.10. LIMITED COMMON ELEMENTS - The exclusive use (or use in common with one or more other designated units) of the following limited common elements that may exist: Concrete driveway, lanai, entrance garden, screened patio(s), open patio(s), and those items set forth in Section 6.2.1. exterior to a unit to be maintained by a unit owner.



5.11. ASSOCIATION MEMBERSHIP and an undivided share in the common surplus of the Association.

5.12. EASEMENT TO AIR SPACE - 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 be lawfully altered or reconstructed from time to time, which easement shall be terminated automatically in any air space which is vacated from time to time.

5.13. EASEMENTS - The following non-exclusive easements from the Developer to (as applicable) each unit owner, to the Association, the Fountain Lakes Community Association, Inc. and their employees, agents and hired contractors, to utility companies, unit owners' families in residence, guests, invitees and to governmental and emergency services, are hereby granted and created:

5.13.1. INGRESS AND EGRESS - Easements over the common elements for ingress and egress to units and public ways.

5.13.2. MAINTENANCE, REPAIR AND REPLACEMENT - Easements through the units and common elements for maintenance, repair and replacements.

5.13.3. UTILITIES - Easements through the common elements and units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of services and utilities to other units and the common elements.

5.13.4. PUBLIC SERVICES - Access to the condominium property and to the units for emergency, regulatory, law enforcement and other public services in the lawful performance of their duties.

6. MAINTENANCE RESPONSIBILITY - The responsibility for maintenance of the Condominium shall be as follows:

6.1. BY THE ASSOCIATION - The Association shall maintain, repair and replace at the Association's expense the common elements and:

6.1.1. STRUCTURAL - Those portions of the unit which contribute to the support of the building including, but not limited to, the perimeter walls, columns, roof and floors. Also, wiring, piping, ductwork and other mechanical, electrical or other installations or equipment serving the common elements or more than one unit.

6.1.2. NEGLIGENCE - Provided that if the maintenance and repair and replacement of any of the common elements, the items in 6.1.1. above or other units shall be made necessary because of the negligence, act or omission of a unit owner, his family, lessees, invitees and guests, it shall be a liability of the unit owner. Such work may be done by the Association at the expense of the unit owner, and the cost shall be secured as a charge.

6.1.3. DAMAGE - All incidental damage caused to a unit by work done or ordered by the Association shall be promptly repaired by and at the expense of the Association.

6.2. BY THE UNIT OWNER - The responsibility of the unit owner shall be as follows:

6.2.1. SPECIFIC ITEMS - To maintain, repair and replace at his expense, all portions of the unit except the portions to be maintained, repaired and replaced by the Association. The unit owner's responsibility specifically includes windows and glass panels, hurricane shutters, doors except exterior surface paint or stain, screens, frames, hardware, appliances, fixtures, switches, compressors, air handlers, wiring, piping, ductwork and plumbing

serving only the particular unit, whether located inside or outside the unit.

6.2.2. EXTERIOR APPEARANCE - A unit owner shall not paint or otherwise decorate or change the appearance of any portion of the building exterior to the unit unless the written consent of the Association is obtained in advance. (This shall not be construed to require approval for interior decorating or for placing appropriate furniture on lanais or terraces, but does include blinds or shutters including but not limited to hurricane shutters of all types other than those installed by the Developer as part of the construction of the condominium.) Unless otherwise approved, curtains, blinds and drapes shall be white, off-white or soft pastel in color or lined with materials of these colors.

6.2.3. NO ALTERATION OF COMMON ELEMENTS - No owner shall make any alterations in the portions of the improvements 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 or impair any easements; provided that two units within the same ownership and adjacent may be connected by doorways through common elements walls; provided that approval in writing is obtained in advance from the Association and that all applicable government agencies approve and grant permits and that the entire expense is borne by such owner. The Association may require approval from engineers or other professionals as a prerequisite.

## 7. COMMON ELEMENTS

7.1. COMMON ELEMENTS - The common elements shall be owned by the unit owners in such undivided shares as are set forth in Exhibit "F".

7.2. NO PARTITION - Being owned in undivided shares, no action for partition of the common elements shall lie.



7.3. OPERATION - The maintenance and operation of the common elements shall be the responsibility of the Association which shall not, however, prohibit management contracts.

