

**DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
FOR SAN SIMEON PHASE 1**

Prepared By and Return To:  
Richard B. MacFarland, Esquire  
Broad and Cassel  
7777 Glades Road, Suite 300  
Boca Raton, Florida 33434-4111

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**DECLARATION OF RESTRICTIONS  
AND PROTECTIVE COVENANTS  
FOR SAN SIMEON PHASE 1**

**THIS DECLARATION** is made this 9<sup>th</sup> day of October, 2006, by Levitt and Sons of Lee County, LLC, a Florida limited liability company, which declares that the real property described in Article II, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "covenants and restrictions") set forth below.

**ARTICLE I.**

**DEFINITIONS**

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Assessments" - those payments due pursuant to Article V, whether General or Special (as hereinafter defined), or a combination thereof.

(b) "Articles" - shall mean the Articles of Incorporation for San Simeon Phase 1 Residents' Association, Inc., attached hereto as Exhibit "D".

(c) "Association" - **SAN SIMEON PHASE 1 RESIDENTS' ASSOCIATION, INC.**, a Florida corporation not-for-profit.

(d) "Board of Directors" - the Board of Directors of the Association.

(e) "Building" - the buildings located on the Property containing two or more Units.

(f) "Bylaws" - shall mean the Bylaws of San Simeon Phase 1 Residents' Association, Inc., attached hereto as Exhibit "E".

(g) "Common Areas" - the real property described on Exhibit "B" attached hereto, and any other interest in real property acquired by the Association and deemed Common Area either in this Declaration or in the instrument of conveyance, together with any improvements on such property including without limitation any structures, offstreet parking areas, street lights, entrance features, and surface water or drainage systems but excluding any public utility installations thereon.

(h) "Developer" - Levitt and Sons of Lee County, LLC, a Florida limited liability company, its successors and assigns, if such successor or assignee acquires the undeveloped portion of the Property and is designated as such by Developer. The Developer may make partial or multiple assignments of its rights under this Declaration. All such assignees shall be deemed to be the Developer as to those rights which may have been assigned to them.

(i) "General Assessments" - Assessments levied to fund expenses applicable to all Members of the Association and set forth in Article V, Section 2 of this Declaration.

(j) "Institutional Lender"- any person or entity (i) holding a mortgage encumbering a Lot, (ii) which in the ordinary course of business makes, purchases, guarantees or insures mortgage loans, and (iii) which is not owned or controlled by the Owner of the Lot encumbered. An Institutional Lender may include, but is not limited to, a federal or state chartered bank or savings and loan association, an insurance company, a real estate or mortgage investment trust, a pension or profit sharing plan, a mortgage company; the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, an agency of the United States or any other governmental authority, including the Veterans Administration and the Federal Housing Administration of the U.S. Department of Housing and Urban Development, or any other similar type of lender generally recognized as an institutional type lender. For definitional purposes only, an Institutional Lender shall also mean the holder of any mortgage executed by or in favor of Developer, whether or not such holder would otherwise be considered an Institutional Lender.

(k) "Lot" - any lot as shown on the plat of San Simeon Phase 1, recorded or to be recorded in the Public Records of Lee County, Florida, any lot shown on any resubdivision of said plat or any portion thereof.

(l) "Owner" or "Member" - the record owner, whether one or more persons or entities, of the fee simple title to any Lot.

(m) "Property" - all property and additions thereto (which additional property may or may not be contiguous to the real property described in Article II herein), as is subject to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

(n) "SFWMD" - The South Florida Water Management District.

(o) "SFWMD" Permit" - that certain South Florida Water Management District Permit No. 36-05243-P.

(p) "Special Assessment" - Assessments levied in accordance with Article V, Section 5 of this Declaration.

(q) "Telecommunications Provider" - any party who contracts with the Association to provide Owners with one or more Telecommunication Services. Developer may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers, on an exclusive or non-exclusive basis. By way of example, with respect to multichannel video programming service, one Telecommunications Provider may provide Association such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such multichannel video programming service.

(r) "Telecommunications Services" - local exchange services provided by a certificated local exchange carrier or alternative local exchange company, intraLATA, and interLATA voice telephony and data transmission service, multichannel video programming

service, and monitoring system. Without limiting the foregoing, such Telecommunications Services may include the provision of the following services: Toll Calls, Data Transmission Services, LAN, A la Carte Programming and security monitoring services.

(s) "Telecommunications Systems" - shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to Owners without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or of other material), conduits, passive and active electronic equipment, pipes, wireless cell sites, computers, modems, satellite antennae site(s), transmission facilities, amplifiers, junction boxes, trunk distribution, drop cables, related apparatus, converters, connections, head-end antennae, earth station(s), appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all of a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

(t) "Unit" - an attached single family residence located on a Lot.

## ARTICLE II.

### PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

Section 1. Legal Description. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Lee County, Florida and is more particularly described as:

See Exhibit "A" attached hereto.

Section 2. Developer's Right to Add Additional Property to or Withdraw Property. Developer shall have the right, in its sole discretion, to add additional property (which may or may not be contiguous to the real property described in Section 1) to the scheme of this Declaration. Developer shall also have the right to withdraw property not previously conveyed to an Owner from the scheme of this Declaration subject to the approval of Lee County. The addition or withdrawal by Developer shall not require the consent or joinder of the Association, or any Owner or mortgagee of any of the Property, but shall be at the sole option of the Developer. Upon addition of any property to the scheme of this Declaration, the owners of such additional property shall be and become subject to this Declaration, including assessment by the Association for their prorata share of the Association expenses. The addition of lands as aforesaid shall be made and evidenced by filing in the Public Records of Lee County, Florida, a supplemental declaration with respect to the lands to be added.



### ARTICLE III.

#### SAN SIMEON PHASE I RESIDENTS' ASSOCIATION

Section 1. Membership. Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to Assessment.

Section 2. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners, with the exception of the Developer, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member(s) shall be the Developer. The Class B Member shall be entitled to the same number of votes held by all other Members of the Association plus one; provided, however, that notwithstanding any provision to the contrary, the Developer shall have the right to appoint the entire Board of Directors of the Association until three (3) months after 90% of the Lots have been conveyed to Owners other than the Developer, or at an earlier date at the sole discretion of the Developer. At such time, the Developer shall call a meeting, as provided in the Bylaws for Special Meetings, to provide for the turnover of control of the Board of Directors to the Owners. The Developer shall have the right, in its sole discretion, to appoint one member to the Board of Directors for so long as the Developer holds for sale in the ordinary course of business at least 5% of the Lots on the Property.

Section 3. Common Area Ownership. Developer may retain legal title to the Common Areas so long as it has not turned over control of the Board of Directors to the Owners as specified in Section 2. Within thirty days after such turnover of control, the Developer shall convey and transfer by quit claim deed the record fee simple title to the Common Areas to the Association and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record.

