NOTE: SUBSTANTIAL REWORDING OF ENTIRE DECLARATION OF COVENANTS AND RESTRICTIONS. FOR PRESENT TEXT, SEE EXISTING DECLARATION.

SECOND AMENDED AND RESTATED DECLARATION OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS FOR BRIARWOOD

KNOW ALL MEN BY THESE PRESENTS that on February 20, 1991, the original Declaration of Master Covenants, Conditions and Restrictions for Briarwood was recorded in Official Records Book 1593, at Page 2360 *et seq.,* of the Public Records of Collier County, Florida (the "Original Declaration"). That Original Declaration, as it has previously been amended, is hereby further amended and restated in its entirety.

The real property subject to this Declaration (hereinafter "Briarwood") is legally described in Exhibit "A" to the Original Declaration, as amended. That Exhibit and the Exhibits, to all subsequent submissions are hereby incorporated by reference.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners. The acquisition of title to a Lot or any other Ownership interest in the Property, or the lease, occupancy or use of any portion of a Lot or the Property constitutes an acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms, it being the intention of the Association to preserve its covenants and restrictions.

1. DEFINITIONS. The following words and terms used in this Declaration or any of the governing documents shall have the following meanings unless the context shall clearly indicate otherwise:

1.1 "Architectural Review Committee" or "ARC" means the committee established pursuant to Section 7 of this Declaration to review plans and specifications for the construction or exterior modification of the Lots, Units, Structures, and other improvements to the Lots and to administer and enforce the architectural controls described in Section 7.

1.2 "Assessments" means a share of the funds required for the payment of Common Expenses and individual expenses which from time to time are assessed by the Association against an Owner, including, but not limited to:

(A) **"Regular Assessments"** means assessments levied by the Association for the payment of operating expenses as more particularly described in Section 5 below;

(B) **"Special Assessments"** means assessments levied by the Association for matters including but not limited to reconstruction, unexpected repair or replacement of a capital improvement as more particularly described in Section 5 below; and

(C) "**Individual Assessments**" means assessments levied by the Association against a specific property or properties as more particularly described in Section 5 below.

1.3 "Articles" and "Bylaws" as used herein, means the Articles of Incorporation and the Bylaws of Briarwood Property Owners Association, Inc., as amended from time to time.

1.4 "Association" or "Master Association" means Briarwood Property Owners Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Common Areas and amenities and for carrying out and enforcing the provisions of the Governing Documents of the Association.

1.5 "Bella Lago" means Lots 2 through 35, Block A, as shown on the Plat of Briarwood Unit Eleven, as recorded in Plat Book 43, Page 1, of the Public Records of Collier County, Florida.

1.6 "Bella Lago Association" means Bella Lago and Sereno at Briarwood Homeowners' Association, Inc., a Florida corporation not for profit.

1.7 "Board" means the Board of Directors responsible for the administration of Briarwood Property Owners Association, Inc.

1.8 "Common Areas" means any and all parts of the Properties legally described in Exhibit "A" to the Original Declaration, as amended, and contained in the Plat attached as Exhibit "B" that are not included in a Lot, including any improvements thereon, if any; any other real property owned, leased, or dedicated for use or maintenance by the Association or its members.

1.9 "Common Expenses" means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common Expenses of the Association include the costs of operating the Association; the costs of maintenance, repair, protection, and replacement of the Common Areas and all improvements thereon; the expenses of carrying out the powers and duties of the Association; and any other expense, whether included in the foregoing or not, that is expressly designated as a common expense by the Governing Documents.

1.10 "Common Surplus" means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the Common Expenses.

1.11 "Condominium Association" means the association responsible for the maintenance and operation of a Condominium Property within Briarwood.

1.12 "Condominium Property" means any Lot that has been submitted to the condominium form of ownership within Briarwood and, more specifically, Dover Parc and Dover Place as of the time of this second restatement.

1.13 "Declarant" means the Developer, which is Briarwood Development Corporation, Inc., a Florida Corporation, and its successors and/or assigns.

1.14 "Declaration" or "Master Declaration" means this Declaration as amended from time to time.

1.15 "Dover Parc" means Dover Parc, a Condominium, according to the Declaration of Condominium thereof originally recorded at O.R. Book 1941, Page 0149, in the Public Records of Collier County, Florida, as may be amended.

1.16 "Dover Place" means Dover Place, a Condominium, according to the Declaration of Condominium thereof originally recorded at O.R. Book 2495, Page 2880, in the Public Records of Collier County, Florida, as may be amended.

1.17 "Family" or "Single Family" shall refer to any one of the following:

(A) One (1) natural person (as used in this Declaration, the term "person" or "natural person" shall mean a real person as opposed to an artificial entity such as a corporation, partnership or trust). "Family member" is a person who resides on a Lot or in a Living Unit as part of the Owner's Family, but is not a title holder; or

(B) Two (2) or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others; or

(A) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

1.18 "Governing Documents" means and includes this Declaration, the Articles of Incorporation and Bylaws of Briarwood Property Owners Association, Inc. and all recorded exhibits thereto.

1.19 "Guest" means any person who is not the Owner or a lessee of a Unit or a member of the Owner's or lessee's Family, who is physically present in, or occupies a Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration. A person who occupies a Unit for more than thirty (30) days shall not be considered a guest and shall apply for and obtain the approval of the Association, in the same manner as a tenant or purchaser of a unit, to be permitted to continue occupying the unit.

1.20 "Home" means the residential structures constructed on the Lots, each intended for use and occupancy as a residence for a single-family.

1.21 "Lease" means the grant by an Owner of a temporary right of use of the Owner's Home or

Lot for valuable consideration.

1.22 **"Lot"** means any single-family lot or multi-family parcel on the plats of the Properties as the same exist from time to time including any and all improvements thereon.

1.23 **"Maintenance", "Repair" and "Replacement"** Maintenance means the upkeep, cleaning or preservation of the condition of the Property to a condition comparable to its original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, weed free environment or optimum plant growth, and retaining such landscaping in an orderly aesthetic manner. Repair means to mend, remedy, or restore to a sound or good state after decay, injury, dilapidation or partial destruction. Replace means to restore to a former condition or create a comparable condition to the former condition after destruction.

1.24 **"Member" or "Owner"** means the record Owner of legal title to a Unit.

1.25 **"Occupy"** when used in connection with a Home, means the act of staying two or more consecutive days and the intervening night. **"Occupant"** is a person who occupies a Home.

1.26 **"Primary Occupant"** means the natural person approved for occupancy when title to the Lot is held in the name of two or more persons, or in trust, or by a partnership, corporation, or other entity which is not a natural person. When used in reference to a Lot owned in one of the aforementioned forms, the term "Primary Occupant" shall be synonymous with the term "Owner".

1.27 **"Property", "Properties" or "Community"** means all the real property which is subject to this Declaration, including Common Areas and Lots.

1.28 **"PUD" or "Briarwood PUD"** means Collier County Ordinance No. 89-36 establishing a Planned Unit Development zoning classification, duly adopted by the Board of County Commissioners of Collier County, Florida, as amended from time to time.

1.29 **"Rules and Regulations"** means the administrative rules and regulations governing the use, maintenance, management and control of the Common Areas, the Lots and Homes, and the operation of the Association as adopted or amended by the Board of Directors.

1.30 **"Sereno Neighborhood"** means Lots 2 through 39, Block B, as shown on the Plat of Briarwood Unit Eleven, as recorded in Plat Book 43, Page 1, of the Public Records of Collier County, Florida.

1.31 **"Structure"** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation, fences, flagpoles, antennas, playground equipment, lanai cages, and storage sheds.

1.32 **"<u>Unit</u>"** means and refers to the following:

(B) **"<u>Single-Family Unit</u>"** means collectively a Lot and any dwelling, structure or other improvement thereon compromising the residential unit and the amenities appurtenant thereto. In the event that the Lot is subjected to the condominium form of ownership, then it shall mean a condominium unit and the amenities appurtenant thereto. Each Lot and building which is intended for use as a residence shall be considered a separate unit. (For example, if a residence is constructed on two adjoining Lots, the combined shall still be considered two Units.)

1.33 **"<u>Multi-Family Unit</u>"** means collectively the condominium unit and the undivided share of the common elements and common surplus appurtenant thereto. Each condominium unit shall be considered as a separate unit.

1.34 **"<u>Voting Interests</u>"** means the arrangement for voting by the Members established in the Articles of Incorporation and the Bylaws, provided that each Owner has one (1) indivisible vote, which may be cast as provided in the Bylaws when a vote of the members on Master Association matters is required or permitted. The total number of voting interests shall equal the total number of Units in Briarwood.

1.35 **"<u>Water Management System</u>"** means and refers to lakes, ditches, culverts, lines, and constructed surface and/or underground systems and facilities for the drainage and/or storage of surface water. Said Water Management System may be entirely located upon the Property, but may also be comprised of public and private easements located outside of the Property, if those facilities service all or some portion of the Property on an exclusive or non-exclusive basis.

2. APPURTENANCES; GENERAL PROPERTY RIGHTS.

2.1 **<u>Appurtenances to the Lots.</u>** The Owner of each Unit has certain rights and obligations that are appurtenant to the Unit, and cannot be changed or taken away from the Owner of the Unit without his consent and that of any person holding a lien on the Unit, including without limitation the following:

(A) Membership in the Master Association and the right to cast one (1) indivisible vote in Master Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Master Association.

(B) The exclusive right to use and possess the Unit or Lot, subject to the restrictions imposed herein.

(C) The non-exclusive right to use the Common Areas for the purposes for which they are intended and reasonably suited, subject to the rules of the Master Association, and to all restrictions and limitations imposed in the Master Governing Documents, as amended from time to time.

(D) Beneficial ownership of an undivided share of the assets and common surplus of the Master Association equal to the Owner's proportional share of liability for the assessments for the common expenses levied by the Master Association. The ownership of an undivided share of the assets and common surplus does not entitle any owner to a distribution.

(E) Membership in the Master Association together with the rights and obligations pertaining to such membership, such as the non-exclusive use of the Master Common Areas.

(A) Other appurtenances expressly created in the Master Governing Documents.

The appurtenances to a Lot automatically pass with the title to the Unit, whether separately described or not, and cannot be separated from the title to the Unit, or assigned, pledged or transferred, except with legal title to the Unit.

2.2 <u>Use and Enjoyment of Lots and Common Areas</u>. An Owner is entitled to exclusive use and possession of his Lot subject to the Governing Documents. The Owners rights are subject to:

(A) The right and duty of the Master Association to levy assessments for common expenses against the Units for the upkeep, maintenance, repair or betterment of the Common Areas and improvements thereon, and for the costs of operating the Master Association.

(B) The right of the Master Association, by resolution of the Board of Directors, to dedicate or transfer or grant easements on, over, under, across or through any part of the Common Areas to any public agency, authority, or utility, for such purposes, and subject to such conditions as may be determined by the Board. No such easement or the permitted uses of the easement shall materially interfere with the rights of the Owners to use the Common Areas.

(C) Reasonable rules and regulations by the Master Association, which rules and regulations may limit the number, frequency and duration of uses by all persons who are not the Owner, the Owner's lawful spouse, the child of the Owner still residing with the Owner, or a Tenant, Tenant's lawful spouse.

2.3 <u>Partition, Separation of Interests</u>. There shall be no judicial partition of the Common Areas, except as expressly provided elsewhere herein, nor shall any Owner or any other person acquiring any interest in the Master Association or any part thereof, seek judicial partition thereof. Nothing herein is intended to prevent judicial partition of any Lot or Unit owned in co-tenancy. The ownership of a Lot, and ownership of the Home or Condominium Unit constructed thereon, may not, however, be separated or separately conveyed, nor may any person who is not an Owner of at least a Unit hold membership in the Master Association.