7.4. USE - Each unit owner and the Association 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.

7.5. MATERIAL ALTERATIONS AND ADDITIONS - Except for changes made by an owner with Association approval per 6.2.3. or by the Board of Directors alone, for the integrity of the condominium property, material alteration of or substantial additions to the common elements may be effectuated only by vote of 67% of the voting interests of the Condominium at a meeting called for the purpose. Provided, however, that the Association is authorized to enter into agreements, to acquire leaseholds, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas and other facilities whether or not contiguous to the lands of the Condominium if they are intended to provide enjoyment, recreation or other use or benefit to the unit owners.

8. FISCAL MANAGEMENT - The fiscal management of the Condominium including budget, fiscal year, charges, assessments, and collection of assessments shall be as set forth herein and in the By-Laws (Exhibit C).

9. ASSOCIATION - The administration of the Condominium by the Board of Directors and its powers and duties shall be as set forth in the By-Laws.

10. INSURANCE - In order to adequately protect the Association, the Association property and the Condominium property required to be insured by the

10.2.5. WORKERS' COMPENSATION - The Association shall maintain Workers' Compensation insurance on at least a minimum premium basis.

10.2.6. STATUTORY DISHONESTY BOND - Minimum of \$10,000 or as required by law per Director, Officer, or employee having access to Association funds.

10.2.7. DIRECTORS AND OFFICERS LIABILITY INSURANCE.

10.2.8. OPTIONAL COVERAGE - The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and unit owners.

10.3. DESCRIPTION OF COVERAGE - A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by unit owners upon request.

10.4. WAIVER OF SUBROGATION - If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against unit owners, the Association, or their respective servants, agents or guests.

10.5. INSURANCE PROCEEDS - All insurance policies purchased solely by the Association shall be for the benefit of the Association, the unit owners and their mortgagees, as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid and hold and disburse the same for the purposes stated herein and for the benefit of the unit owners and their respective mortgagees in the following shares:

10.5.1. COMMON ELEMENTS - Proceeds on account of damage to common elements shall be held in as many undivided shares as there are units, the shares of each unit owner being the same as his share in the common elements.

10.5.2. UNITS - Proceeds on account of units shall be held in undivided shares as follows:

10.5.3. PARTIAL DESTRUCTION, WHEN THE BUILDINGS ARE TO BE RESTORED - For owners of all units, each owner's share being his share in the common elements.

10.5.4. TOTAL DESTRUCTION WHEN THE BUILDINGS ARE TO BE RESTORED - For owners of all units, each owner's share being his share in the common elements.

10.5.5. MORTGAGEE - If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the unit owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against units except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings, and no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty. The Association shall pay all policy deductible amounts.

10.6. DISTRIBUTION OF PROCEEDS - Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the unit owners in the following manner:

10.7. COST OF RECONSTRUCTION OR REPAIR - If the damage for which the proceeds are paid is to be repaired or reconstructed by the Association, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall become a part of the common surplus of the Association.



10.8. FAILURE TO RECONSTRUCT OR REPAIR - If it is determined in the manner elsewhere provided that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of mortgagees and may be enforced by such mortgagees.

10.9. ASSOCIATION AS AGENT - The Association is hereby irrevocably appointed agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

11. RECONSTRUCTION OR REPAIR AFTER CASUALTY - If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

11.1. DAMAGE TO UNITS - Where loss or damage occurs within a single unit or units, any Association insurance proceeds on account of the damage, less the deductible, shall be distributed to the owner(s) of the damaged units in shares proportional to the amount of damage in each unit covered by the Association policy. The owners of damaged units shall be responsible for reconstruction and repair.

11.2. DAMAGE TO COMMON ELEMENTS - LESS THAN "VERY SUBSTANTIAL" - Where loss or damage occurs to the common elements, but the loss is less than "very substantial", as hereinafter defined, it shall be mandatory for the Association to repair, restore or rebuild the damage caused by the loss, and the following procedures shall apply:

11.2.1. ESTIMATES - The Board of Directors of the Association shall promptly obtain reliable and detailed estimates of the cost

of repair and restoration, and shall negotiate and contract for the repair and reconstruction of the premises.

11.2.2. INSURANCE INSUFFICIENT - If the net proceeds of insurance plus available reserves are insufficient to pay for the cost of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the proceeds available for repair and restoration of the property.