Section 4. Powers. In addition to the powers provided in its Articles of Incorporation, the Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more person, firms or corporations for management services.

Section 5. Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Property, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines, which shall be levied as Special Assessments as provided in this Declaration, and suspension of the right to vote and the right to use the recreation facilities. The Board shall, in addition, have the power to seek relief in any court for

violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. In addition, the Association, through the Board, may, by contract or other agreement, enforce court ordinances or permit Lee County to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 6. Merger or Consolidation. Upon a merger or consolidation of any association referred to herein with any other association, the Property, rights and obligations of the Association may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the Property rights and obligations of another association may, by operation of law, be added to the Property, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Property together with the covenants and restrictions established upon any other property as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration.

Section 7. Termination of the Association. In the event of dissolution of the Association, for whatever reason other than merger or consolidation as provided for herein, any Owner may petition the Circuit Court of the Twentieth Judicial Circuit of the State of Florida for the appointment of a Receiver to manage the affairs of the Association and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association, the Property and Common Areas.

#### ARTICLE IV.

##### MAINTENANCE OBLIGATIONS

Section 1. Common Area Maintenance. Commencing with the date this Declaration is recorded, except as stated hereinafter, the Association shall be responsible for the maintenance of any signage identifying or promoting the Property whether within the Property or outside the Property, the Common Areas and any improvements or personal property in a continuous and satisfactory manner and for the payment of taxes assessed against the Common Areas, if any, and any improvements and any personal property thereon accruing from and after the date these covenants are recorded. For purposes of illustration, Common Areas include but are not limited to entrance features and gate house, any wall and buffer area around the perimeter of the Property, as well as lake tracts, roads and recreation areas within the Property. The Association shall at all times maintain in good repair, and shall replace as scheduled any and all improvements belonging to the Association, including the gate house. The gate house will initially be unmanned, but will be manned at such time as the Developer determines in its sole and absolute discretion. All such work shall be completed in a manner which, in the sole and exclusive judgment of the Board of Directors of the Association, is deemed satisfactory.

Section 2. Street Lighting. The Association shall have the obligation for maintenance of any street lighting facilities owned by the Association, if any, from the date of recording this Declaration or from the date of installation of the street lighting, whichever occurs first. Maintenance of the street lighting fixtures shall include the fixtures within the Common Areas and shall further extend to payment for electricity consumed in the illumination of such lights. In

the event the Developer, in its sole discretion, elects to install such street lighting, Developer shall be entitled to all rebates or refunds of the installation charges and the Association hereby assigns such rebates or refunds to Developer and the Association shall forthwith pay same to the Developer.

**Section 3. Lot Maintenance.** The Association shall perform routine maintenance of all Lots, including maintaining the grass and all landscaping originally installed by the Developer. The Developer shall replace any landscaping originally installed by the Developer for a period of 90 days from the date of the initial conveyance of a Lot from the Developer to the Owner, thereafter the Owner shall be responsible for replacement of landscaping as necessary. If the restoration of landscaping is required, the Lot Owner shall restore the landscaping to the standard of the original landscaping installed by the Developer. The Association shall only be responsible for the replacement of landscaping to the extent replacement is required due to the Association's failure to properly perform routine maintenance as required herein. The maintenance and/or repair of landscaping on an Owner's Lot damaged due to the negligence or intentional acts of such Owner shall be the responsibility of such Owner. The maintenance of the residence and related improvements constructed on the Lot shall be the complete maintenance responsibility of the Owner(s) thereof. The maintenance of all landscaping installed on a Lot by the Owner(s) thereof which is in addition to and not a replacement of the landscaping originally installed by the Developer shall be the complete maintenance responsibility of such Owner(s). If a mailbox is installed by the Developer, in its sole discretion, the Owner shall be responsible for the maintenance, repair and replacement of the mail box installed by the Developer.

**Section 4. Irrigation System.** Developer presently plans to install a common irrigation system throughout the Property. If so installed, the irrigation pump(s) and any main irrigation lines shall be the maintenance obligation of the Association. In addition, all irrigation lines and all sprinkler heads located on the Lots shall be the maintenance responsibility of the Association. The Association shall have an easement over the Property, including any Lot, to provide maintenance of such system. Notwithstanding the foregoing, the maintenance and/or repair of any damage to irrigation lines or sprinkler heads located on an Owner's Lot caused by the Owner's negligence or intentional act(s) shall be the responsibility of such Owner.

**Section 5. Offsite Signage & Landscaping.** The Association shall have the obligation to maintain any offsite signs which advertise and promote the name of the Property and to maintain the landscaping surrounding said signs.

**Section 6. Stormwater Drainage Facility.** The operation, maintenance, repair, or replacement of any stormwater drainage facility located on the Property shall be the complete responsibility of the Association, in accordance with the requirements of the South Florida Water Management District ("SFWMD") or other governmental agencies regulating such facilities. Any drainage facility shall be subject to any permit which may be issued by the SFWMD for the Property and as the same may be amended from time to time. If wetland mitigation monitoring is required by any permit issued by the SFWMD, the Association shall be responsible for carrying out mitigation monitoring and meeting all conditions associated with the mitigation maintenance and monitoring pursuant to the terms of the permit. Copies of the SFWMD permit and all subsequent permitting actions shall be maintained by the Association's Registered Agent and/or the Board of Directors for the Association's benefit. The SFWMD has the right to enforcement

action, including a civil action for an injunction and penalties against the Association to compel it to correct any outstanding problems with the drainage facilities or in mitigation or conservation areas under the responsibility or control of the Association.

Section 7. Lakes. The SFWMD is the local permitting authority for surface water permits. The onsite lakes are designed as water management areas, and are not designed as aesthetic features, they are for drainage purposes only. The water level within the lakes is dependent upon rainfall and the level of the water in the ground. The water level within the lakes can be affected by and may decline significantly at certain times as a result of the level of drainage canals, the demand for potable water and irrigation water, rainfall conditions and wellfield pumpage. Because none of these factors are within the control of the Association, the Association shall not be responsible for direct or consequential damage resulting from the lowering of the water level in the lakes. The Association shall not be responsible for the maintenance of water in the lakes to any specified level.