2.4 <u>Water Management System</u>. The Water Management System shall be for the use and benefit of all lands that are now or hereafter a part of the Property. The Water Management System may, if Declarant so elects, service other lands that do not form a part of the Property, for which the Association may pay a fee. Each Owner, the Master Association and Declarant shall have a perpetual, non-exclusive easement, right license and servitude to use the Water Management

System. Declarant, (with the consent of the owner of the fee underlying any part of the Water Management System), or Master Association may reconfigure such parts of the Water Management System with the consent of the Declarant, provided same is then in accordance with sound engineering practices and government approvals. In such event, the perpetual non-exclusive drainage easement rights of Declarant, Master Association and all Owners shall, without necessity of additional written documentation, be transferred from the previously existing Water Management System to the revised system. Declarant may dedicate to any applicable governmental agency or authority, all or part of the drainage lines, structures, facilities which are part of the Water Management System. Declarant, or others with consent of Declarant, may execute such instruments as may be necessary or desirable to effect such dedication without the joinder or consent of the Master Association, any Owner, or the holder of any mortgage or other lien on any Parcel. The South Florida Water Management District has the right to take enforcement action, including a civil action for an injunction and penalties against the Master Association to compel it to correct any outstanding problems with the Water Management System or in any mitigation or conservation areas under the responsibility or control of the Master Association. All costs associated with the operation, maintenance, repair, replacement and monitoring of the Water Management System, including all monitoring, administrative, and implementation expense required and resulting from a condition of any and all development permits including, but not limited to, maintenance of all conservation and preserve tracts and easements, compliance with all development permit conditions, compliance with all animal and vegetation management plans approved pursuant to development permit approvals, and compliance with all South Florida Water Management District and United States Army Corps of Engineers, or County requirements, or those of any successor agencies, shall be an expense allocated to all Units.

4. EASEMENTS. Together with any easements appearing on the Plat and in the Public Records of Collier County, easement rights contained in this section are a covenant running with the land, and notwithstanding any other provision of this Declaration, may not be revoked and shall survive the exclusion of any land from the Master Association. Any lien encumbering these easements is automatically subordinate to the rights of the Owners with respect to such easements. Each Lot is subject to an easement in favor of all other parts of the Master Association for the location of utilities, for surface water drainage, for later and subjacent support, and for the use, maintenance, repair and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility liens and other similar or related facilities serving the Master Association. The parts of the Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the Owners, and each Owner has a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and rules of the Master Association.

3.1 <u>Utility and Other Easements</u>. The Master Association has the power, without the joinder of any Owner, to grant, modify or move easements such as water, sewer, electric, gas, cable television, waste pickup, hauling, and/or other utility, services or access easements, and to relocate any existing easements in any portion of the Master Association, as the Master Association shall deem necessary or desirable for the proper operation and maintenance of the Master Association. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Master Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company service provider, or governmental agency to which any such utility-related equipment or installations are to be so transferred.

3.2 <u>Ingress and Egress</u>. A non-exclusive easement exists in favor of each Owner and occupant, and their respective guests, tenants, contractors, licensees and invitees for pedestrian traffic over, through, and across the sidewalks, streets, paths, walks, and other portions of the Common Areas intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across any parts of the Common Areas that are or may be paved or intended for such purposes, to provide ingress and egress to the public ways. There shall also exist easements of access to all private streets within the Properties to Collier County for the use of county personnel and equipment on county business.

3.3 <u>Drainage</u>. A perpetual, non-exclusive easement exists in favor of the Master Association and its employees, agents, contractors or other designees for the use of drainage areas established throughout the Properties, and an easement for ingress, egress, and access to enter any portion of the Properties in order to construct, maintain or repair, as necessary, any drainage areas and improvements thereon specifically including, without limitation, access over and across portions of the Common Areas by utility companies. No structure, landscaping, or other material shall be placed or permitted to remain which may damage or interfere with or the installation or maintenance of utilities or which may obstruct or retard the flow of water through drainage areas or otherwise interfere with the Water Management System, any easement provided for in this Section or the use rights set forth elsewhere in the Governing Documents.

3.4 <u>Encroachment</u>. There shall exist reciprocal appurtenant easements between adjacent lots and between each Lot and any portion or portions of the Common Areas adjacent thereto for any encroachment due to the unwilful placement, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration was completed in accordance with this Declaration. Such easement shall exist to a distance of not more than one (1) foot as measured from any point on the relevant common boundary, along a line perpendicular to such boundary at such point. The easement shall continue until such encroachment no longer exists. No easement for encroachment shall exist as to any encroachment occurring due to the willful conduct of an Owner.

3.5 <u>Other Easements or Use Rights</u>. It is declared that all owners of property within the Briarwood PUD, whether or not such property is subjected to this Declaration, shall have the right to use the road right of ways, drainage easements, utility easements, and recreation areas dedicated to the Master Association, in accordance with that certain Cross Easement Agreement dated February 15, 1991 and recorded in O.R. Book 1593, Page 2350, in the Public Records of Collier County, Florida. Additionally, the owners of that certain property known as the "Maplewood Project," (which consists of the property immediately South and East of the Briarwood PUD), shall be entitled to use the road right of ways created within the Briarwood PUD (whether or not such roads are dedicated to the Master Association) for ingress and egress to the Maplewood Project without any charge or fee.

3.6 Right of Entry. The Master Association shall have the right, but not the obligation, to enter any Unit for emergency, security and safety, which right may be exercised by the Board, officers, agents, employees, managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their respective duties. This right of entry shall include the right of the Master Association to enter a Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails to cure the condition upon request by the Board. Failure to maintain the landscaping and improvements located on the Lot shall be deemed a condition that increases the possibility of a hazard to the Properties. In addition to the foregoing, an easement for ingress, egress and access shall exist in favor of the Association, and all agents, employees, or other designees of the Association to enter upon any portion of the Lot for the purpose of inspecting any improvements or fulfilling the rights, duties, and responsibilities of an Owner, including maintenance and repair. Notwithstanding the foregoing, nothing contained herein shall be interpreted to impose any obligation upon the Association to maintain, repair, or construct any Home or other improvement which the Owner is required to maintain, construct or repair. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

4. MASTER ASSOCIATION. The administration and management of the Property shall be by Briarwood Property Owners Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

4.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association are attached hereto as Exhibit "C".

4.2 Bylaws. The Bylaws of the Master Association shall be the Bylaws attached to this Declaration as Exhibit "D" and may be amended from time to time.

4.3 Rules and Regulations. The Board of Directors may, from time to time, adopt and amend administrative rules and regulations governing the use, maintenance, management, and control of the common areas and the operation of the Association and the Properties. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the unit owners and uniformly applied and enforced.

4.4 Delegation of Management. The Association may contract with a third party for the management and maintenance of those portions of the Property it is required or permitted to maintain, and may authorize a licensed and insured management agent to assist the Association in carrying out its powers and duties by performing functions which may include, but are not limited to, the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the Common Areas with funds made available by the Association for such purposes, and such other responsibilities as determined by the Board of Directors. The Association and its officers, however, retain at all times the powers and duties and non-delegable responsibilities imposed by the Florida Statutes, as amended from time to time, and as provided in the Governing Documents.

4.5 Membership. Every Owner shall be a Member of the Association, and by acceptance of a deed or other instrument evidencing his Ownership interest, each Owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the Rules and Regulations of the Association, as amended from time to time. Membership is appurtenant to, runs with, and cannot be separated from, the real property ownership interest upon which it is based.

4.6 Transfer. Transfer of ownership, whether voluntary or by operation of law, shall terminate membership in the Association and said membership is then vested in the transferee, as further set forth in the Bylaws. The burden of notifying the Association of a change of membership shall be borne by the new member. The Association shall not be required to recognize a change of membership until the new member has fully complied with Section 10 hereof. Termination of membership does not relieve or release any former member from liability or obligation incurred under or in any way connected the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former Owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

4.7 Voting Rights. Members shall have voting rights as set forth in the Articles of Incorporation and/or the Bylaws of the Association, subject to suspension as allowed by Law.

4.8 Multiple Owners. When more than one person or entity shall at any time be the Owner of a Lot subject to a membership interest, the vote attributed to such Lot shall be exercised as provided in the Bylaws.

4.9 Acts of the Association. Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Owners. Notwithstanding any contrary provisions in the Articles of Incorporation or the Bylaws, the number of Directors of the Association shall be five (5). The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for or bind the Association by reason of being an Owner.

4.10 Powers and Duties. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the Governing Documents. The Association may contract, sue, or be sued with respect to exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Common Areas and administration of the Association. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association may impose fees for the use of the Common Areas or Association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement, or use interests in lands or facilities for the use and enjoyment of the Owners. The Board of Directors has the power to enter into bulk rate contracts for all

Community Services, including but not limited to communication services as defined in Chapter 202, Florida Statutes (such as basic cable television programming services, telephone), information services and/or internet services in bulk for the entire community, and the cost of such services shall be a common expense allocated on a per Unit basis.

4.11 Official Records. The Association shall maintain its official records as required by law.

4.12 Purchase of Units. The Master Association has the power to purchase Units and to acquire and hold, lease, mortgage and convey them. The Master Association has the right to purchase a Unit at a foreclosure sale resulting from the Master Association's foreclosure of its lien for unpaid assessments or charges (including fines), or to take title by deed in lieu of foreclosure. However, the acquisition of any Units not resulting from the Master Association's foreclosure action, must have the prior approval of a majority of the voting interests of the Master Association present and voting, in person or by proxy, at a duly called meeting of the members of the Association, called for that purpose.

4.13 Interests in Property. The Association has the power to acquire property, both real and personal. The power to acquire, encumber, convey, or otherwise dispose of personal property shall be exercised by the Board of Directors. Except as otherwise provided in Sections 2.12 above and 3 below, the power to acquire, encumber or convey ownership interests in real property, whether or not contiguous with the property, shall be exercised by the Board of Directors only after approval by at least a majority of the Voting Interests of the Association, present and voting, in person or by proxy, at a duly called meeting of the members of the Association, called for that purpose. However, the power to lease or grant easements to Association property or Common Areas shall be exercised solely by the Board of Directors.

4.14 Limitation on Liability. Notwithstanding the Association's obligation to maintain and repair the Common Areas, the Association shall not be liable to any Owner for damage to property, other than the cost of maintaining and repairing the Common Areas, resulting from any latent or hidden condition of the property to be maintained by the Association. In no event shall the Association be liable to any Owner for damage related to the acts or omissions of Owners or other persons or the elements. The Master Association shall not be liable to any owner for repairing or replacing decorative surfaces, personal property or fixtures within the Home, including but not limited to, wallpaper, floor coverings, furniture, and artwork.

4.15 Alterations, Improvements, Additions. In a fiscal year, the Association, by action of its Board, may make alterations and improvements to the Association property having a cost not in excess of One Hundred Fifty Thousand Dollars ($150,000) irrespective of whether funds have been reserved for such alterations and improvements. All other alterations and improvements must first be approved by at least two-thirds (2/3) of the voting interests who are present in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or improvement may be made to the Association property which materially and adversely affects the rights of the Owner to the enjoyment of his Lot or the Association Property unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing. If work reasonably necessary to protect, maintain, repair, replace or insure the common areas or

Association property also constitutes a material alteration or substantial addition to the common areas, no prior owner approval is required.

5. ASSESSMENTS. The provisions of this section shall govern assessments required for the payment of Common Expenses and individual expenses, which, from time to time, are assessed by the Association against an Owner as Regular, Special or Individual Assessments.