11.2.3. "VERY SUBSTANTIAL" DAMAGE - As used in this Declaration, the term "very substantial" damage shall mean loss or damage whereby three-fourths (3/4) or more of the total units are rendered uninhabitable. Should such "very substantial" damage occur, then:

11.2.4. OWNERS' MEETING - A meeting of the Association shall be called by the Board of Directors to be held not later than sixty (60) days after the casualty, to determine the wishes of the membership with reference to rebuilding or termination of the Condominium, subject to the following:

11.2.5. INSURANCE SUFFICIENT - If the insurance proceeds and reserves available for restoration and repair are sufficient to cover the cost thereof, so that no special assessment is required, then the Condominium property shall be restored or repaired unless the then applicable zoning or other regulatory laws will not allow reconstruction of the same number and general type of unit, in which case the Condominium shall be terminated pursuant to Paragraph 16.

11.2.6. INSURANCE INSUFFICIENT - If the insurance proceeds and reserves available for restoration and repair are not sufficient

to cover the cost thereof so that a special assessment will be required, then unless 67% of the voting interests of the Association vote in favor of such special assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Condominium Act. If 67% of the voting interests of the Association approve the special assessment, the Association, through its Board, shall levy such assessment and shall proceed to negotiate and contract for such repairs and restoration. The special assessment shall be added to the proceeds available for repair and restoration of the property.

11.2.7. DISPUTES - If any dispute shall arise as to whether "very substantial" damage has occurred, a determination by the Board of Directors shall be binding upon all unit owners.

11.3. APPLICATION OF INSURANCE PROCEEDS - It shall be presumed that the first monies disbursed for repair and restoration shall be from the insurance proceeds; if there is a balance in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be credited to the unit owners, as provided in Section 10.7.

11.4. EQUITABLE RELIEF - In the event of substantial damage to the condominium property, and if the property is not repaired, reconstructed, or rebuilt within a reasonable period of time, any unit owner may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction and is completed within a reasonable time thereafter.





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his personal, business or professional telephone calls or correspondence in and from his unit. Such uses are expressly declared customarily incident to the principal residential use. All guests should be registered with the Association upon arrival and unregistered guests may be denied use of recreational facilities and amenities. When a unit is leased, the tenant shall have all use rights in Association property and those common elements available for use generally by unit owners and the unit owner shall not have such rights except as a guest.

12.4. **ASSOCIATION'S ACCESS TO UNITS:** The Association has an irrevocable right of access to the units during reasonable hours when necessary for the purpose of maintenance, repair and replacement of the common elements or of any portion of a unit to be maintained by the Association pursuant to this Declaration or for making emergency repairs which are necessary to prevent damage to the common elements or to another unit or units. The Association's right of access to a unit shall be exercised after reasonable notice to the unit owners, unless such notice is not possible or practical under the circumstances, and with due respect for the occupants' rights to privacy and freedom from unreasonable annoyance, as well as with reasonable precautions to protect the personal property within the unit. The Association may retain a pass-key to all units. If it does, no unit owner shall alter any lock, nor install a new lock, to prevent access when the unit is unoccupied, unless the unit owner provides the Association with a key.

12.5. **PARKING:** Each unit shall have a garage and a concrete driveway which shall be used for parking. The streets and lawns shall not be used for parking except as may be permitted by the Rules and Regulations.

12.6. PETS - TENANTS AND GUESTS: Pets shall be as allowed and regulated in the Rules and Regulations (Exhibit "D") but tenants and guests shall not be permitted to have pets.

13. LEASE, CONVEYANCE, DISPOSITION, FINANCING - In order to assure a stable community and protect the value of the units, the lease, conveyance, disposal and financing of the units by any owner (subject to the exceptions provided in Section 18.1) shall be subject to the following provisions.

13.1. ASSOCIATION APPROVAL REQUIRED - No owner may sell, lease, give or dispose of a unit or any interest therein in any manner without the written approval of the Association. Only entire units may be leased. All leases must and shall be deemed to contain the agreement of the lessee(s) to abide by all of the covenants of the condominium and Community Association's documents and must and shall be deemed to provide that a violation of the documents is a breach and event of default of the lease and grounds for termination and eviction and that the lessee and the owner agree that the Association may proceed directly against such lessee(s) and that the lessee(s) shall be responsible for the Association's costs and expenses, including attorney's fees, at all trial and appellate levels. If such costs and fees are not immediately paid by the lessee(s), the Unit Owner shall pay them. Each Unit Owner by acceptance of the deed to a unit and by the terms of this declaration appoints the Association as owner's agent to bring actions in owner's name and at owner's expense including injunction, damages, termination and eviction. The rules and regulations must be provided to the lessee(s) by or on the behalf of the unit owner at or before the commencement of the lease term. The minimum leasing period is 30 days and no unit may be leased more than three (3) times per calendar year.