Section 8. Exterior Surfaces. No Owner shall authorize the painting, refurbishing, or modification of the exterior surfaces or roof of his Unit or of the Building without the consent of the Architectural Control Board (the "ACB"), as said term is hereinafter defined. The maintenance of the exterior surfaces, including but not limited to the maintenance, repair, and replacement of the roof of each Unit, shall be the responsibility of the Association. The Association shall have the right to require any painting or roof replacements to be done uniformly at the same time for an entire Building. If the Association requires the roofing to be maintained, repaired, or replaced, the cost thereof shall at the option of the Association, be paid by a Special Assessment levied against all Owners as provided in Article VI, Section 5 hereof. Notwithstanding the foregoing, any maintenance, repair or replacement of exterior surfaces, including the roof, caused by acts or omissions of any Owner, his family, guests, tenants, or invitees, whether by negligence, willful, or otherwise, shall be the responsibility of said Owner. In the event the same is not performed by said Owner, the Association shall have the right to collect the cost of the maintenance, repair, or replacement, perform the same and collect the amount from such Owner as a Special Assessment against such Owner's Lot as provided herein.

## ARTICLE V.

### PARTY WALLS

Section 1. Party Walls. The Units in each Building are single family attached units with common walls between each adjoining unit, hereinafter known as "Party Walls". The center line of the Party Wall is the common boundary of the adjoining Units.

Section 2. Restrictions on Use. Any party to an adjoining Party Wall, his heirs, successors, and assigns shall have the right to use the same jointly as set forth herein. Use of such Party Walls shall include normal interior usage such as paneling, plastering, painting, decoration, erection of tangent walls and shelving but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the structure or material forming the party wall. No Owner shall cause the Party Wall to be exposed to the elements. Any Owner who by his negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 3. Sharing of Costs of Repair and Maintenance; Right to Contribution. The costs of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall, except to the extent such repairs are covered by the Association's insurance pursuant to Article X hereof. The cost of maintaining the interior surface of the Party Wall shall be borne by the Owner making use of that interior space. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners' successors in title.

Section 4. Destruction by Fire or Other Casualty. If a Unit and/or Party Wall is damaged through an act of God, fire or other casualty, the affected Owner shall promptly have the Unit and/or party wall repaired and rebuilt substantially in accordance with the architectural plans and specifications of the attached unit building. Each affected Owner shall be responsible for the costs attributable to the repair or construction of his Unit and one half the cost of each Party Wall which adjoins the affected Owner's Unit to another Unit, except to the extent such repairs are covered by the Association's insurance pursuant to Article X hereof. In the event such damage or destruction of a Party Wall is caused solely by the neglect or willful misconduct of an Owner, any expense incidental to the repair or reconstruction of such wall or common roof shall be borne solely by such wrongdoer. If the Owner refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to levy a Special Assessment against said Owner for the costs of such repair and reconstruction. In the event an affected Owner fails or refuses to pay such Special Assessment, the Association may file a lien in the Public Records of the County for said cost of repair and reconstruction together with reasonable attorney's fees and incidental cost for collection of the amount secured by the lien.

## ARTICLE VI.

### ASSOCIATION ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. The Developer, for each Lot owned by it within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association General Assessments for expenses outlined in Section 2 hereof and Special Assessments as provided in Section 5 hereof. Such Assessments are to be fixed, established and collected from time to time as hereinafter provided. Except as otherwise provided herein, the Assessments shall be against all Lots equally. The cost of any maintenance, repair or replacement caused by the negligent conduct of a Member or by the failure of a Member to comply with the lawfully adopted rules and regulations of the Association shall be levied as a Special Assessment against such Member. The full Assessment as to each Lot upon which an improvement is constructed shall commence on the first day of the full calendar month after a certificate of occupancy for the improvement is issued, or upon the conveyance of the Lot by the Developer or upon the first occupancy of the improvement, whichever occurs first. No Owner may waive or otherwise escape liability for the Assessments for maintenance by non-use of the Common Areas or abandonment of his right to use the Common Areas. The General and Special Assessments, together with interest thereon and costs collection thereof as hereinafter provided, shall be a charge on the Lot and shall be a

continuing lien upon the Lot against which the Assessment is made, and shall also be the personal obligation of the Owner of such Lot. The lien rights provided herein shall not apply to any portion of the Property owned by the Developer.

**Section 2. General Assessments.** The General Assessments levied by the Association shall be used exclusively for the expenses of the Association. General expenses are any and all charges for the administration of the Association, cable television expenses and Telecommunication Services, if any, maintenance, repair, replacement and operation of the Common Areas including, but not limited to: management, accounting and legal fees, postage, utility service to Common Areas, Association insurance, reserves deemed necessary by the Board of Directors for repair, replacement or addition to the Common Area, operation, maintenance and replacement of surface water management systems and payment of all debts and obligations of the Association which are properly incurred for the purposes stated in this Declaration.

**Section 3. Date of Commencement of General Assessments; Due Dates.** The General Assessments shall commence on the first day of the month following the recordation of this Declaration. Thereafter, the Board of Directors shall fix the date of commencement and amount of the Assessment against each Lot at least thirty (30) days in advance of the commencement period. The General Assessments shall be payable in advance in quarterly installments, or as otherwise determined by the Board of Directors.

**Section 4. Initial Budget.** The Developer shall establish the initial budget, which shall be based on a fully developed community. By a majority vote of the Board of Directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such a manner that the obligations imposed by this Declaration will be met. In the event the community is not fully developed at the time the budget is adopted by the Board, the Board may nevertheless base the budget on a fully developed community. In instances where the Developer or the Board bases the budget on a fully developed community when in fact the community is not so developed, then the budget (and therefore the Assessments) shall be reduced by the amount allocated for incomplete amenities or facilities. The Assessment shall be for the calendar year, but the amount of the General Assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year. The amount of the General Assessment may be changed at any time by the Board from that originally adopted or that which is adopted in the future.

**Section 5. Special Assessments.** A Special Assessment may be levied against one or more Lots for the following purposes:

- A. charges for expenses of the Association which are not general expenses but which are attributable to a specific Lot or Lots and which are designated as a special charge.
- B. reimbursement for damages caused by an Owner, Owners, their family members, guests, invitees or tenants.
- C. capital improvements relating to the Common Area.

D. costs related to painting, refurbishing or modifying exterior surfaces or roofs of Units or Buildings.

E. late charges, user fees, fines and penalties.

F. any other charge which is not a general expense.

G. any general expense which exceeds the amount budgeted, or any emergency expense which exceeds the amount of any reserves or other Association funds.

A Special Assessment required to maintain the Association Property in good condition or to protect the liability of the Association Members may be levied against all Lots by a majority vote of the Board of Directors. Additionally, Special Assessments against individual Lot Owners for expenses incurred in direct relation to the maintenance or liability associated with that Lot may be levied by a majority vote of the Board of Directors. Other Special Assessments shall require approval by a majority vote of those members present and voting at a meeting of the membership called in accordance with the Bylaws of the Association. The Board of Directors shall fix the amount and due date of any Special Assessment by resolution, which resolution shall also set forth the Lot or Lots subject to such Assessment.