5.1 Covenant to Pay Assessments. Each Owner by the act of becoming an Owner covenants and agrees, and each subsequent Owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

(A) The Unit's pro rata share of quarterly assessments based on an annual budget of common expenses adopted by the Board of Directors ("Regular Assessments");

(B) The Unit's pro rata share of special assessments levied for capital improvements or other expenses that cannot be paid from the regular assessments;

(C) Individual Assessments levied against, or payable by, less than all of the Units, as authorized elsewhere under Florida law, this Declaration, in the Bylaws, or the Rules and Regulations of the Association; and

(D) Fines levied by the Association for violations of the Governing Documents.

Assessments and charges shall be established and collected as provided herein and elsewhere in the governing documents. An Owner, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 5.13 below, whenever title to a Lot is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No Owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the Common Areas, by abandonment, or otherwise. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot. No Owner can withdraw or receive distribution of his prior payments to the common surplus or Master Association reserves, except as otherwise provided herein or by law. When an Owner conveys a Lot to a trust or other entity, the Master Association may condition its approval upon the transferors agreeing to remain liable to the Association for any assessments, charges, monetary obligations or other obligations owing to the Master Association as of the date of approval, and for so long as the transferee trust or other entity may remain the title holder of the Lot. If the Master Association obtains ownership of a Lot through a foreclosure proceeding or otherwise, the Master Association shall not be responsible for assessments on said Lot and shall not be considered a subsequent Owner of the Lot for purposes of collection under this section.

5.2 **Share of Regular and Special Assessments**. The Owner of each Unit shall be liable for an equal share of the Regular and Special Assessments levied by the Association, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Units.

5.3 **Regular Assessments**. All Regular Assessments shall be paid in quarterly installments, in advance, due on the first day January, April, July and October of each year. Written notice of any assessment shall be sent to the owners of each Lot prior to the installment being due, but failure to send (or receive) such notice does not excuse the obligation to pay. If an annual budget for a new fiscal year has not been adopted and the payment for the first installment is due, it shall be presumed that the amount of such installment is the same as the last quarterly installment, and payments shall be continued at such rate until a budget is adopted and new annual assessment is calculated, at which time an appropriate adjustment shall be added to or subtracted from each Unit's next due quarterly installment.

5.4 **Special Assessments.** Special assessments may be imposed by the Board of Directors when necessary to meet unusual, unexpected, unbudgeted or non-recurring expenses, or for such other purposes as are authorized by Florida law and the Governing Documents. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any Board meeting at which a special assessment will be considered shall be given as provided in the Bylaws and must contain a statement of the purpose(s) of the Special Assessment.

5.5 **Individual Assessments.** The Association shall have the power to levy Individual Assessments against a particular Lot, without participation from other Owners, which amounts may also accrue interest, late fees, and attorney's fees and costs as permitted by law and such interest, late fees, attorney's fees and costs shall also be considered an individual assessment, in accordance with the following provisions:

(A) To cover costs, including the overhead and administrative costs, incurred in bringing the Lot into compliance with this Declaration, any Rules and Regulations, or any other governing document of the Association, as the same may be amended from time to time, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests. If the assessment is in connection with an Owner not meeting that Owner's maintenance obligations under the Governing Documents, the Master Association shall provide the Owner with reasonable written notice of the maintenance required and an opportunity to cure the violation before it takes corrective action and incurs the expense to be charged to the Owner.

(B) To collect monetary fines assessed against an Owner pursuant to the governing documents, provided the fines exceed $1,000.

(C) To cover the cost of any damage caused to any portion of the Common Areas by an Owner, that Owner's lessees, guests, invitees, or occupants of their Unit as a result of an intentional act, misuse, negligence.

(D) To levy and collect a capital contribution fee from the purchaser or transferee of a Lot or Unit upon the occurrence of a conveyance, as defined elsewhere in this Declaration, in accordance with the capital contribution provisions set forth herein.

All Individual Assessments shall be a personal obligation of the Owner and shall be secured by a lien against the Lot and collectible in the same manner as any other assessment, including, without limitation, by the foreclosure of the lien.

5.6 Capital Contribution. Upon conveyance of title to a Lot or Unit, the purchaser or transferee shall, at the time of closing of such conveyance, pay to the Association a capital contribution fee. The amount of the capital contribution fee shall be as determined at the sole discretion of the Board of Directors of the Master Association from time to time, however, in no event shall the amount exceed Two Thousand Dollars ($2,000.00) unless approved by a majority of the owners who are present and voting at a duly noticed meeting of the members at which a quorum is present.

(A) The capital contribution, together with interest, costs, and reasonable attorney's fees, shall be the personal obligation of the purchaser of the Lot or Unit and shall be secured by a continuing lien as provided in Section 5.7 below. Said lien may be foreclosed in the same manner as provided herein for an assessment lien.

(B) For purposes of this Section, the term "conveyance" shall mean the transfer of legal title to a lot by deed or authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed, transfer of an interest in a land trust or similar conveyance of a beneficial interest. If the Owner is a corporation, limited liability company or other business entity, then the term "conveyance" shall include the sale, issuance, transfer of any voting capital stock or interest of the Owner or of any corporate entity which directly or indirectly controls the Owner which shall result in a change in the voting control of the Owner or the legal entity or persons who control the Owner. If the Owner is a partnership, then the sale, issuance or transfer of a majority interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership which directly or indirectly controls the Owner, or the transfer of any portion of any general partnership or managing partnership interest which shall result in a change of control over the Owner, shall be deemed a "conveyance" within the meaning of this Section 5.6.

(C) The following conveyances shall be exempt from paying a Capital Contribution Assessment:

(i) A conveyance by any record title holder to any person or entity who was also a record title holder of the Lot being conveyed in the Association immediately prior to such conveyance;

(ii) A conveyance to a trustee or to the Owner's spouse, solely for estate planning or tax reasons without changing occupancy;

(iii) A conveyance to the Owner's estate, surviving spouse, or to other heirs resulting from the death of an owner;

(iv) A conveyance by an Owner to a trust, partnership, corporation or other entity so long as such entity is and remains wholly-owned by the Owner or by such Owner and the Owner's spouse and/or children for estate planning or tax purposes and without changing occupancy; and

(v) A conveyance to a mortgagee or other lienholder, or to the Master Association, resulting from or in connection with the enforcement of a mortgage or lien, including a conveyance pursuant to a final judgment of foreclosure, foreclosure sale, or deed in lieu of foreclosure.

Notwithstanding the foregoing, upon reconveyance that occurs following the exempt conveyances in (i) through (v) above, the Capital Contribution Assessment shall be due and payable. Capital Contribution Assessments shall be collected in accordance with this Section 3 as an individual assessment.

5.7 Establishment of Lien. All assessments, charges, and other monetary obligations levied or imposed by the Association pursuant to this Declaration, the Bylaws, or applicable law, together with any interest, late fees, costs of collection, and attorneys' fees, shall constitute a continuing lien upon the Lot or Unit against which such amounts are levied and shall also be the personal obligation of the Owner of such Lot or Unit at the time the Assessments become due. The lien shall relate back to the date this Declaration was originally recorded and shall be superior to any homestead rights claimed by the Owner. The lien shall be perfected and enforced by the recording of a Claim of Lien in the Public Records of the County, setting forth the legal description of the property encumbered, the name of the record Owner, and the amounts then due and owing. A recorded Claim of Lien shall secure payment of all unpaid Assessments due at the time of recording, together with all Assessments, interest, late fees, costs, and attorneys' fees that thereafter accrue until the lien is satisfied or a final judgment of foreclosure is entered. Upon full payment of all sums secured by the Claim of Lien, the Association shall provide a satisfaction of lien in recordable form.

5.8 Collection of Assessments. Assessments shall become due and payable on the date or dates established in this Declaration, the Bylaws, or by resolution of the Board of Directors. Any Assessment not paid within ten (10) days after the due date shall bear interest at the highest rate permitted by law from the due date until paid, and the Association may also charge an administrative late fee in an amount not to exceed the maximum allowed by law. Assessments shall become due and payable on the date or dates established in this Declaration, the Bylaws, or by resolution of the Board of Directors. Any Assessment not paid within ten (10) days after the due date shall bear interest at the highest rate permitted by law from the due date until paid, and may be subject to an administrative late fee in an amount not to exceed the maximum allowed by law. No payment by check shall be deemed received until the check has cleared the Association's financial institution; provided, however, that upon clearance, such payment shall be credited as of the date the Association initially received the check. All payments shall be made in United States funds through financial institutions located within the United States. In addition to all other remedies, the Association shall have the right, to the extent permitted by law, to demand and receive from any tenant occupying a Lot or Unit payment of rent otherwise due to the Owner during any period in which Assessments for such Lot or Unit are delinquent, until all such Assessments are paid in full.

5.9 <u>Foreclosure of Lien; Personal Liability</u>. The Association may bring an action in its own name to foreclose the lien established pursuant to Section 5.7 for unpaid Assessments, by the procedures and in the same manner as provided in Section 720.3085, Florida Statutes for the foreclosure of a lien upon a Lot for unpaid assessments. All Assessments shall also constitute the personal obligation of the Owner of the Lot at the time such Assessments become due. In addition to foreclosure, and without limitation on any other remedy provided herein or by law, the Association may bring an action at law against any Owner personally liable for unpaid Assessments. Any final judgment obtained by the Association shall include all unpaid Assessments, together with interest, late fees, costs, and reasonable attorneys' fees incurred by the Association, including attorneys' fees incurred in connection with any appeal, as permitted by law. The remedies provided in this Section are cumulative and may be exercised concurrently or successively.

5.10 <u>Priority of Liens</u>. The Association's lien for unpaid charges, assessments and all other amounts shall be subordinate and inferior to any recorded institutional first mortgage, but only to the extent required by the Homeowners' Association Act, unless the Association's Claim of Lien was recorded before the institutional first mortgage. The lien shall relate back to the date the original Declaration was recorded in the Public Records and be superior to, and take priority over, any other mortgage, lien or interest recorded after that date, except as otherwise expressly provided by the Homeowners' Association Act. Any lease of a Lot shall be subordinate and inferior to the lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or other charge coming due after taking title. Any unpaid assessment or other charge which cannot be collected by reason of this Section shall be treated as a common expense, collectable from all Units, including the Unit as to which the foreclosure (or deed in lieu of foreclosure) occurred.

5.11 <u>Acceleration</u>. If any special assessment or installment of a regular assessment becomes more than thirty (30) days past due, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Master Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorney fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the

Owner's last known address, and shall be deemed given upon mailing of the notice.

If an Owner fails to pay in full all assessments due under a lien and said default shall continue into a new fiscal year, the Master Association shall have the right to accelerate the due date of the entire balance of the Lot's assessments of that fiscal year as well. The due date for all accelerated assessments for that fiscal year shall be the first day of the fiscal year. The right to accelerate a new fiscal year's assessments shall be exercised by sending to the delinquent Owner a notice of the acceleration, which notices shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice.

5.12 Certificate as to Assessment, Estoppels. Within ten (10) business days after receiving a written or electronic request for an estoppel certificate by a parcel owner, mortgagee, or the parcel owner's designee, the Association shall provide an estoppel certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the Owner with respect to the Lot have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby. The Association may charge a reasonable fee for the estoppel letter.

5.13 Mortgage Foreclosure. Unless otherwise required or limited by applicable law, and subject to the provisions of Section 720.3085, Florida Statutes, as amended from time to time, if a first mortgagee of record, or its successor or assignee as a subsequent holder of the first mortgage, acquires title to a Lot as a result of foreclosure of its mortgage or by acceptance of a deed in lieu of foreclosure, such first mortgagee shall be liable for unpaid Assessments attributable to the Lot that became due prior to the first mortgagee's acquisition of title only to the extent provided by the Homeowners' Association Act, and for all Assessments that come due during the period of its ownership of the Lot. Any unpaid Assessments for which such first mortgagee is not liable by operation of law shall become a common expense collectible from all Owners, including the first mortgagee and its successors and assigns. All persons or entities other than a first mortgagee of record, its successor or assign, who acquire title to a Lot as a result of foreclosure, deed in lieu of foreclosure, or other court-ordered sale shall be jointly and severally liable for all unpaid assessments, capital contributions, interest, late fees, costs, and attorneys' fees due and owing with respect to the Lot at the time of acquisition, whether or not a claim of lien has been recorded. No Owner, mortgagee, or other acquirer of title to a Lot by foreclosure, deed in lieu of foreclosure, or otherwise shall be excused from liability for the payment of any Assessments that come due during the period of such party's ownership of the Lot. The liability limitations applicable to first mortgagees shall not apply to any assignee or transferee of such mortgagee that is not entitled to such limitation under applicable law.