13.2. MORTGAGE APPROVAL - No owner other than the Developer may mortgage or finance his unit in any manner without the written approval of the association except to an institutional mortgagee as defined in Paragraph 4.22, provided that a unit owner who sells his unit needs no approval to take back a purchase money mortgage.

13.3. APPROVAL PROCEDURE - The approval of the Association shall be obtained as follows:

13.3.1. WRITTEN NOTICE - Written notice shall be given the Association by the owner of his intention to sell, transfer in any fashion or encumber his interest. The notice shall include the name and address of the proposed acquirer or lender and a correct and complete copy of the proposed documents to be executed to effectuate the transaction. The Association may require such other and further information as it deems reasonably necessary and may impose a charge not to exceed \$100.00 or as permitted by law.

13.3.2. SALE - The Association must, within 15 days after receipt of the information required above, either approve the transaction, disapprove for cause, or, except in the case of disapproval for cause, upon the written demand of the owner, furnish an alternate purchaser it approves or itself elect to purchase, and the owner must sell to such alternate or to the Association upon the same terms set forth in the proposal given the Association or the owner may withdraw his proposed sale. In exercising its power of disapproval the Association must act reasonably and in a fair and non-discriminatory manner and withhold approval only for a reason or reasons rationally related to the protection, preservation and proper operation of the condominium and the purposes of the Association as set forth in the Condominium and Community Associations' documents. If the Association fails or refuses

within the allotted time to notify the owner of either approval or disapproval in writing, or if it fails to provide an alternate purchaser or make an election to purchase the unit itself when required to do so, then the Association shall conclusively be presumed to have approved the transaction, and the Association shall, upon demand, provide a recordable certificate of approval.

13.3.3. CLOSING DATE - The sale shall be closed within 60 days after an alternate purchaser has been furnished or the Association has elected to purchase.

13.3.4. NOTICE OF DISAPPROVAL - GROUNDS - If the Association disapproves the proposed transaction and it is anything other than a sale or a mortgage to an institutional lender, notice of disapproval shall be promptly sent in writing to the owner or interest holder, and the transaction shall not be made. The grounds for disapproval of a lease may include, but are not limited to, a unit owner being delinquent in the payment of an assessment at the time the approval is sought.

13.4. NOTICE OF SUIT - An owner shall give notice to the Association of every suit or other proceedings which may affect the title to his unit, such notice to be given immediately after the owner receives knowledge thereof.

13.5. JUDICIAL SALES - are exempt from this Section.

13.6. UNAPPROVED TRANSACTIONS - Any transaction which is not approved pursuant to the terms of this Declaration shall be void unless subsequently approved by the Association.

14. COMPLIANCE AND DEFAULT - Each owner and the Association shall be governed by and shall comply with the terms of the Condominium Documents as they may be amended from time to time.

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14.1. REMEDIES - Failure to comply shall be grounds for relief, which relief may include, but shall not be limited to, an action to recover damages or injunctive relief or both. Actions may be maintained by the Association or by any unit owner.

14.2. COSTS AND FEES - In any such proceeding, including appeals, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorney fees.

14.3. OWNER GRIEVANCES - In the event of a grievance by an owner against the Association, the Board of Directors or a member thereof, such owner, prior to the institution of litigation, shall give written notice in detail of the grievance to the Board of Directors, and they shall be allowed a period of 30 days in which to try to resolve the grievance.

14.4. NO WAIVER OF RIGHTS - The failure of the Association or any owner to enforce any covenant, restriction or other provision of the Condominium Documents shall not constitute a waiver of the right to do so thereafter as to subsequent or other instances.

15. AMENDMENTS - Amendments to any of the Condominium Documents shall be in accordance with the following:

15.1. REQUIREMENTS - An Amendment may be proposed either by the Board of Directors or by 10% of the voting interests, and may be considered at any meeting of the owners, regular or special, of which due notice has been given according to the By-Laws, which notice includes notice of the substance of the proposed amendment. Passage shall be evidenced by a certificate executed in recordable form signed by the President or Vice President of the Association that it has been enacted by the affirmative vote of the required percentage of unit owners (which vote may be evidenced by written approval of owners not present),

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and the separate written joinder of mortgagees where required and shall include the recording data identifying the location of the Declaration as originally recorded and which shall become effective when recorded in the public records.