Section 6. Trust Funds. The portion of all General Assessments collected by the Association as reserves for future expenses, and the entire amount of all Special Assessments collected for capital improvements shall be the property of the Association as a whole and shall be used exclusively for the purposes designated at the time of Assessments. Each owner acknowledges and consents that such funds are the exclusive property of the Association as a whole and no Owner shall have any interest, claim or right to any such funds.

Section 7. Guaranteed Assessments during Guarantee Period. Developer covenants and agrees with the Association and the Owners that, for the period commencing with the date of recordation of this Declaration and ending upon the sooner to occur of the following: (i) the date of turnover of the Association as described in Article III hereof ("Turnover Date"); or (ii) December 31, 2006, as such may be extended in Developer's sole discretion, as described herein ("Guarantee Period"), Developer shall be excused from payment of its share of the operating expenses and Assessments related to its Lots (other than Special Assessments) and, in turn, that the individual Lot Assessment charged to Owners other than Developer will not exceed the dollar amount set forth in the initial budget, as defined in Section 4 herof, of the Association ("Guaranteed Assessment") and that Developer will pay the difference ("Deficit"), if any, between (a) the operating expenses (other than those operating expenses which are properly the subject of a Special Assessment) incurred by the Association during the Guarantee Period, and (b) the sum of amounts assessed as Guaranteed Assessments against Owners during the Guarantee Period, the "Working Capital Fund" set forth in Article V, Section 8 hereof and any other income of the Association during the Guarantee Period. Thus, during the Guarantee Period Owners shall not be obligated to pay Assessments other than the Guaranteed Assessment and Special Assessments and the Owners' respective Working Capital Fund contribution. The Deficit, if any, to be paid by Developer pursuant to this Section 7 shall be determined by looking at the Guarantee Period as a whole, without regard to quarterly, annual or any other accounting or fiscal periods and without regard to intra period allocations. In that regard, in the event it is determined

at the end of the Guarantee Period that there is a Deficit and Developer has previously advanced funds to the Association in excess of the Deficit during the Guarantee Period, Developer shall be entitled to the immediate repayment from the Association of the amount of funds advanced by Developer in excess of the Deficit. Developer hereby reserves the right to extend the Guarantee Period from time to time to a date ending no later than the Turnover Date at Developer's sole election by providing written notice to the Association of such election at least thirty (30) days prior to the expiration of the Guarantee Period (as same may have been previously extended). Developer also reserves the right to increase the amount of the Guaranteed Assessment during any such extended Guarantee Period. Special Assessments are not included in this guarantee. Notwithstanding the foregoing, in the event of an Extraordinary Financial Event, as hereinafter defined, the cost necessary to effect restoration shall be assessed against all Lot Owners owning Lots as of the date of the Extraordinary Financial Event, and their successors and assigns, including the Developer, with respect to lots owned by Developer. Extraordinary Financial Event shall mean a casualty loss affecting common elements and resulting from a natural disaster or Act of God which is not covered by insurance proceeds from insurance maintained by the Association.

**Section 8. Working Capital Fund.** Developer shall establish a Working Capital Fund for the operation of the Association, which shall be collected by the Developer from each Lot purchaser at the time of conveyance of each Lot to such purchaser from the Developer in an amount equal to two (2) months of the annual assessment for each Lot without consideration for reductions due to incomplete facilities. The Association shall be entitled to collection a contribution equal to two (2) months of the annual assessments of the time of conveyance of any Lot subsequent to the initial conveyance from the Developer the initial Lot Owner. Each Lot's share of the Working Capital Fund shall be collected and transferred to the Association at the time of closing of the sale of each Lot. Amounts paid into the fund are not to be considered as advance payment of regular Assessments. Notwithstanding the foregoing, the Developer, for so long as it controls the Board of Directors, shall have the right to use the Working Capital Fund to pay for ordinary expenses of the Association.

**Section 9. Assessment Roster and Certificate.** A roster of the Owners, Lot numbers and Assessments applicable thereto shall be kept in the office of the Association and shall be open to inspection by any Owner. If the Owner does not reside on the Lot, Owner is required to provide their current mailing address to the Association, together with the names of those residing on the Lot.

The Association shall, within five (5) days of receipt of a written request, furnish to any Owner liable for an Assessment a certificate in writing signed by an officer or agent of the Association, setting forth whether such Assessment has been paid as to the Lot owned by the Owner making request therefor. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid.

**Section 10. Collection of Assessment; Effect of Non Payment of Assessments; The Personal Obligation of the Owner; The Lien; Remedies of the Association.** If any Assessment is not paid within ten (10) days after the due date, the Association shall have the right to charge the defaulting Owner a late fee of ten percent (10%) of the amount of the Assessment, or Ten and No/100 Dollars (\$10.00), whichever is greater or as otherwise adopted by the Board of Directors



from time to time, plus interest at the then highest rate of interest allowable by law from the due date until paid. If there is no due date applicable to any particular Assessment, then the Assessment shall be due ten (10) days after written demand by the Association. If any Owner is in default in the payment of any Assessment owed to the Association for more than thirty (30) days after written demand by the Association, the Association upon written notice to the defaulting Owner shall have the right to accelerate and require such defaulting Owner to pay Assessments to the Association for the next twelve (12) month period, based upon the then existing amount and frequency of Assessments. In the event of such acceleration, the defaulting Owner shall continue to be liable for any increases in the General Assessments, for all Special Assessments, and/or for all other amounts due and payable to the Association. If the Assessments and any late fees and interest are not paid on the date when due, then such Assessments and any late fees and interest shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. Any individual who acquires title to a Lot upon the death of an Owner or by operation of law shall be personally liable for unpaid Assessments and late fees with respect to such Lot. In any voluntary conveyance, the Grantee shall be jointly and severally liable with the Grantor for all unpaid Assessments made prior to the time of such voluntary conveyance, without prejudice to the rights of the Grantee to recover from the Grantor the amounts paid by the Grantee therefor.

The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the Lot on which the Assessment and late fees are unpaid, or may foreclose the lien against the property on which the Assessment and late fee are unpaid, in like manner as a foreclosure of a mortgage on real property, or pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such Assessment and late fee, attorney's fees and costs of preparing and filing the claim of lien and the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment and late fee as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorney's fees in connection with any appeal of any such action.

It shall be the legal duty and responsibility of the Association to enforce payment of the Assessments and late fees hereunder.

The provisions set forth in this section shall not apply to the Developer for so long as the Developer owns any portion of the Property.