6. MAINTENANCE.

6.1 Maintenance of Common Areas. The Master Association shall at all times maintain in good repair, and shall replace as often as necessary, any and all improvements constructed on the

Common Areas, including, but not limited to all landscaping (except as provided in 6.2 below), sprinkler pipes and systems, paving, drainage structures, walkways, recreational facilities, private streets, street lighting fixtures and appurtenances, entrance features and other structures, except public utilities, all such work to be done as ordered by the Board of Directors or its designee. The Master Association, its successors and assigns, shall have a perpetual, non-exclusive easement for ingress and egress over, upon and across all portions of the Properties and to excavate thereon in connection with the maintenance of sprinkler pipes and systems to the extent necessary for the performance of the work to be performed pursuant to this Section; provided, however, that the party causing any such excavations restores disturbed areas as nearly as practicable to the condition thereof immediately prior to such excavations.

6.2 Maintenance of Lots and Units. The maintenance, repair and replacement responsibility of the Lots and Unit shall be the responsibility of the Owner thereof at the Owner's expense and includes the complete interior of the residence. The Owner's responsibility shall be to keep the appearance of the structure and all related improvements in a condition comparable to when they were new, except normal wear. The Unit owner shall also be responsible for the maintenance, repair and replacement of the grass or lawn area located between the Owner's Unit and the road, and if, applicable, between the Unit and the lake. No Owner shall materially alter or make any substantial additions to the Lot or exterior of that Owner's Unit without the prior written approval of the Association as further provided in Section 7.

6.3 Enforcement of Maintenance. If the Owner of a Unit fails to maintain his Lot and Unit as required herein or the Home or Unit is not cared for and/or maintained in a manner acceptable to the Board of Directors and in general conformity with the standards of the community, the Master Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to levying fines against the Owner, and entering the Lot and remedying the violation, with or without consent of the Owner. Unless an emergency exists, the Association may only enter the Lot for remedying an Owner's violation after giving the Owner written notice of the Master Association's intent to do so. The Master Association may repair, replace or maintain, at the Owner's expense, any item which constitutes a hazard to other property or residents, prevents the Association from fulfilling its maintenance responsibilities, or which has a materially adverse effect on the appearance of the Properties as determined by the Board of Directors. Any expenses so incurred by the Master Association shall be charged to the Owner of the Lot to which such services are provided, and shall be an Individual Assessment charged against the Lot, together with reasonable attorneys' fees and other expenses of enforcement. Such assessments shall become a lien on the Unit which may be foreclosed or otherwise collected pursuant to the governing documents and Florida law.

6.4 Negligence; Damage Caused by Condition on Home or Unit. Each Owner shall be responsible and liable for the costs of any maintenance, repair, or replacement of the Common Areas, Association Property, other Lots, Dwellings, or personal property made necessary by the act, omission, or negligence of the Owner, or of any member of the Owner's family, tenants, guests, invitees, employees, or agents. Each Owner shall maintain the Owner's Lot, Dwelling, and all improvements and personal property thereon or therein in a condition that prevents foreseeable and reasonably preventable damage to other Lots, the Common Areas, Association Property, or the property of other Owners or residents. If any condition, defect, failure, or malfunction originating on, within, or from a Lot or Dwelling—whether caused by negligence or otherwise—results in damage to the Common Areas, Association Property, or another Lot or Dwelling, the Owner of the Lot from which such condition originated shall be liable for all costs of repair or replacement to the extent such costs are not paid or payable by applicable insurance proceeds. If one or more of the damaged Units is not occupied at the time the damage is discovered, the Association may enter the Lot, Home or Unit and take such reasonable actions as are necessary to prevent or mitigate the spread of damage. Any costs and expenses incurred by the Association in connection with entry, mitigation, repair, or enforcement under this Section, including reasonable attorneys' fees and costs, and to the extent not covered by insurance, shall constitute an Individual Assessment against the Owner of the Lot from which the condition originated, collectible pursuant to the governing documents and applicable law, and shall be secured by a lien against the Lot.

6.5 Licensed and Insured Contractors. Whenever an Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Lot or Unit, such owner shall be deemed to have warranted to the Association and its members that any contractor(s) used are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to persons or property not paid by the contractor's insurance.

7. ARCHITECTURAL AND AEESTHETIC CONTROL. No building, structure, pool, or other improvement shall be constructed, installed, or materially altered on any Lot, nor shall any grading, excavation, landscaping, tree removal, change of exterior color, or other work materially altering the exterior appearance of any Dwelling, Lot, Unit, or Common Area be undertaken without the prior written approval of the Association, in accordance with Section 720.3035, Florida Statutes, the Governing Documents and the Association's Rules and Regulations.

7.1 Powers and Duties. The architectural review and control functions of the Association shall be administered and performed by the Board of Directors. The Board shall have the power and duty to:

(A) Adopt, amend, or modify written Architectural/Aesthetic Guidelines and Standards, building materials, colors, location of improvements, size restrictions, exterior appearance, contractor specifications, application and review procedures, and reasonable timeframes for completion of projects. Notice of any proposed adoption, amendment, or modification shall be delivered to each member at least fourteen (14) days prior to the meeting at which the Board acts.

(B) Require submission of plans and specifications for any proposed improvements, grading, excavation, landscaping changes, or exterior alterations, including samples of materials or colors as reasonably necessary by the Board to evaluate the proposed work.

(C) Review and approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading or excavation that alters the exterior appearance of any structure Unit, Home, or Common Area. Evidence of approval may be made by a certificate, in recordable form, executed by the President of the Association.

(D) Establish fees for processing applications, reviewing and inspecting completed improvements (including by third parties), and security deposits to cover incidental damage to Association property or adjacent Units or Homes. Unpaid fees may be assessed as an Individual Assessment and constitute a lien against the Lot and Home.

(E) Inspect approved changes during and after construction to ensure conformity with approved plans.

(F) Set reasonable time limits for completion of approved projects and require the work proceed uninterrupted, except for material shortages, inclement weather, or acts of Gods, unless otherwise approved in writing by the Board.

(G) Enact regulations regarding the appearance of Units and adjacent Common Areas during the construction or renovation period, which regulations may include but are not limited to the placement of dumpsters, portable restrooms and building materials.

(H) Adopt hurricane protection specifications for each structure or other improvement on a parcel governed by the association. The specifications may include the color and style of hurricane protection products and any other factor deemed relevant by the board.

(I) Delegate architectural review to a committee appointed by the Board of Directors, the members of which shall serve at the pleasure of the Board. Any such committee shall conduct its meetings and take action in accordance with the same notice and procedural requirements applicable to meetings of the Board. If such review is delegated, decisions of the Committee may be appealed to the Board within fifteen (15) days, and the Board's determination upon reconsideration shall be final.

7.2 **<u>Approval Required for Alteration</u>**. In seeking approval, the Owner or other applicant must submit all plans, specifications, and any other information reasonably required by the Board in accordance with the procedures established by the Association. The Board, or any architectural or construction committee authorized by the Board, may review and approve or disapprove the application. Approval or disapproval must be exercised in good faith, reasonably, and equitably applied to all Owners, and may consider aesthetic, functional, or other factors including architectural guidelines and standards promulgated by the Board. Any disapproval of an alteration shall be in writing and specify the basis for denial to the extent required by §720.3035, Florida Statutes. Approvals granted by the Board shall not be construed as a warranty or representation by the Association regarding structural integrity, compliance with building codes, zoning, or other governmental requirements, all of which remain the sole responsibility of the Owner.

7.3 **Alterations by Owners.** No Owner shall make any material change or improvement to the exterior appearance of any portion of the Lot, Unit, or Home, without first obtaining the written approval of the Association. Any improvement must comply with the Briarwood PUD. If an Owner makes any modification, installation or addition to the landscaping, the Owner's Home or the Common Areas, the Owner and the Owner's successors in title shall be financially responsible for the following which shall be an Individual Assessment against the Unit as set forth in Section 5.5 above:

(A) The cost to insure, maintain, repair and replace the modifications, installations or additions;

(B) The cost of repairing any damage to the Common Areas or other Units or Homes resulting from the existence of such modifications, installations or additions; and

(C) The cost of removing and replacing or reinstalling such modifications if their removal by the Master Association becomes necessary in order to maintain, repair, replace, or protect other parts of the Units or Homes for which the Master Association is responsible.

7.4 **Construction to be in Conformance with Plans.** After plans, specifications and other data submitted have been approved by the Board of Directors, the material change or improvement must be constructed, altered or maintained in conformity with the plans and specifications approved by the Board of Directors.

7.5 **Local Building Code.** This Section 7 shall not be deemed to excuse any Owner from compliance with local building and construction codes, ordinances and/or regulations and all improvements erected, constructed, placed, altered or maintained shall conform to the requirements of such laws, codes, ordinances and regulations, nor shall the Association's approval create any presumption that Owner's plans comply with applicable laws, codes, ordinances and regulations, nor that the work will serve its purpose as intended by the Owner. The Owner is required and responsible for obtaining any and all approvals and permits required by such laws, codes, ordinances and regulations.

8. **USE RESTRICTIONS**. The following rules and standards apply to the Property and shall be enforced by the Association pursuant to this Declaration or as otherwise permitted by law.

8.1 Residential Use. Each Unit shall be occupied as a single-family residence and no Unit shall be used for any other purpose. Except for Lots submitted to the condominium form of ownership, Lots shall have no more than one (1) Unit thereon. Improvements accessory to the use of one (1) family may be erected on a Lot, such as an attached guest suite, provided they do not furnish accommodations for an additional family.

8.2 No Trade, Business, Profession, Etc. The Units in the Master Association shall be used for single family residences and for no other purposes. No business may be conducted on any of the Lots, nor shall any Unit or a portion thereof be used or maintained as a professional office. No person may publicly advertise the address of a Unit as the address of any business. This restriction shall not be construed to prohibit any Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit, if such uses do not involve customers, clients, or employees coming onto the property, excessive deliveries to the Lot, the posting of any signage in the Community, the storage of equipment, products or materials in the Community. Such uses are expressly declared customarily incident to residential use. Such personal business use must, nonetheless, comply with any applicable governmental regulation. Lots may not be used for commercial or business purposes, including, without limitation, caring for children or adults or any use that requires an occupational license. This Section is intended to prohibit commercial or business activity by an Owner or occupant of a Home which would noticeably change the residential ambiance of the Property.

8.3 Nuisances. No obnoxious or offensive activity shall be carried on upon any Common Area, Unit or in any Home, nor shall anything be done which constitutes or causes an unreasonable amount of annoyance or nuisance to other residents and their guests. No Owner shall use his Unit or Home, or permit it to be used, in any manner that would not be consistent with the maintenance of the highest standards for a first class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each Lot, Unit, and the Common Areas shall be consistent with existing laws and the Governing Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. Extreme care shall be exercised to minimize noises so as not to unreasonably disturb other persons. The Board of Directors' determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

8.4 Signs. In order to maintain an attractive appearance, no sign, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted, or affixed in, on or upon any part of the Properties, by an Owner or occupant. This restriction includes, without limitation, signs of real estate professionals, politicians, contractors or subcontractors. Signs may not be placed in or on windows of the home, on vehicles parked on the Lot or in its driveway, in "take-one" type receptacles or anywhere else visible from the frontage of the unit or an adjacent parcel. Notwithstanding the foregoing, the owner of a Unit may display a sign provided by a contractor for security services within ten feet (10') of any entrance to the home, which security sign shall not exceed one square foot in size.