15.2. CORRECTORY AMENDMENT - Whenever it shall appear that there is a defect, error or omission in any of the Condominium Documents or in order to comply with applicable laws or requirements of government agencies, the amendment may be adopted by the Board of Directors.

15.3. REGULAR AMENDMENTS - Amendments may be enacted by a favorable vote of the owners of sixty-seven percent (67%) of the voting interests in the Association.

15.4. MORTGAGEE JOINDER - Amendments of a material nature must have the approval of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages who have requested the Association to notify them on any proposed action specified in this paragraph. Implied approval shall be assumed when such holder fails to submit a response to any written proposal for an amendment within 30 days after it receives proper notice of the proposal provided the notice was delivered certified or registered mail, with a "Return Receipt" requested. A change to any of the following shall be considered as material:

- voting rights;
- assessments, assessment liens, or the priority of assessment liens;
- reserves for maintenance, repair and replacement of common areas;
- responsibility for maintenance and repairs;
- reallocation of interests in the general or limited common areas, or rights to their use;
- redefinition of any unit boundaries;

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- convertibility of units into common areas or vice versa;
- expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
- decrease of insurance or fidelity bond;
- imposition of any additional restrictions on a unit owner's right to sell or transfer his or her unit;
- a decision by the owners' association to establish self-management when professional management had been required previously by the project's documents or by an eligible mortgage holder;
- restoration or repair of the project (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- any action to terminate the legal status of the project after substantial destruction or condemnation occurs other than those specified in the documents; or
- any provisions that expressly benefit mortgage holders, insurers or guarantors.

15.5. DEVELOPER'S RIGHTS - No amendment to this Declaration or any of the condominium documents shall change the rights and privileges of the Developer without the Developer's written approval so long as the Developer holds any units for sale in the ordinary course of business.

15.6. WRITTEN AGREEMENTS - Any approval of unit owners on any matter called for by this Declaration, its Exhibits or any statute to be taken at a meeting of unit owners is hereby expressly allowed to be taken instead by written agreement, without a meeting (which agreement may be in counterparts), subject to F.S. 718.112(d)(3).

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16. TERMINATION - The Condominium may be terminated in the following manner:

16.1. AGREEMENT - The Condominium may be terminated at any time by approval, in writing, of ninety percent (90%) of the voting interests of the Association and the approval of the holders of institutional first mortgages of record representing 51% of the votes of units subject to such mortgages. Approval shall be assumed when the holder of such a mortgage fails to submit a response to a written proposal for an amendment within 30 days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "Return Receipt" requested.

16.2. VERY SUBSTANTIAL DAMAGE - If the Condominium, as a result of casualty, suffers "very substantial damage" and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership will thereby terminate without agreement.

16.3. GENERAL PROVISIONS - Upon termination, the former unit owners shall become the owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements. The mortgagee or lienor of a unit owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other properties and rights which he may receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association executed by its President and Secretary certifying as to facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Collier County, Florida.



16.4. NEW CONDOMINIUM - The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

16.5. PARTITION; SALE - Following termination, the Condominium and Association property may be partitioned and sold upon the application of any unit owner. If following a termination, the owners of sixty-seven percent (67%) of the voting interests of the Association determine to accept an offer for the sale of the property, all owners shall be bound to execute deeds and other documents reasonably required to effect the sale. In such event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

16.6. LAST BOARD - The members of the last Board of Directors shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association, notwithstanding the fact that the Association itself may be dissolved upon a termination.

16.7. PROVISIONS SURVIVE TERMINATION - The provisions of this Paragraph 16 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by this paragraph have been completed.

17. PROVISIONS PERTAINING TO THE DEVELOPER - So long as the Developer holds any unit for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

17.1. Assessment of the Developer as a unit owner for capital improvements.

17.2. Any action by the Association that would be detrimental to the sale of units or the completion of the project by the Developer including such use of unsold units and common elements as may facilitate completion, sale, maintenance of a sales office, showing the property and display of signs.