**Section 11. Subordination of the Lien to First Mortgages.** The lien of Assessments, including interest, late charges (subject to the limitations of Florida laws), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of any first mortgage of an Institutional Lender upon any Lot. In addition, the lien of assessments, including interest, late charges (subject to the limitation of Florida laws), and costs (including attorneys' fees) provided for herein, shall be subordinate to a mortgage held by Developer upon the Property, or any portion thereof, or any interest therein. The sale or transfer of any Lot or parcel of land shall not affect the Assessment lien. However, the sale or transfer of any Lot or parcel pursuant to judicial or non judicial foreclosure of a first mortgage shall extinguish the lien of such Assessments as to

payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot or parcel from lien rights for any Assessments thereafter becoming due. Where the Institutional Lender of a first mortgage of record or other purchaser of such a Lot obtains title, its successors and assigns shall not be liable for the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Such unpaid Assessments shall be deemed to be a Special Assessment divided equally among, payable by and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place. Likewise, where a mortgage is held by the Developer upon the Property, or a portion thereof, and the Developer or other purchaser obtains title, its successors and assigns shall not be liable for the Assessments by the Association chargeable to the Property, or a portion thereof, which become due prior to the acquisition of title to the Property, or portion thereof, by such acquirer. Such unpaid Assessments shall be deemed to be a Special Assessment divided equally among, payable by and assessed against all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

## ARTICLE VII.

### ARCHITECTURAL CONTROL

Section 1. Developer Architectural Control. For so long as the Developer owns any portion of the Property, the Developer shall have all powers of the Architectural Control Board as hereinafter set forth.

Section 2. Architectural Control Board. At such time as the Developer no longer owns any portion of the Property, the Architectural Control Board ("ACB") shall become a standing committee of the Association. The ACB shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section and other provisions of this Declaration. The ACB shall consist of three members and such members shall be designated by the Directors of the Association. In the event of death, disability or resignation of any member of the ACB the remaining members shall have full authority to designate a successor. The members of the ACB need not be members of the Association and shall not be entitled to any compensation for services performed pursuant to this Section. A majority of the ACB may take any action the ACB is empowered to take, may designate a representative to act for the ACB and may employ personnel and consultants to act for it.

Section 3. ACB's Consent. Any request by an Owner for approval by the ACB for any addition, alteration, improvement, or change to a Lot or any structure constructed thereon shall be in writing and shall be accompanied by plans and specifications or other details as the ACB may deem reasonably necessary in connection with its determination as to whether or not it will approve same. Approval of any request shall not be unreasonably withheld, and shall not be withheld in a discriminatory manner or in a manner which unreasonably prohibits the reasonable development of any Lot but may be withheld due to aesthetic considerations. The ACB shall notify the Owner of its approval or disapproval by written notice within thirty (30) days after request for such consent is made in writing to the ACB, and in the event the ACB fails to disapprove any request within such thirty (30) day period, the consent shall be deemed approved and upon request the ACB shall give written notice of such approval. In consenting to any plans or specifications, the ACB may condition such consent upon changes being made. If the ACB

consents to any plan and specifications, the Owner may proceed to make the alteration, addition, improvement, or change in strict conformance with the plans and specifications approved by the ACB, and subject to any conditions of the ACB's approval.

**Section 4. No Liability.** The ACB or the Developer shall not be liable to any Owner in connection with the approval or disapproval of any alteration, addition, improvement, or change. Furthermore, any approval of any plans or specifications by the ACB or the Developer shall not be deemed to be a determination that such plans or specifications are complete or do not contain defects, or in fact meet any standards, guidelines and/or criteria of the ACB or the Developer, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and the ACB or the Developer shall not be liable for any deficiency, or any injury resulting from any deficiency, in such plans and specifications.

**Section 5. Remedy for Violations.** In the event this section is violated in that any alteration, addition, improvement, or change is made without first obtaining the approval of the ACB or the Developer, as the case may be, or is not made in strict conformance with any approval granted by the ACB or the Developer, the Association or the Developer shall specifically have the right to demand that an Owner stop, remove and/or alter any alteration, addition, improvement or change in a manner which complies with the requirements of the ACB or the Developer, and the Association or the Developer may pursue injunctive relief or any other legal or equitable remedy available to the Association or the Developer in order to accomplish such purposes.

## ARTICLE VIII.

### EASEMENTS

**Section 1. Members' Easements.** Each Member of the Association and each tenant, agent and invitee of such Member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the walkways, driveways and roads from time to time laid out on the Common Areas, for use in common with all such Members, their tenants, agents and invitees. The portion of the Common Areas not used, from time to time, for walkways and/or driveways or lakes shall be for the common use and enjoyment of the Members of the Association and each Member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts and for the use of same in such manner as may be regulated by the Association. The foregoing easements are subject to the following:

A. The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Areas in compliance with the provisions of this Declaration and with any restrictions on the plat of the Property.

B. The right of the Association to suspend the voting rights for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its lawfully adopted and published rules and regulations.

C. The right of the Association to adopt and enforce rules and regulations governing the use of the Common Areas.

The right of an Owner to the use and enjoyment of the Common Areas shall extend to the residents and their guests, subject to regulations from time to time adopted by the Association in its lawfully adopted and published rules and regulations.

Section 2. Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Utility Easements. Public utilities may be installed underground in the Common Areas when necessary for the service of the Property or additional lands for which Developer holds an option to purchase, but all use of utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 4. Public Easements. Firefighters, police, health, sanitation and other public service personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas.

Section 5. Easements for Encroachment. There shall be reciprocal appurtenant easements of encroachment as between each residence and such portion of the Common Area adjacent thereto or as between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed by the Developer (in accordance with the terms of these restrictions).

Section 6. Right to Grant or Relocate Easement. The Developer (during any period in which the Developer has any ownership interest in the Property) and the Association shall each have the right to grant such additional electric, telephone, gas, sprinkler, irrigation, cable television or other easements, and to relocate any existing easement in any portion of the Property and to grant access easements and to relocate any existing access easements in any portion of the Property as the Developer or the Association shall deem necessary or desirable, for the proper operation and maintenance of the Property, or any portion thereof, or for the general health or welfare of the Owners or for the purpose of carrying out any provisions of this Declaration; provided that such easements or the relocation of existing easements will not prevent or unreasonably interfere with the use of the Lots for dwelling purposes.

Section 7. Association Easement. For the purpose solely of performing its obligations under the provisions of this Declaration, the Association, through its duly authorized agents, employees or independent contractors, shall have the rights, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours of any day. The Developer hereby grants an additional perpetual, non-exclusive easement to the Association for maintenance and repair purposes as described in this Declaration. In the event of an emergency, such right of entry shall exist without notice on any day. Each Owner hereby grants to the Association, its duly authorized agents, employees or independent contractors such easements for ingress and egress, across the Lots as may be reasonably necessary to effect and perform the exterior maintenance aforementioned.