8.5 **Pets.** Each Owner may keep a reasonable number of commonly accepted household pets, including dogs, cats, caged birds, and fish, subject to such reasonable limitations on number, size, and type as may be established by the Board of Directors from time to time. Tenants shall be permitted to keep no more than two (2) such household pets. Notwithstanding the foregoing, nothing in this Declaration shall be deemed to prohibit or unreasonably restrict the rights of Owners or Tenants to keep service animals or emotional support animals as required by applicable federal or state law.

(A) **Control and Supervision.** All pets must be carried, crated, or leashed while outside the Unit. Pets shall not be left unattended in garages or outside the interior portions of a Unit. Owners are responsible for ensuring that their pets do not disturb other residents or damage person or property.

(B) **Removal of Nuisance or Dangerous Animals.** The Board of Directors may require the removal of any pet that becomes a source of unreasonable annoyance, nuisance, or danger to residents, property, or the Community. A determination by the Board that a pet constitutes a nuisance or danger shall be conclusive and binding, provided such determination is made in good faith and in compliance with applicable law. If the Board determines that a pet kept by a tenant must be removed, the tenant shall promptly remove the pet from the Community upon notice. Failure to comply with such notice shall constitute a default under the applicable lease and the Governing Documents, and shall provide a basis for the Association to exercise all available remedies, including, without limitation, the right to require the Owner to terminate the lease and to pursue removal of the tenant and all occupants from the Lot in accordance with applicable law.

(C) **Dangerous Dogs**. In no event shall a "dangerous dog" be permitted on a lot or in the community, which shall include any dog that has unprovoked: (i) chased in a menacing fashion, aggressively bitten, attacked, or endangered, or has inflicted injury on a human being, whether on public or private property when that occurs; or (ii) has severely injured or killed a domestic animal while off the owner's property. "Unprovoked" means that the human being or domestic animal was conducting himself, herself, or itself peacefully and lawfully. "Severe injury" means any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery.

(D) **Responsibility and Indemnification.** Each Owner and Tenant shall be fully responsible for the behavior and activities of their pet or animal and shall indemnify and hold harmless the Association, its Board, and its agents against any claim, liability, loss, or expense arising from or related to the pet.

(E) **Rules and Regulations.** The Board may adopt reasonable rules regarding the keeping of pets, including restrictions on type, number, size, and behavior, provided such rules are consistent with this Declaration and applicable law.

8.6 <u>Appearance</u>. Each Owner shall keep their Unit, including the Home and surrounding Lot, free of weeds, underbrush, unsightly growths, trash, debris, and other refuse, and shall maintain the Home and Lot in a neat, safe, and sanitary condition. No Unit shall be used or maintained as a dumping ground for rubbish. Garbage, trash, and refuse must be stored in covered trash barrels or other approved containers, as determined by the Board of Directors, and kept out of sight from the lot frontage and adjacent parcels except during authorized collection periods. Containers may be placed at the curb no earlier than 24 hours before and no later than 24 hours after the scheduled pickup time. All storage areas and containers must be maintained in a clean and sanitary condition. No obnoxious, offensive, or noxious odors shall be permitted to emanate from any Lot. Garbage incinerators are strictly prohibited.

8.7 <u>Antennae</u>. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, construed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Association, except that this prohibition shall not apply to those satellite dishes that are one meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association may adopt and amend from time to time, rules governing the types of antennae which may be permitted and restrictions related to safety, location and maintenance of antennae. All antennae installed shall be painted to blend into the background against which it is mounted, so long as the paint does not interfere with reception of an acceptable signal. The Association may also adopt (and amend from time to time) and enforce reasonable rules limiting installation of permissible satellite dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible satellite dishes or antennae. Any permissible satellite dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations.

8.8 <u>Flags and Flagpoles</u>. A homeowner may display, in a respectful manner, up to two of the following portable, removable flags not larger than 4½ feet by 6 feet: United States flag; official flag of the State of Florida; a flag that represents the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard; a POW-MIA flag; or a first responder flag. A homeowner may erect a freestanding flagpole no more than 20 feet high on any portion of the homeowner's real property if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. Flagpoles and flag display are subject to all building codes, zoning setbacks, and other applicable governmental regulations.

8.9 **__Temporary Structures__.** No structure of a temporary nature or character, including, but not limited to, tent, shed, barn, recreational equipment, or other similar structure shall be used or permitted to remain on any Lot unless the size, appearance and temporary location has been approved by the Board of Directors in writing. The temporary erection of a tent for special occasions may be allowed. No outdoor clothes washing, drying, hanging or storage shall be allowed where visible from the parcel frontage or an adjacent lot.

8.10 **__Fences and Walls__.** No fences may be erected on any Lot, and no walls may be constructed that are not attached to and approved as part of the main structure, with all walls fully contained within the building envelope. Notwithstanding the foregoing, a fence or enclosure may be installed to conceal equipment such as generators, trash receptacles, or pool pumps, provided that: (i) the fence or enclosure does not exceed six (6) feet in height; (ii) it is properly permitted; (iii) it is approved in advance by the Board of Directors or the Architectural Review Committee; (iv) it is not located on the frontage of the Lot; and (v) it is constructed either of concrete block with a stucco finish that blends with the exterior construction of the home, or of vinyl, provided that any vinyl panels are solid and not slatted or spaced.

8.11 **__Hedges__.** No hedge may exceed six feet (6') in height in the front yard and any hedge in a front yard may not be used as an alternative to a fence or a wall. No hedge may exceed ten feet (10') in height in the side yard and must be maintained or trimmed to no more than three feet (3') from the primary or accessory structure. No hedge shall exceed twelve feet (12') in height in a rear yard that abuts another home in the Property. No hedge may encroach upon the Common Areas or another Unit in the Property. A hedge that exists on the date that this provision became effective shall be allowed to keep that hedge, so long as that hedge complies with the height limits set forth above. A hedge may not be replaced except in accordance with this provision. All hedges are subject to review in accordance with Section 7 above.

8.12 **__Landscaping and Lawns__.** All areas not covered by structures, walkways, or paved parking facilities shall be maintained as lawn or landscape with underground sprinkler systems, to the pavement of any roadway or edge of any abutting lake, canals or water management areas. No stone, gravel or paving of any type shall be used as a lawn unless approved as a part of the final landscape plan for the Lot. Landscape lighting shall emit only white light, except during periods authorized under Section 8.22 of this Declaration, when colored lighting may be used as part of holiday decorations, provided such lighting is tasteful and otherwise complies with the requirements of Section 8.22. No planting materials may block or interfere with the view of oncoming traffic at an intersection. Landscaping is subject to review in accordance with Section 7 above.

8.13 **__Driveways and Parking Areas__.** Driveways and parking areas must be constructed with materials approved by the Master Association.

8.14 **__Factory-Built Structures__.** No structure of any kind that is commonly known as "factory-built,” “modular,” or “mobile home” type of construction shall be erected without the prior written permission of the Master Association.

8.15 <u>Underground Utility Lines</u>. All electric, gas, and other utility lines must be installed underground, with the exception of transformers, junction boxes, and other such equipment.

8.16 <u>Air Conditioning Units and Other Outdoor Equipment</u>. All air conditioning and heating units, garbage and trash containers, oil tanks, bottle gas tanks, swimming pool equipment, housing and sprinkler pumps and other such outdoor equipment must be placed underground or shielded and hidden from view by adequate landscaping so as not to be readily visible from the parcel’s frontage or an adjacent parcel. Wall air conditioning units may be only permitted if not visible from the parcel’s frontage or adjacent parcel.

8.17 <u>Hurricane Shutters</u>. All hurricane protection must meet the specifications set forth by the Master Association. Hurricane protection meeting the specifications may be utilized on a continual basis on unoccupied units during hurricane season (June 1 through November 30). All other times of the year, the hurricane shutters must be removed or left open unless Properties are subject to a storm warning as determined by the National Oceanic and Atmospheric Administration. All hurricane protection visible from the exterior are subject to review in accordance with Section 7 above.

8.18 <u>Vehicles and Parking</u>.

(A) Unless stored within a garage or otherwise screened from view from the parcel frontage and adjacent lots or otherwise approved by the Board of Directors, no Owner shall park, keep, or store any of the following on any Lot or the Community Common Areas: commercial motor vehicles as defined in Section 320.01(25), boats, trailers of any kind, semitrailers, house trailers, campers, mobile homes, buses, ATVs, swamp buggies, dune buggies, go-carts, golf carts, wave runners, jet skis, mopeds, travel trailers, or moving/storage containers.

(B) No motor vehicle shall be parked anywhere other than on a driveway, in a garage or in a designated parking space. Parking on lawns, across walkways, across sidewalks, on landscaped areas or in roadways is prohibited, except that temporary (not to exceed 3 hours and in no event overnight) parking will be allowed on the roadway for guests when a driveway for a Unit is fully utilized. Work vehicles, other than commercial motor vehicles as defined in Section 320.01(25), Florida Statutes, are permitted as long as they are parked in an Owner’s driveway or garage.

(C) No motor vehicle shall be used as a domicile or residence, either permanent or temporary, while in the neighborhood.

(D) No vehicles shall be parked in the lot at the Briarwood Clubhouse overnight.

Notwithstanding the foregoing, the Board may permit a resident to park a first responder's vehicle such as a marked Police or sheriff's patrol car.

(E) No unregistered motorized or electric vehicles may be operated on roadways or Common Areas within the Community, except that golf cart type vehicles which are driven by a person bearing a valid driver's license may be operated on the roadways. This restriction shall include without limitation, all terrain vehicles, scooters, and mini-cycles. The riding of electric motorcycles / e-motos, which are motorized vehicles that are not a conventional bicycle, for example an electric dirt bike, mini-motorcycle or off-road motorbike powered by an electric motor (typically greater than 750 watts or capable of speeds > 28 mph) that would require licensure, registration or is otherwise illegal for use on public roads/sidewalks in Florida, is prohibited. The restrictions in this section shall not include wheelchairs or other such vehicles intended to provide mobility for disabled persons.

(F) If the Master Association is notified, in writing, of a violation of this provision, it may take such further action as deemed necessary under the circumstances, including towing the vehicle. All expenses associated with enforcing compliance with this provision shall be borne jointly and severally by the owner of the vehicle and Owner of the Unit to which the offending vehicle is registered or who consented to the vehicle being admitted into the Community (whether it be by the Owner, his guest, invitee, tenant, lessee or tenant's guests), including towing charges, storage expenses, costs and attorney's fees incurred by the Master Association and shall not be deemed a fine. Such charges, if unpaid after thirty (30) days of demand, shall be assessed as an Individual Assessment against the Unit and collectable in the same manner as any other assessments, including lien and foreclosure. The remedies provided herein are cumulative and in addition to any other remedy provided in the Declaration, Association's Bylaws, Rules and Regulations, or Florida Law.

(G) Subsection (A) and (B) in this Section 8.18 are not applicable to vehicles parked on a temporary basis that are utilized by contractors and suppliers for the purpose of performing maintenance work at a Unit or for the Master Association.

8.19 Garages. Each single family residence on a Lot shall contain an attached garage which can accommodate two (2) full-size passenger automobiles. Each condominium unit shall have an attached garage which can accommodate at least one (1) full-size passenger automobile. No garage shall be erected which is separated from a residence. Carports are not permitted. Repairs of vehicles in the Community are only permitted inside a garage. No garage shall ever be permanently enclosed or converted to other uses, including without limitation, used as a living or storage area.