## 18. RIGHTS OF MORTGAGEES

18.1. EXCUSED FROM PRIOR ASSESSMENTS - Where an institutional mortgagee holding a first mortgage of record obtains title to a unit by foreclosure or by deed in lieu of foreclosure, such mortgagee and its successors and assigns shall not be liable for such unit's assessments, charges or share of the common expenses which became due prior to acquisition of title, unless otherwise provided by law, unless the assessment or charge is secured by a claim of lien which was recorded prior to the recordation of the mortgage. Such mortgagee may obtain title, own, occupy, lease, sell or otherwise dispose of such unit without the approval of the Association.

18.2. RIGHTS TO INFORMATION - Upon receipt by the Association from any institutional mortgagee, Guarantor or Insurer of a copy of the mortgage held by such mortgagee, Guarantor or Insurer on a Unit, together with a written request from such mortgagee or an Insurer or Guarantor of such mortgagee specifying the address to which the following items are to be sent, the Association shall timely send to such mortgagee, Insurer or Guarantor the following, and for which the Association may charge a reasonable fee:

18.2.1. FINANCIAL STATEMENTS - A copy of a financial statement of the Association for the immediately preceding fiscal year; and

18.2.2. INSURANCE CANCELLATION - Written notice of the cancellation or termination by the Association of any policies of insurance

covering the Association Common Elements or any improvements thereon, or any fidelity bonds of the Association; and

18.2.3. DAMAGE TO CONDOMINIUM - Written notice of any damage or destruction to the improvements located on the Association Common Elements which affects a material portion of the project or the unit securing its mortgage; and

18.2.4. EMINENT DOMAIN - Written notice of condemnation or eminent domain proceeding affecting a material portion of the project or the unit securing its mortgage; and

18.2.5. DELINQUENT ASSESSMENTS - Written notice of failure by an Owner owning a Unit encumbered by a first mortgage held by such institutional mortgagee, Guarantor or Insurer to pay any Assessments where such failure or delinquency has continued for a period of sixty (60) days.

18.2.6. FAILURE TO NOTIFY - The failure of the Association to send any such notice to any such mortgagee, Guarantor or Insurer shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof.

19. ENFORCEMENT OF ASSESSMENT LIENS - Liens for assessments may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of mortgage on real property. After a judgment of foreclosure has been entered the unit owners during his occupancy, if so ordered by the Court, shall be required to pay a reasonable rental. If the unit is rented or leased during the pendency of a foreclosure action, the Association shall be entitled to the appointment of a receiver to collect the rent. The Association shall have all the powers provided in F.S. 718.116 and shall be entitled to collect interest at the highest lawful rate (currently 18% per annum) on unpaid



assessments and reasonable attorneys' fees, including appeals, and costs incident to the collection of such assessment or enforcement of such lien, with or without suit.

19.1. CREATION AND ENFORCEMENT OF CHARGES - The Association shall have a non-statutory common law lien upon the condominium parcels to secure payment to the Association by unit owners of all charges, costs and expenses for which they are liable to the Association and which cannot be secured as assessments, regular or special, under F. S. 718.116. The lien may be foreclosed in the same fashion as a mortgage on real property, shall bear interest at the highest lawful rate, and shall carry with it costs and attorney's fees, including appeals, incurred in collection.

20. ASSOCIATION MEMBERS - The qualification of members and the manner of their admission shall be as provided in the Bylaws.

21. COMMON EXPENSES AND COMMON SURPLUS - Each unit's share shall be that share of the whole set forth in Exhibit "F".

22. CONDEMNATION:

22.1. DEPOSIT OF AWARDS WITH ASSOCIATION - The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to unit owners, the unit owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting unit owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that owner.

22.2. DETERMINATION WHETHER TO CONTINUE CONDOMINIUM - Whether the Condominium will be continued after condemnation will be determined in the manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

22.3. DISBURSEMENT OF FUNDS - If the Condominium is terminated after condemnation, the proceeds of all awards and special assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, the size of the Condominium will be reduced, the owners of condemned units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and special charges shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.

22.4. ASSOCIATION AS AGENT - The Association is hereby irrevocably appointed as each unit owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation for the taking.

22.5. UNITS REDUCED BUT TENANTABLE - If the taking reduces the size of a unit and the remaining portion of the unit can be made tenantable, the awards for the taking of a portion of that unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

22.5.1. RESTORATION OF UNIT - The unit shall be made tenantable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the owner of the unit.

22.5.2. DISTRIBUTION OF SURPLUS - The balance of the award, if any, shall be distributed to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and mortgagees.