Section 8. Telecommunications Service Easement. Developer (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each

Telecommunications Provider providing Telecommunications Services to all or a part of the Property pursuant to an agreement between Association and such Telecommunications Provider, a perpetual right, privilege, easement and right-of-way across over, under and upon for the installation, construction and maintenance of Telecommunications Systems together with a perpetual right, privilege and easement of ingress and egress, access, over and upon the Property for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such systems. In addition, Developer (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider providing Telecommunications Services to all or a part of the Property pursuant to an agreement between Association and such Telecommunications Provider, an easement five feet in width and centered upon the location of the actual installed cables and other portions of the Telecommunications system installed upon the Common Areas and Lots for the purposes of maintenance, repair and/or replacement of portions of the Telecommunications Systems.

Section 9. Conservation Easement Areas. Pursuant to the provisions of Section 704.06, Florida Statutes, Developer has granted to SFWMD a conservation easement in perpetuity ("Conservation Easement") over the property described in the Conservation Easement recorded on June 29<sup>th</sup>, 2005 in Official Records Book 04835, Page 3348, Public Records of Lee County, Florida. The Conservation Easement is attached hereto as Exhibit "F". Developer granted the Conservation Easement as a condition of SFWMD permit number 36-05243-P issued by SFWMD solely to offset adverse impacts to natural resources, fish and wildlife, and wetland functions.

A. Purpose. The purpose of the Conservation Easement is to assure that the Conservation Easement areas will be retained forever in their existing natural condition and to prevent any use of the Conservation Easement areas that will impair or interfere with the environmental value of these areas. The Conservation Easement areas are hereby dedicated as Common Areas, they shall be the perpetual responsibility of the Association and may in no way be altered from their natural or permitted state. Activities prohibited within the Conservation Easement areas include, but are not limited to, construction or placing of buildings on or above the ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation – with the exception of exotic/nuisance vegetation removal; excavation, dredging of soil material; diking or fencing; any other activities detrimental to drainage; flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

B. Prohibited Uses. Any activity in or use of the Conservation Easement areas inconsistent with the purpose of the Conservation Easement is prohibited. The Conservation Easement expressly provides that wetlands and upland buffers may not be altered from their natural/permitted condition with the exception of: exotic or nuisance vegetation removal, or restoration in accordance with the restoration plan included in the Conservation Easement. Exotic vegetation may include, but is not limited to, Melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern or any other species currently listed by the Florida Exotic Pest Plant Council. Nuisance vegetation may include cattails, primrose willow and grape vine.

C. Responsibilities. The Developer, its successors and assigns, or the Association after the turnover of the Association to Lot Owners, shall be responsible for the periodic removal of trash and other debris which may accumulate in the Conservation Easement areas. The Lot owners shall be responsible for the perpetual maintenance of any signage required by the permit. The Association shall be responsible for perpetual maintenance of the Conservation Easement (preserved/restored/created wetlands areas and upland buffer zones) and agrees to take action against Lot owners as necessary to enforce the conditions of the Conservation Easement and of the permit. The Lot owners will be timely notified of any mitigation/monitoring and/or financial assurances for which the Association is responsible.

D. Notice. Certain Lots on the Property may contain or be adjacent to wetland preservation or mitigation areas and upland buffers which are protected under the Conservation Easement.

## ARTICLE IX.

### GENERAL RESTRICTIVE COVENANTS

Section 1. Applicability. The provisions of this Article shall be applicable to all Lots situated within the Property.

Section 2. Land Use. No Lot shall be used except for residential purposes. Temporary uses for model homes, parking lots, construction trailer, construction storage areas and/or sales offices shall be permitted for the Developer.

Section 3. Building Location. Buildings shall be located in conformance with the requirements of Lee County, Florida and any specific zoning approvals thereunder, or as originally constructed on a Lot by Developer or its successor or assignee. Whenever a variance or special exception as to building location or other item has been granted by the authority designated to do so by the municipality, said variance or special exception is hereby adopted as an amendment to this Section and any future variance or special exception as to building location or other item shall constitute an amendment of this Section.

Section 4. Landscaping of Easements. In addition to the easements reserved herein, easements for drainage, installation and maintenance of utilities and for ingress and egress are shown on the recorded plat(s) of the Property. Within these easements no structure, planting or other material may be placed or permitted to remain that will interfere with vehicular traffic or prevent maintenance of utilities. Public utility companies servicing the Property and the Association, and their successors and assigns, shall have a perpetual easement for the installation and maintenance of water lines, sprinkler lines, sanitary sewers, storm drains, gas lines, electric and telephone lines, cables and conduits, including television cables and conduits and such other installations as may be required or necessary to provide maintenance and utility services to the Lots and/or the Common Areas under and through the utility easements as shown on the plat(s). Any damage caused to pavement, driveways, drainage structures, sidewalks, other structures, or landscaping in the installation and maintenance of such utilities shall be promptly restored and repaired by the utility whose installation or maintenance caused the damage. All utilities within the subdivisions, whether in streets, rights-of-way or utility easements, shall be installed and

maintained underground, provided, however, that water and sewer treatment facilities and control panels for utilities may be installed and maintained above ground.

**Section 5. Nuisances.** No noxious or illegal activity shall be carried on upon any Lot or Common Areas, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood or any other Lot Owner. In the event of any question as to what may be or become a nuisance, such question shall be submitted in writing to the Board for a decision in writing, which decision shall be final. In addition, no weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon any Lot. No refuse pile or unsightly objects shall be allowed to be placed or suffered to remain on any Lot; and in the event that an Owner shall fail or refuse to keep his Lot free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the Association may enter upon said premises and remove the same at the expense of the Owner, and such entry shall not be deemed a trespass. All garbage or trash containers must be placed in areas so that they shall not be visible from adjoining Lots or from the street. Provided, however, any portion of the Property not yet developed by Developer, shall be maintained in a clean condition but shall not be expected to be maintained in a manicured condition.

**Section 6. Temporary Structures.** No structure of a temporary character, or trailer, tent, mobile home or recreational vehicle shall be permitted on any Lot either temporarily or permanently, except that the Developer may park trailers on the Property during periods of construction and sales.

**Section 7. Signs.** One sign of not more than one square foot may be used on a Lot to indicate the name of the resident and/or house number. Notwithstanding the foregoing, no sign of any kind whatsoever shall be displayed to the public view on the Property or on any Lot, without the prior consent of the ACB; provided that the Developer, so long as it has not sold all of its Lots in the Property, shall retain the right, in Developer's sole and absolute discretion, to disapprove any signs displayed to the public view. Notwithstanding the foregoing, this Section shall not apply to the Developer for as long as it holds title to any portion of the Property.

**Section 8. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in the Property. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the Property subject to these restrictions.