8.20 No Time-Shares. No residential unit or a portion thereof shall be conveyed or used as a Time-Share Property or as part of a Time-Share Plan as those terms are defined under Chapter 721, Florida Statutes.

8.21 <u>Drones</u>. The operation, flying or use of a drone, as a drone is defined in Section 934.50 (2)(a), Florida Statutes, as may be amended from time to time, on, over or through the Subdivision is prohibited without the operator or Owner of such drone having first obtained the express, written approval of the Board of Directors. If such approval is granted, the use of the drone shall be operated in accordance with the provisions of Section 934.50, Florida Statutes, as amended from time to time, and the operator may not use a drone equipped with imaging device to record an image of privately owned real property or of the Owner, tenant, occupant, invitee, guest or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person's reasonable expectation of privacy without his or her written consent.

8.22 <u>Holiday Decorations</u>. Notwithstanding the provisions of Section 7 of this Declaration, each Owner or Tenant may display tasteful holiday decorations on their Lot, including lights, wreaths, and ornaments, provided such decorations do not unreasonably interfere with the use and enjoyment of neighboring Lots or Common Areas, as determined in the sole discretion of the Board. Projected decorations on the exterior of the Home or Lot and multicolored or moving lights are not permitted unless tastefully displayed. For purposes of this provision, whether an item or display is "tasteful" shall be determined in the sole discretion of the Board of Directors, and such determination shall be final and binding on all Owners. Except for major observed holidays occurring in December, decorations may be installed no earlier than two (2) weeks prior to the holiday and must be removed no later than two (2) weeks following the holiday, as determined by the Board. The Board may, by duly adopted rule, extend the permitted display period. For major observed holidays occurring in December, decorations may be installed immediately following the Thanksgiving holiday and must be removed no later than two (2) weeks after the applicable holiday for which the decorations are displayed. All decorations must be safely installed and maintained so as not to create a hazard or cause damage to the Lot, Home, or Common Areas, and the Board may adopt additional reasonable rules regarding the placement, type, and size of holiday decorations.

8.23 <u>Laws and Ordinances</u>. Every Owner and occupant of every Unit, their guests and invitees shall comply with all laws, statutes, ordinances and rules of federal, state and county governments applicable to the properties and any violation thereof may be considered a violation of this Declaration; provided the Board shall have no obligation to take action to enforce such laws, statutes, ordinances and rules.

8.24 <u>Miscellaneous Use Restrictions</u>. The following miscellaneous activity and use restrictions shall apply to the Community:

(A) The discharge of firearms is prohibited;

(B) All personal property, including bicycles, mopeds, motorcycles, and play equipment shall be stored within a Home or garage except when in use, and may not be left on driveways or Common Areas overnight. No unenclosed exterior storage area shall be permitted if visible from the parcel's frontage or an adjacent parcel;

(C) Barbeque grills and flammable or explosive gas and liquids shall be used and stored in accordance with all applicable laws, statutes, ordinances and rules of federal, state and county governments; and

(D) Nothing shall be done or kept in any Unit or on the Common Area that would increase the rate of insurance incurred by the Master Association without the prior written consent of the Master Association, and no Owner shall permit anything to be done or kept in the Owner's Unit or Common Area that would result in the cancellation of any insurance on any home or on any part of the Common Area.

9. MASTER ASSOCIATION INSURANCE.

9.1 Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Owners without naming them, and their mortgagees, as their interests shall appear.

9.2 Required Coverage. The Master Association shall maintain adequate liability and casualty insurance covering buildings and other insurable improvements (if any) within the Common Areas, with coverage in amounts as determined annually by the Board of Directors. The insurance carried by the Association shall afford at least the following Protections:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism, and malicious mischief, and other hazards.

(B) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Owners as a group to an Owner.

(C) Statutory Fidelity Bonding or Insurance. For all persons who control or disburse funds of the Association as required by the Homeowners' Association Act. The insurance policy or fidelity bond must cover the maximum funds that will be in the custody of the Master Association or its management agent at any one time. If annually approved by a majority of the voting interests present, in person or by proxy, at a meeting of the members, the Master Association may waive this requirement for all persons who control or disburse funds of the Association.

(D) Directors and Officers Liability. The Association shall obtain Directors and Officers

Liability Insurance for the Board and its officers.

9.3 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 Master Association and Owners.

9.4 Description of Coverages. A detailed summary of the coverage included in the master policies, and copies of the master policies, shall be available for inspection by Owners or their authorized representatives upon request.

9.5 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 the Association Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

9.6 Insurance Proceeds. All insurance policies purchased by the Master Association shall be for the benefit of the Master Association, and all proceeds shall be payable to the Master Association.

9.7 Distribution of Proceeds. Proceeds of insurance policies received by the Master Association shall be used to defray the cost of repair or reconstruction. Any proceeds remaining after defraying costs shall become part of the Master Association's common surplus.

9.8 Master Association as Agent. The Master Association is hereby irrevocably appointed as the agent for each Owner, to adjust all claims arising under insurance policies purchased by the Master Association for damage or loss to the Units.

10. INSURANCE OF RESIDENCES; RECONSTRUCTION AFTER CASUALTY. In order to protect values and maintain the Property's appearance by minimizing the existence of partially or completely demolished Homes for unreasonably long periods of time, and in order to protect all other Owners from the adverse effects of the negligence or imprudence of a few, the following provisions shall apply.

10.1 Owner's Duty to Insure. Each Owner of a single-family Unit shall at all times maintain property insurance on that Owner's Home and all other insurable improvements on the Lot and the condominium associations in the Community shall maintain insurance on the multi-family units and common elements of its condominium property in an amount not less than the full replacement value thereof, along with ordinance or law coverage, taking into account local construction costs and property values as they may from time to time exist. The casualty insurance policy must encompass all perils including wind damage, fire flood, tornado, and hurricane.

10.2 Failure to Insure. The Master Association has the right to require each Owner to produce proof of insurance. If an Owner fails or refuses to maintain such insurance coverage deemed reasonably necessary by the Master Association, or if the Owner allows the required insurance coverage to lapse, or for some other reason causes the same to become ineffective, the Master Association may, but is not obligated to, purchase whatever coverage it deems reasonably necessary for the Master Association's benefit. The costs incurred by the Master Association in procuring insurance shall become due and payable by the Owner in all respects, together with interest, reasonable attorney's fees and costs of collection, immediately upon the Master Association notifying the Owner, in writing, that it has procured such insurance, and the costs thereof. Should the owner fail to carry the required insurance, the Owner shall be liable for all damages that would have been covered by the policy had it been in place at the time of a loss, including any item for which the Master Association has maintenance responsibilities as provided in this Declaration.

10.3 Owner's Duty to Reconstruct. If any Home or other improvements located on any Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvements shall cause repair or replacement to be commenced within six (6) month from the date that such damage or destruction occurred, and to complete the repair or replacement within one (1) year thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation, boundaries, and appearance of the original improvements except as otherwise approved by the Board of Directors. The Board of Directors may, based on its sole and exclusive discretion, extend the time periods for reconstructions contained herein based on a particular circumstance.

10.4 Owner's Failure to Reconstruct. If any Owner fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided for in Section 10.3 above, the Association shall give written notice to the Owner of his default. If after thirty (30) days the Owner has not made satisfactory arrangements to meet his obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the Lot shall be deemed to have assigned to the Association any right he may have to insurance proceeds that may be available because of the damage or destruction of the improvement. To the extent that the cost of repairing or restoring the Unit exceeds the insurance proceeds received by the Association, the Association shall have the right to levy an Individual Assessment against said Unit in an amount equal to such excess.

10.5 Master Association Right of Entry. For the purposes of performing the duties authorized by this Section 10, the Master Association, through its duly authorized agents and employees, has the right, after written notice to the Owner, to enter upon the Unit at reasonable hours and perform such duties.

10.6 <u>Deductible</u>. The party responsible for procuring insurance on an item must pay the deductible in the event of a loss involving that item, regardless of who may be responsible to maintain, repair or replace that item as provided in this Declaration.

11. LEASING OF HOMES. In order to foster a stable residential community, the leasing of Units by their Owners shall be restricted as provided in this section. All leases of Units must be in writing. An Owner may lease only the entire Unit, and then only in accordance with this Section, after receiving the approval of the Association. No room rental, subleasing, or assignment of lease rights by the Lessee or Owner is allowed. The lessee must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The following provisions concerning leasing also apply to any new adult occupant of a Unit that was not approved under an existing lease of the Unit.

11.1 <u>Lease Procedures</u>.

(A) <u>Notice by the Owner</u>. An Owner intending to lease his Home shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease together with the name, telephone number, and address of the proposed lessee, a fully executed copy of the proposed lease and such other information as the Board may reasonably require, which may include a completed Association lease application. To the extent a Collier County ordinance requires property owners to register short-term vacation rentals, any Owner intending to lease a Home in a manner that qualifies as a short-term vacation rental shall, in addition to the foregoing requirements, provide the Board or its designee with the Owner's Collier County Rental Registration Number. The Board may also require a credit report or criminal background check for all applicants and each adult occupant intending to reside in the unit, the cost of which will be assessed to the applicant(s) by the Association. The applicant must also sign for having received copies of the rules and regulations of the Association. The Association shall charge the Owner a preset fee for processing the application, such fee to be determined by the Board and not to exceed the maximum amount allowed by law and a separate fee shall be charged for each person who is intending to occupy the Home except that a single fee may be charged to a married couple and no extra fee may be charged for minor children.

(B) <u>Board Action</u>. After the required notice and all information or interviews requested have been provided, the Board shall have twenty (20) days in which to approve or disapprove the proposed lease. If the Board neither approves nor disapproves within that time, its failure to act shall be deemed the equivalent of approval, and on demand the Board shall issue a written letter of approval to the lessee.

(C) <u>Disapproval</u>. Appropriate grounds for disapproval shall include, but not be limited to, those listed in the following subsections. If disapproved, the lease shall not be made. A proposed lease shall be disapproved pursuant to Subsections (3) through (14) below only if a majority of the whole Board so votes.

(1) With respect to any lease that qualifies as a short-term vacation rental under applicable Collier County ordinances and requires a registration number, the Owner fails to provide the Board or its designee with the Owner's Collier County Rental Registration Number;

(2) The proposed tenant, occupants, or use of the Lot would:

(a) violate any applicable federal, state, or local law, ordinance, rule, or regulation; or
(b) violate any provision of the Governing Documents, including without limitation this Declaration, the Articles of Incorporation, Bylaws, or duly adopted rules and regulations of the Association.

(3) The Owner is delinquent in the payment of assessments, fines or other charges at the time the application is considered;

(4) The Owner is in violation of any covenant, the rules or regulations at the time the application is considered;

(5) The Owner has a history of leasing his Home without obtaining approval, or leasing to troublesome lessees and/or refusing to control or accept responsibility for the occupancy of his Home;

(6) The real estate company or rental agent handling the leasing transaction on behalf of the Owner has a history of screening lessee applicants inadequately, recommending undesirable lessees, or entering into leases without prior Association approval;

(7) The application on its face indicates that the person seeking approval or any of the proposed occupants intend to conduct themselves in a manner inconsistent with the covenants and restrictions applicable to the Association;

(8) The prospective lessee or any of the proposed occupants have been convicted of or has pleaded no contest to:

(a) a felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years;
(b) a felony demonstrating dishonesty or moral turpitude within the past ten (10) years;
(c) a felony involving illegal drugs within the past ten (10) years;

(d) any other felony in the past five (5) years; or

(e) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred.