22.6. UNIT MADE UNTENANTABLE - If the taking is of any entire unit or so reduces the size of a unit that it cannot be made tenantable, the award for the taking of the unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

22.6.1. PAYMENT OF AWARD - The fair market value of the unit immediately prior to the taking, as determined by agreement between the unit owner and the Association or by arbitration in accordance with Section 22.6.4. following, shall be paid to the owner of the unit and to each mortgagee of the unit, the remittance being made payable jointly to the owner and the mortgagee(s).

22.6.2. ADDITION TO COMMON ELEMENTS - If possible and practical, the remaining portion of the unit shall become a part of the common elements and shall be placed in condition for use by all unit owners in the manner approved by the Board of Directors.

22.6.3. ADJUSTMENT OF SHARES IN COMMON ELEMENTS - The shares in the common elements appurtenant to the units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements equally among the reduced number of unit owners. This shall be done by restating the shares of continuing unit owners in the common elements as percentages of the whole.

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22.6.4. ARBITRATION - If the fair market value of a unit prior to the taking cannot be determined by agreement between the unit owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The unit owner, the first mortgagee, if any, and the Association shall each appoint one M.A.I. appraiser, who shall appraise the unit and shall determine the fair market value by computing the arithmetic average of their appraisals of the unit. A judgment of specific performance upon the value arrived at by the appraisers may be entered in any court of competent jurisdiction. The cost of appraisals shall be paid by the party selecting the appraiser.

22.7. TAKING OF COMMON ELEMENTS - Awards for the taking of common elements shall be used to make the remaining portion of the common elements usable in the manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the unit owners in the shares in which they own the common elements after adjustment of these shares on account of the condemnation. If a unit is mortgaged, the remittance shall be paid jointly to the owner and mortgagee(s) of the unit.

22.8. AMENDMENT OF DECLARATION - The changes in units, in the common elements and in the ownership of the common elements that are necessitated by condemnation, shall be evidenced by an amendment of the Declaration of Condominium that need be approved only by a majority of all Directors of the Association, without the consent of any unit owner or mortgagee required for any such amendment.

23. VOTING - Each unit shall have one full indivisible vote in all matters as provided for in the condominium documents.

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24. DEVELOPER AMENDMENTS - Until relinquishment of Developer control of the Association (Turnover) and except as otherwise provided by law the Developer specifically reserves the right, without the joinder of any person, to make such amendments to the Declaration and its exhibits or to the plan of development, as may be required by any lender or governmental authority. This paragraph shall take precedence over any other provision of the Declaration or its exhibits.

25. RESERVED EASEMENTS - Developer, for itself and its successors and assigns, reserves easements over the condominium property as necessary to complete future development, if any, including construction access and utilities.

26. PLAN OF PHASING - This Condominium is a phase condominium as provided for in F.S. 718.403. On Exhibit "B", labeled as Residential Phases 1 through 8, there are representations and descriptions of phases which may, at Developer's sole option, become part of the Condominium. Exhibit "B" shows the approximate location of all existing and proposed buildings and improvements that may ultimately be contained within the Condominium. The plot plan, and other survey documents, may be modified by the Developer as to unit or building types to the following extent:

- (a) Size of buildings and units.
- (b) Location and configuration of buildings.
- (c) Elevations of lands and buildings.
- (d) Design of buildings and units.
- (e) Configuration of units within buildings.
- (f) Building materials.
- (g) Height of buildings.
- (h) Number of buildings.
- (i) Location of easements.

(j) Changes in parking and landscaped areas.

(k) Price.

(l) Number of bathrooms and bedrooms in units.

26.1. The Developer may make non-material changes in the legal description of a phase. All phases must be added within seven (7) years of recording this Declaration.

26.2. The minimum and maximum number of units in each phase is as follows:

	<u>Number of Units</u>	
	<u>Minimum</u>	<u>Maximum</u>
<u>Phase 1</u>	2	2
<u>Phase 2</u>	3	3
<u>Phase 3</u>	3	3
<u>Phase 4</u>	4	4
<u>Phase 5</u>	3	3
<u>Phase 6</u>	3	3
<u>Phase 7</u>	2	2
<u>Phase 8</u>	3	3

26.3. THE GENERAL SIZE of each unit is shown below and is depicted upon Exhibit "B". The maximum and minimum sizes of the units are as follows:

<u>Unit Type</u>	<u>Proposed Square Feet</u>	<u>Minimum</u>	<u>Maximum</u>
Type A	1500	1200	1800