**Section 9. Animals and Pets.** No reptiles, animals, livestock, or poultry of any kind may be raised, bred, kept or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets not to exceed a total of two (2) in number regardless of the type. The keeping of a dog or other domestic pet is not a right of an Owner, but is a conditional license. This conditional license is subject to termination at any time by the Board of Directors upon a finding that a dog or other pet is vicious, is annoying to other residents, or has in any way become a nuisance. The owner of a pet assumes liability for all damage to persons or property caused by the pet or resulting from its presence at the Property.

This license is subject to the following conditions:

A. Pets shall be kept on a leash at all times when outside a building and not enclosed within a fenced-in area, if such fenced-in area is permitted or has been approved by the ACB.

B. Pets are permitted to have excrements upon the Common Areas provided that the Owner shall immediately remove such excrement from the Common Areas with a "Pooper-Scooper" or other appropriate tool and deposit said waste in an approved trash receptacle.

C. The owner of a pet shall be responsible, and by virtue of ownership, assumes responsibility for any damage to persons or property caused by his pet(s).

D. Any pet whose owner violates the provisions and intent of these rules shall be deemed a nuisance and subject to removal in accordance with the provisions of this Declaration.

Section 10. Visibility at Intersections. No obstruction to visibility at street intersections shall be permitted.

Section 11. Commercial Trucks, Trailers, Campers and Boats. No commercial vehicles, campers, mobile homes, motor homes, boats, house trailers, boat trailers, or trailers of every other description shall be permitted to be parked or to be stored at any place on any Lot, except only during the periods of approved construction on said Lot, and except that they may be stored within garages. Small pick-up trucks or vans of the type commonly used as private passenger vehicles may be parked or stored in approved parking areas, so long as no commercial equipment or lettering or graphics is exposed to view. The term "commercial vehicle" shall include all automobiles, trucks and vehicular equipment, including station wagons, which bear signs or shall have printed on same some reference to any commercial undertaking or enterprise. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up, delivery, and other commercial services. Provisions of this Section 11 shall not apply to Developer.

No vehicle which is unlicensed or inoperable may be kept or stored on the Property, unless kept fully enclosed inside a garage. No repair work to any type of motor vehicle, boat or trailer shall be conducted on any Lot other than minor repairs, cleaning or waxing which is completed in less than 24 hours.

Section 12. Fences. No fence, wall or other structure shall be erected in the front yard, back yard, or side yard except as approved by the ACB or as installed by the Developer.

Section 13. Hedges. No hedge shall be erected in the front or rear yards except as approved by the ACB or as installed by the Developer.

Section 14. Garbage and Trash Disposal. Garbage, refuse, trash or rubbish shall be stored in a fashion to protect it from view from the street or another Lot, provided however, that the requirements from time to time of Lee County for disposal or collection shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage placed out for collection must be in sealed garbage bags, covered



plastic garbage cans, or such other containers supplied or approved by the garbage collecting authority. Trash, recyclables, and/or vegetation shall not be placed curbside earlier than 6:00 P. M. the evening before collection. Emptied receptacles or uncollected refuse shall be promptly removed from curbside by Owner.

Section 15. Drying Areas. Drying areas will be permitted when protected from view from the street or other Lots.

Section 16. Gas Containers. No gas tank, gas container, or gas cylinder (except those placed by the Developer or approved by the ACB in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be permitted to be placed on or about the outside of any house or any ancillary building, and all such items (except those placed by the Developer in connection with the installation of swimming pools and/or permanent barbecues, and except those used for portable barbecues) shall be installed underground in every instance where gas is used. In the alternative, gas containers may be placed above ground if enclosed on all sides by a decorative safety wall approved by the ACB.

Section 17. Communication Equipment. Except as may be installed by the Developer or as may be permitted by the ACB, no antennas, satellite dishes, aerials, or lines, wires or other devices for communication or transmission of current shall be placed on any portion of the Property. In no event, however, shall lines or wires for communication or the transmission of current be constructed placed, or permitted to be placed within the Common Areas unless the same shall be installed by the Association for the common use of all Members, and shall be protected cables, and any of said lines or wires which are not located in buildings shall be constructed or placed and maintained underground. Any line or wire installations permitted by the Architectural Control Board pursuant to this Section shall be protected cable and shall only be installed underground.

Section 18. County Requirement. Any plat or replat of the Property subject to this Declaration must conform with the requirements of all applicable governmental agencies.

Section 19. Drainage. No change in any drainage pattern of any Lot, after issuance of a certificate of occupancy for the dwelling thereon, or of any portion of the Property, after all contemplated improvements have been completed, shall be made which will cause undue hardship to an adjoining Lot or adjoining property with respect to natural runoff of rain water. Streets, swales, and any other areas designated as retention areas pursuant to the engineer's drainage plans will retain water during certain storm periods that may extend for a period of time beyond the engineer's design estimate. The Association has the right to drain the Common Area through each individual Lot and all Lots.

Section 20. Leasing. No lease shall be made for less than a three (3) month period, and all leases must be in writing. No more than one (1) lease may be executed per year for the rental of a Lot. Owners are required to provide to the Association the Owner's current mailing address, together with the names of those residing on the Lot. Each Owner shall be responsible for the acts and omissions, whether negligent or willful, of any person residing on his Lot, and for all guests, and invitees of the Owner or any such resident, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the

Association, the Owner shall be assessed for same as in the case of any other Assessment, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, of the Articles, or the Bylaws, by any resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

With respect to any tenant or any person present on any Lot or any portion of the Property, other than an Owner and the members of his immediate family permanently residing with him in the Lot, if such person shall materially violate any provision of this Declaration, the Articles, or be a source of annoyance to the residents of the Property, or shall willfully or negligently damage or destroy any Common Areas or personal property of the Association, then upon written notice by the Association, such person shall be required to immediately leave the Property and if such person does not do so, the Association is authorized to commence an action to evict such tenant or compel the person to leave the Property and, where necessary, to enjoin such person from returning. The expense of any such action, including attorneys' fees, may be assessed against the applicable Owner, and the Association may collect such Assessment and have a lien for same as elsewhere provided. The foregoing shall be in addition to any other remedy of the Association.

Section 21. Waterways. Motorized boat, jet ski or other motorized vessels are not permitted in any waterway within the Property.

Section 22. Screen Enclosures. No screen enclosures may be constructed on any Lot except as approved by the ACB and after all necessary approvals and permits have been obtained from all governmental agencies. No screen enclosure may be constructed in any designated building setback area on any Lot.

## ARTICLE X.

### INSURANCE AND HAZARD LOSSES

Insurance covering the Units, Building, Property, Common Areas, and all improvements thereon to the extent provided in this Article X shall be governed by the following provisions:

#### Section 1. Purchase, Custody and Payment.

(a) Purchase. All insurance policies described herein covering the Units, Buildings, the Property and Common Areas shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida meeting the following requirements: a B general policyholder's rating or a financial performance index of 6 or better in the Best's Key Rating Guide, or an A or better rating from Demotech, Inc.