(9) The person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

(10) The prospective lessee or any of the proposed occupants have a history of conduct which evidences disregard for the rights and property of others. By way of example, but not limitation, a lessee taking possession of the premises prior to approval by the Association as provided for herein shall constitute a presumption that the applicant's conduct is inconsistent with the Declaration and Rules and Regulations of the Association and may constitute grounds for denial;

(11) The prospective lessee evidences a strong probability of financial irresponsibility;

(12) The lessee or any of the proposed occupants, during previous occupancy, have evidenced an attitude of disregard for the Association rules;

(13) The prospective lessee or any of the proposed occupants give false or incomplete information to the Board as part of the application procedure, or required application or transfer fees and/or security deposit is not paid; or

(14) The Owner fails to give proper notice of his intention to lease his Home to the Board of Directors.

(D) Failure to Give Notice or Obtain Approval. If proper notice is not given, the Board at its election may approve or disapprove the lease. Any lease which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board and the Board shall have the power to cause the removal the lessee with seven (7) days notice, without securing consent to such removal from the Owner.

11.2 Term of Lease and Frequency of Leasing. Unless a higher minimum lease term is provided otherwise in the governing documents for a Neighborhood Property, there shall be a seven (7) night minimum lease term. No lease may be for a period of more than one (1) year, and no option for the lessee to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year. No subleasing or assignment of lease rights by the lessee is allowed.

11.3 Owner Designation of Responsible Party. Owners who lease their Units must designate a single responsible party to the Association to oversee all leasing, maintenance, and enforcement matters relating to the Unit. The responsible party may be the Owner or a designated agent; however, regardless of the designation, the individual serving in this role must be approved by the Association. The designated person must be available, either in person or by telephone, twenty-four (24) hours a day, seven (7) days a week to address matters concerning the property, and must be willing and able to be on-site within one (1) business day after notice to address any violations of the governing documents arising from the lease of the Unit.

If the Owner designates himself or herself and the Association does not approve the Owner to serve as the responsible party, the Owner must promptly designate an alternate agent who is approved by the Association. No leasing activity may occur unless and until an approved responsible party is in place.

Approval of a responsible party shall be required initially and shall be renewed at least annually. An application must be submitted on forms provided by the Association, and no application shall be deemed complete until all required information is provided and any interviews required by the Association have been completed. Approval of a responsible party for one Unit does not constitute approval for any other Unit.

The Association may charge the Owner a predetermined fee for processing the application and approval. Grounds for disapproval of a proposed responsible party, including an Owner seeking to serve in that capacity, may include, without limitation: a history of inadequate lessee screening; recommending or placing undesirable lessees; entering into leases without prior Association approval; failure to properly maintain the property; or otherwise acting in a manner inconsistent with the Governing Documents or the Rules and Regulations. Disapproval may also be based on such other factors or considerations as the Board may determine from time to time.

The Association may provide the approved responsible party with access to Association-managed platforms or systems for registering tenants, managing leases, or facilitating tenant access to the Property. The Association may charge a fee to the Owner or the Owner's agent for the use of such platforms. All such access shall be subject to the rules, requirements, and limitations established by the Association.

11.4 <u>Occupancy During Lease Term</u>. When a Home has been leased, the Home may be occupied by the lessee and the lessee's family within the first degree of relationship by blood, adoption, or marriage, and their spouses. The occupancy of Homes shall comply with all applicable local codes and ordinances. The Board of Directors may, from time to time, adopt reasonable occupancy restrictions; however, in no event shall more than two (2) adults per bedroom be permitted to occupy a Home. The Board of Directors may also adopt additional rules regarding Guest occupancy during a lease term, including, but not limited to, length of Guest stay, number of occasions for Guest occupancy, and notice requirements to the Association advising of Guest occupancy.

11.5 Occupancy in Absence of Lessee. If a lessee absents himself from the Unit for any period of time during the lease term, his family who is authorized to occupy the Home and are already in residence may continue to occupy the Home and may have house guests subject to any rules or regulations promulgated by the Board of Directors. If the lessee and all of the family members mentioned in the foregoing sentence are absent, no other person may occupy the Home.

11.6 Lessee Compliance and Enforcement. All of the provisions of the Governing Documents and the Rules and Regulations of the Association shall be applicable and enforceable against any person occupying a Lot or Home as a lessee or guest to the same extent as against the Owner. A covenant requiring each occupant to comply with the Governing Documents and the Association's Rules and Regulations, and designating the Association as the Owner's agent with authority to terminate any lease and evict tenants in the event of a breach, shall be deemed included in every lease agreement, whether expressly stated or not. All leases shall also provide, or be deemed to provide, that the lessee has read and agrees to be bound by the Governing Documents. Any violation of the Governing Documents shall constitute a material breach of the lease and may subject the lessee to eviction by the Association or the Owner, or to any other legal or equitable action necessary to effectuate the removal of the lessee, as well as any other remedies available under the Governing Documents or Florida law.

If a lessee, resident, occupant, guest, or invitee of the Owner or lessee fails to comply with the Governing Documents, the Owner shall be responsible for such conduct and shall be subject to all remedies set forth in the Governing Documents and Florida law, without waiving any remedy available to the Association against the lessee. The Owner has a duty to bring the lessee's conduct (and that of all residents, occupants, guests, and invitees of the Owner or Lessee) into compliance with the Governing Documents by any necessary means, including, where legally permissible, initiating eviction proceedings. If the Owner fails to bring the lessee into compliance in a manner acceptable to the Association, or under such other circumstances as determined by the Board, the Association shall have the authority to act as the Owner's agent to take any action necessary to remedy the noncompliance. This includes, without limitation, the right to initiate legal proceedings to remove the lessee in the name of the Association, either in its own capacity or as agent for the Owner.

The Association shall be entitled to recover all costs and fees incurred in connection with any enforcement or removal action, including attorneys' fees, from the Owner. Such amounts shall be secured by a lien for charges and may be collected in the same manner as assessments for common expenses. The Association shall not be required to initiate legal action or be deemed the prevailing party in order to recover such amounts.

11.7 Collateral Assignment of Rents. In the event an Owner is in default in payment of any monetary obligation owed to the Master Association, the Master Association shall have the authority to collect rents directly from the Owner's tenant. Upon written demand by the Master Association the tenant shall pay said rent to the Master Association. Such rental payments shall be collected in accordance with the procedures established by the Board of Directors and applied in accordance with Section 3 of this Declaration until all past due amounts are paid in full. In the event such tenant fails to remit said rents directly to the Master Association or provide written evidence to the Master Association of having paid the rent within fourteen (14) days from the day the Master Association notified such tenant in writing that the rents must be remitted directly to the Association, the Master Association shall have the right to terminate the lease and cause the removal of the tenant. The tenant shall continue making rental payments to the Association for the following rental period and continue to make rental payments to be credited to the Owner's past due amount until the Association releases the tenant or the tenant discontinues tenancy in the unit. If the tenant fails to make any required payment, the Master Association may terminate the lease and evict or cause the removal of the tenant. For the purpose of such eviction, the Master Association shall be deemed to be an agent of the landlord. The authority granted in this Section is in addition to any authority granted by law.

12. TRANSFER OF OWNERSHIP OF LOTS. In order to maintain a community of congenial, financially responsible residents with the objectives of protecting the value of the Homes, inhibiting transiency, and facilitating the development of a stable, quiet community and peace of mind for all residents, the transfer of Ownership of a Lot shall be subject to the following provisions:

12.1 Forms of Ownership.

(A) A Lot may be owned by one natural person.

(B) Co-Ownership. Co-Ownership of Lots is permitted. If there are co-Owners, the Board shall be entitled to require the Owners to designate one (1) natural person as "Primary Occupant". The use of the Lot and Unit by other persons shall be as if the Primary Occupant were the only actual Owner. Any change in the Primary Occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families or in the manner of fractional Ownership or a vacation club.

(C) Ownership by Corporations, Partnerships or Trusts. A Lot may be owned in trust, or by a corporation, partnership or other entity which is not a natural person. The intent of this provision is to allow flexibility in estate, financial or tax planning, and to prohibit circumstances in which the Lot may be used as short-term transient accommodations for several individuals or families or in the manner of fractional Ownership or vacation club. The approval of a trust, or corporation, partnership or other entity as a Lot Owner shall be conditioned upon designation by the Owner of not more than one (1) natural person to be the Primary Occupant. The use of the Lot by other persons shall be as if the Primary Occupant were the only actual Owner. Any change in the Primary Occupant must be approved in advance by the Board of Directors. No more than one such change will be approved in any twelve (12) month period.

(D) Designation of Primary Occupant. Within thirty (30) days after the effective date of this provision, each Owner of a Lot which is owned in the forms of Ownership stated in preceding subsections 12.1(B) and 12.1(C) shall designate a primary occupant in writing to the Association. If any Owner fails to designate a Primary Occupant when required to do so, the Board of Directors may make the initial designation for the Owner, and shall notify the Owner in writing of its action.

(E) Life Estate. A Lot may be subject to a life estate, either by operation of law or by a voluntary conveyance. In that event, the life tenant shall be the only Association member from such Lot, and occupancy of the Lot shall be as if the life tenant was the only Owner. Upon termination of the life estate, the holders of the remainder interest shall have no occupancy rights unless separately approved by the Association. The life tenant shall be liable for all assessments and charges against the Lot. Any consent or approval required of the Association members may be given by the life tenant alone, and the consent or approval of the holders of the remainder interest shall not be required. If there is more than one life tenant, they shall be treated as co-Owners for purposes of determining voting and occupancy rights under Section 12.1(B), above.

12.2 Transfers.

(A) Sale or Gift. No Owner may transfer a Lot or any Ownership interest in a Unit by sale or gift (including agreement for deed) without prior written approval of the Board of Directors.

(B) Devise or Inheritance. If any 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 under Section 12.3(A)(2) below. The approval shall not be denied to any devisee or heir who was the prior Owner's lawful spouse or non-spouse companion at the time of death, or was related to the Owner by blood or adoption within the first degree.

(C) Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, that person shall have no right to occupy or use the Unit before being approved by the Board of Directors under the procedures outlined in Section 10.3 below.

12.3 Procedures.

(A) Notice to Association.

(1) Sale or Gift. An Owner intending to make a sale or gift of the Owner's 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 before the intended closing date, together with the name and address of the proposed purchaser or donee, a copy of the executed sales contract, if any, a completed Association sale application, and such other information as the Board may reasonably require. The Board shall determine the form of the application for approval of sales. The Board may require a personal interview with any purchaser or donee and his spouse or non-spouse companion, if any,

and any other adults intending to occupy the unit as a pre-condition to approval.

(2) Devise, Inheritance or Other Transfers. The transferee must notify the Board of Directors of the transferee's Ownership and submit 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 or use rights until and unless approved by the Board, but may sell or lease the Lot following the procedures in this Section or Section 11.

(3) Failure to Give Notice. If no notice is given, the Board of Directors, at its election may approve or disapprove at the time it learns of the transfer. If any Owner fails to obtain the Association's approval prior to selling an interest in a Unit, such failure shall create a rebuttable presumption that the seller and the purchaser intend to violate the covenants of this Declaration, and shall constitute good cause for Master Association disapproval.

(B) Board Action. Within twenty (20) days after receipt of the required notice and all information or interview requested, or not later than (60) days after the notice required by paragraph (A) above is received, whichever occurs first, 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 the President or the Vice-President or authorized representative of the Master Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves within the time limits as set forth above, 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.

(D) Disapproval. Approval of the Association shall be withheld only for good cause, and then only if a majority of the whole Board so votes, after receiving a written opinion of counsel that good cause exists. Only the following may be deemed to constitute good cause for disapproval:

(1) The person seeking approval (which shall hereinafter include all proposed occupants) has been convicted of or pled no contest to:

(a) A felony involving violence to persons, theft, arson or destruction of property within the past twenty (20) years; or

(b) A felony demonstrating dishonesty or moral turpitude within the past ten (10) years; or

(c)A felony involving illegal drugs within the past ten (10) years; or

(d) Any other felony in the past five (5) years; or

(e)A felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when that conviction occurred.

(2) The person seeking approval has been labeled a sexual offender by any governmental or quasi-governmental agency regardless of when that conviction occurred or when that label occurred;

(3) The person seeking approval has a record of financial irresponsibility, including without limitation prior bankruptcies, foreclosures or bad debts;

(4) The person seeking approval gives the Board reasonable cause to believe that person intends to conduct himself in a manner inconsistent with the covenants and restrictions;

(5) The person seeking approval has a history of disruptive behavior or disregard for the rights or property of others;

(6) The person seeking approval has evidenced an attitude of disregard for Association rules by his conduct in this community as a tenant, Owner or occupant of a Unit;

(7) The person seeking approval has failed to provide the information, fees or interviews required to process the application in a timely manner, or provided false information during the application process; or

(8) The transaction, if a sale or gift, was concluded by the parties without having sought and obtained the prior approval required herein.

12.4 **Exception**. The provisions of Sections 12.2 and 12.3 are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, but shall apply to the acquisition of title by any other person without regard to how the title was acquired.

12.5 **Unapproved Transfers**. Any sale or transfer which is not approved, or which is disapproved pursuant to the terms of this Declaration shall be void or voidable by the Master Association unless subsequently approved in writing by the Board.

12.6 **Fees and Deposits Related to the Sale of Lots**. Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a Lot, the Master Association shall charge the Owner a predetermined fee for processing the application, in an amount established by the Board from time to time. A separate fee may be charged for each person who is obtaining an interest in the Lot except if such persons are a married couple. In addition to transfer fee, the Master Association may perform a background check and credit review for the transferee and each adult residing or intending to reside in the unit and the applicant shall be responsible for the cost of those reviews.

13. ENFORCEMENT; GENERAL PROVISIONS. Every Owner, tenant, guest, or other invitee shall at all times comply with all the covenants, conditions and restrictions of the Governing Documents along with the Rules and Regulations of the Association. Failure of any Owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. The proper interpretation and effect of the Governing Documents and the Rules and Regulations of the Association shall be as interpreted by the Board of Directors of the Master Association.

13.1 <u>Mediation</u>. Chapter 720 of the Florida Statutes requires that certain disputes be mediated before filing an action in the Florida courts or before an arbitrator. Any such dispute must be filed in accordance with the law in the appropriate venue as required by law.

13.2 <u>Enforcement</u>. Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Master Association or by any Owner, against the Association; an Owner; anyone who occupies or is a tenant or guest of a Unit; or any officer or Director of the Master Association who willfully and knowingly fails to comply with these provisions. Failure of the Master Association or any Owner to enforce any covenants, conditions or restrictions herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

13.3 <u>Entry by Master Association</u>. Violation of any conditions or restrictions or breach of any covenant herein contained or in any of the Governing Documents shall also give the Master Association and its authorized agent or representative in addition to all other remedies, the right, but not the obligation to enter upon the land where such violation or breach exists and summarily abate and remove, at the expense of the Owner of the land, any construction or violation that may be or exist thereon. The Master Association and its authorized agents shall not thereby become liable in any manner for trespass, abatement or removal. Any costs and expenses incurred by the Master Association in abatement of any violations, including attorney's fees, shall be assessed against the Owner of said Unit, which assessments, if unpaid, shall become a lien on the Unit and foreclosed, or otherwise collected in the same manner as assessments for common expenses.

13.4 <u>Fines; Suspension of Rights</u>. The Board of Directors may levy fines and/or suspensions, including suspending the right to use the Common Areas, against any Owner, Tenant, or their respective family members, guests, invitees, or occupant, for violations of Chapters 617 or 720, Florida Statutes, the provisions of the Governing Documents, or the Rules and Regulations, or for condoning such violations.

Any fine shall not exceed One Hundred Dollars ($100.00) per violation, or such greater amount as may be permitted by applicable law, and a fine may be levied for each day of a continuing violation, provided that no fine shall exceed Five Thousand Dollars ($5,000.00) in the aggregate in a quarter for a continuing violation unless otherwise permitted by law. A fine of One Thousand

Dollars ($1,000.00) or more may become a lien against the Lot in accordance with applicable law.

A suspension of use rights for Common Areas or facilities may be imposed for a reasonable period for failure to comply with the Governing Documents or applicable law, or for nonpayment of any monetary obligation due to the Association for more than ninety (90) days, all in accordance with Chapter 720, Florida Statutes. In addition, voting rights may be suspended in accordance with Chapter 720, Florida Statutes.

All fines and suspensions shall be imposed and enforced in strict compliance with Chapter 720, Florida Statutes, as amended from time to time, and the procedures set forth in the Bylaws to the extent not inconsistent therewith.

13.5 <u>Attorney Fees</u>. In any legal proceeding arising from an alleged failure of a guest, tenant, Owner, officer, Director, or the Master Association to comply with applicable law or the Governing Documents or Rules and Regulations, as amended from time to time, the prevailing party shall be entitled to recover all costs of the proceeding and such attorneys' fees as may be awarded by the court.

In addition, the Association shall be entitled to recover from the Owner or tenant, as applicable, all costs incurred in connection with the enforcement of the Governing Documents or the Rules and Regulations and in obtaining compliance with or addressing any violation thereof, including, without limitation, reasonable attorneys' fees, property management fees, administrative charges, and any other related expenses, whether or not litigation is initiated and without regard to whether the Association is deemed the prevailing party. All such amounts may, in the Association's sole discretion, be assessed against the Owner and collected in the same manner as other assessments, to the fullest extent permitted by Florida law.

The Owner shall be responsible for all violations committed by the Owner's tenant, occupants, guests, or invitees, and the Association may charge the Owner for any fines, costs, fees, or other assessments arising from such violations without the obligation to pursue or charge the tenant or other responsible party. Nothing herein shall limit the Association's right to proceed directly against any tenant or other responsible party; however, the Association shall not be required to do so as a condition of enforcement against the Owner.

13.5 <u>No Election of Remedies</u>. All rights, remedies and privileges granted to the Association or Owners under the law and the governing documents shall 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 from exercising any other rights, remedies, or privileges that may be available.

13.6 <u>Owner Liability</u>. Each Owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests and by the guests, licensees and invitees of his tenants, at any time, including for any damage to persons or property caused by such violations. Each Owner agrees to indemnify and hold harmless the Association from any loss, claim, damage, liability, cost, or expense (including attorneys' fees) arising from the acts or omissions of the Owner's tenants or other occupants. The joint and several liability set forth herein is solely for the benefit of the Association and shall not be deemed to create any duty, obligation, or cause of action in favor of any other Owner or occupant.

13.7 <u>Member Approval of Certain Litigation</u>. Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Master Association for the purpose of commencing any lawsuit that involve amounts in controversy in excess of $100,000, other than for the following purposes:

(A) Enforcement of the Governing Documents or the Rules and Regulations of the Association;

(B) In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Master Association or its members; or

(C) Filing a compulsory counterclaim.

14. AMENDMENTS; TERMINATION.

14.1 <u>Duration</u>. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of all Owners and all Institutional First Mortgagees on Lots affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

14.2 Proviso. No amendment may materially or adversely change the voting rights attributable to a Unit (i.e. one vote for each Unit subject to the Declaration) or the proportion by which the Owner of a Unit shares the common expenses and owns the common surplus (i.e. all Units subject to the Declaration pay an equal share of assessments, exclusive of Individual Assessments as set forth in Section 3 above), unless all record Owners of the Unit, and all record owners of mortgages on such Unit, consent in writing to the amendment. This proviso does not apply to amendments that subject additional Units to the Declaration, so long as after any such addition, each Unit subject to this Declaration has one vote and the obligation to pay an equal share of assessments. No amendment shall operate to unlawfully discriminate against any plot or Owner nor against any class of Owners. Any amendment which would affect the surface water management system, including the water management portions of the Common Areas must have the prior approval of the South Florida Water Management District.

14.3 Leasing Amendment Proviso. Any amendment to this Declaration, approved pursuant to Section 14.4 below, that is intended to restrict the leasing of a Unit within Briarwood shall only apply to Owners who vote in favor of or consent to the amendment and Owners who take title to Units after the effective date of this amendment. This provision shall not apply to restrictions that apply equally to Units that are owner occupied and those that are leased.

14.4 Amendments by Members. Except as otherwise provided herein or by law, this Declaration may be amended at any time by the affirmative vote of two-thirds (2/3) of the voting interests of the Master Association present, in person or by proxy, at a duly called meeting of the members of the Association at which a quorum exists and for which proper notice has been given. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded and shall be executed by the President or Vice-President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

15. GENERAL PROVISIONS.

15.1 Use of Singular and Plural and Gender. Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

15.2 Waiver. Any waiver by the Master Association of any provisions of this Declaration or breach hereof must be in writing and shall not operate or be construed as a wavier of any other provision and subsequent breach.

15.3 Severability. Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect. Nothing contained in this Second Amended and Restated Declaration is intended to affect vested rights. If any provision contained herein is deemed by a competent court of law to have such affect, then such provision will be deemed null and void but have no effect on the remaining provisions herein.

15.4 Headings and Capitalization. The headings used in the Governing Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents. The capitalization of certain words are for convenience only and do not affect the meaning or interpretation of the provisions of this Declaration.

15.5 Notices. Any notice required to be sent to any Owner under the provisions of this Declaration, the Articles of Incorporation or Bylaws, shall be deemed to have been properly sent when mailed, postpaid to the last known address of the person who appears as Owner in the records of the Master Association at the time of such mailing. The Owner bears the responsibility for notifying the Master Association of any address changes.

15.6 Interpretation; Disputes. The Board of Directors is responsible for interpreting the provisions of this Declaration, its exhibits and rules promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, its exhibits or the rules promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

15.7 Priority of Governing Documents. In the event of any conflict, inconsistency, or ambiguity between or among the provisions of this Declaration, the Articles of Incorporation of the Association, the Bylaws of the Association, the Rules and Regulations, or any policies, procedures, or other governing documents adopted by the Association, the documents shall control in the following order of priority: this Declaration; the Articles of Incorporation of the Association; the Bylaws of the Association; and the Rules and Regulations and any other policies or resolutions adopted by the Board. To the extent any irreconcilable conflict exists between such documents, the provisions of the document having the higher priority as set forth above shall control.

15.8 **Security.** The Master Association makes no representation whatsoever as to the security of the Property, or the effectiveness of any monitoring system, guardhouse, entry gate, or security service. All Members agree to hold the Master Association harmless from any loss or claim arising from the occurrence of any crime or act on or within the Property. The Master Association shall not in any way be considered insurers or guarantors of security within the Property. The Master Association shall not be held liable for any loss or damage by reason or failure to provide adequate security or in effecting the security measures undertaken, if any. All Owners and Occupants of any Units acknowledge that the Master Association does not represent or warrant that any fire protection system, burglar alarm system, gatehouse or other security systems, if any, designated by or installed by it may not be compromised or circumvented; nor that any fire protection system, burglar alarm system, gatehouse or other security systems will prevent loss by fire, smoke, burglary, theft, hold up or otherwise; nor that fire protection system, burglar alarm system, gatehouse, or other security systems will in all cases provide the protection for which the system is designed or intended. Each Unit Owner and Occupant of any Unit acknowledge and understand tat each Owner and/or Occupant assumes all risks for loss or damage to persons or structures and consents thereto. Each Owner and Occupant further acknowledges that the Master Association has not make any warranty, representation, expressed or implied, including any warranty of merchantability or fitness for a particular purpose, relative to any fire and/or burglar system or other security systems recommended or installed, if any.

15.9 **Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of Briarwood does and shall be conclusively deemed to have consented to and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

15.10. DISCLAIMER OF LIABILITY OF ASSOCIATION. NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

(A) IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE

PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

(B) THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

(C) ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

(D) EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

(E) AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.