(b) Mortgagees. No policy or insurance coverage shall impair the security of the Institutional Lender without its consent.

(c) Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Lots covered by the policy, without naming them, and as agent for

their mortgagees, without naming them. The Owners and their mortgagees shall be deemed additional insureds.

(d) Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Association, and all policies and endorsements thereto shall be deposited with the Association.

(e) Copies to Mortgagees. One copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association upon request to each Institutional Lender who holds a mortgage upon a Lot covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

(f) Personal Property and Liability. Except as specifically provided herein, the Association shall not be responsible to Owners to obtain insurance coverage upon the property lying within the boundaries of their Lot, including, but not limited to, their personal property, and for their personal liability and living expense and for any other risks not otherwise insured in accordance herewith.

Section 2. Coverage. The Association shall use its best efforts to maintain insurance covering the following:

(a) Casualty. The Units, Building(s) (including the Common Areas) and all fixtures, installations or additions comprising that part of the Units within the boundaries of the Lots to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Owners or tenants of Owners, and also excluding hurricane shutters and such equipment as the Owner is required to repair or replace such as electrical fixtures, appliances, air conditioner or heating equipment, water heaters, built-in cabinets, personal property, fixture, appliance or equipment permitted to be excluded by law, and all improvements located on the Common Areas from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Areas or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than 100% of the full insurable replacement value thereof, excluding foundation and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against:

A. Loss or Damage by Fire and Other Hazards covered by a standard extended coverage endorsement; and

B. Such Other Risk as from time to time are customarily covered with respect to the Building(s) and improvements similar to the Insured Property in construction, location and use, including, but not limited to, vandalism and malicious mischief.

(b) Liability. Comprehensive general public liability and automobile liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work,

matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than \$1,000,000 for each accident or occurrence, \$300,000 per person and \$100,000 property damage, and with a cross liability endorsement to cover liabilities of the Owners as a group to any Owner, and vice versa. The Association may also obtain and maintain liability insurance for its directors and officers and for the benefit of the Association's employees.

(c) Worker's Compensation. The Association shall obtain worker's compensation and other mandatory insurance, when applicable.

(d) Flood Insurance. The Association shall obtain flood insurance if the Property is located in a Special Flood Hazard Area which is designated an A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate map or if the Association so elects.

(e) Fidelity Insurance. The Association shall obtain and maintain adequate fidelity bonding of all persons who control or disburse funds of the Association, including but not limited to the President, Secretary and Treasurer of the Association.

(f) Association Property. Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Property, where such coverage is available.

(g) Such Other Insurance. The Board of Directors of the Association shall obtain such other policies of insurance as the Board may determine from time to time to be desirable.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to: (i) subrogation against the Association and against the Owners individually and as a group, (ii) pay only a fraction of any loss in the event of co-insurance or if other insurance carriers have issued coverage upon the same risk, and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one or more Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Owners that are not under the control of the Association, and that the policy shall be primary, even if an Owner has other insurance that covers the same loss.

**Section 3. Additional Provisions.** All policies of insurance shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all of the named insureds, including all mortgagees of Lots. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property (exclusive of foundations), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Section.

**Section 4. Premiums.** Premiums (or allocable shares thereof) upon insurance policies purchased by the Association shall be paid by the Association and deemed a General Assessment to be paid by all Owners. Premiums may be financed in such manner as the Board of Directors deems appropriate.

**Section 5. Unit Owner Coverage.** Each Owner shall obtain and maintain at all times, individual casualty and general liability policies insuring the property lying within the boundaries of their Lot and for their personal liability arising in the use of their own Lot and other areas of the Common Areas for which they have exclusive use. Each Owners' insurance policy shall provide that the coverage afforded by such policy is excess over the amount recoverable under any other policy covering the same property, without the rights of subrogation against the Association. Each Owner shall, upon the written request of the Association, provide the Association with a copy of a binder, a policy or other proof satisfactory to the Association of said insurance coverage.

**Section 6. Share of Proceeds.** All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Owners and their mortgagees, as their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Association. The duty of the Association shall be to receive such insurance proceeds as are paid and to hold the same for the purposes elsewhere stated herein, and for the benefit of the Owners and their respective mortgagees in the following shares:

(a) **Insured Property.** Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Owner, such shares being the same as the undivided shares in the Common Areas appurtenant to each Lot, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Lots, that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph (b) below.

(b) **Optional Property.** Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property (all as determined by the Association in its sole discretion) (collectively, the "Optional Property"), if any is collected by reason of optional insurance which the Association elects to carry thereon (as contemplated herein), shall be held for the benefit of Owners or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

(c) **Mortgagees.** No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Owner and mortgagee pursuant to the provisions of this Declaration.

**Section 7. Distribution of Proceeds.** Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

(a) Expenses of the Trustee. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefor.

(b) Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Owners and their mortgagees being payable jointly to them.

(c) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in subsection 12.6 above, and distributed first to all Institutional Lenders in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

(d) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee (if appointed) may rely upon a certificate of the Association made by its President and Secretary as to the names of the Owners and their mortgagees and their respective shares of the distribution.

Section 8. Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner and for each owner of a mortgage or other lien upon a Lot and for each owner of any other interest in the Property for the purpose of compromising, settling and/or adjusting all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

Section 9. Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring upon his or her Lot, nor casualty or theft loss to the contents of an Owner's Lot. It shall be the obligation of the individual Owner, if such Owner so desires, to purchase and pay for insurance as to all risks not covered by insurance carried by the Association.

Section 10. Benefit of Mortgagees. Certain provisions in this Article X entitled "Insurance" are for the benefit of mortgagees of Lots and may be enforced by such mortgagees.

Section 11. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in the capital reserves account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

Section 12. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used in this paragraph, shall mean repairing or restoring the Property to substantially the same condition in which it existed immediately prior to the fire or other casualty.

(b) Any damage or destruction to the Common Areas, a Building or Unit shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the damage to or destruction of the Property, Common Areas or improvements thereon shall be repaired or reconstructed.

Section 13. Repair and Reconstruction. If the damage or destruction to the Property, Common Areas, Building(s) or Unit for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners on the same basis as provided for assessments. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE XI

### DEVELOPER'S RIGHTS

Section 1. Sales Activity. Notwithstanding any provision herein to the contrary, until the Developer has completed, sold and conveyed all of the Lots within the Property, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of Lots and any other sales activity of the Developer, whether related to the Property or other developments of the Developer. The Developers (or its duly authorized agents or assigns) may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices, construction trailers, storage areas, model homes, and/or parking lots for the showing of the property, and the display of signs, billboards, flags, placards and visual promotional materials. The Developer shall have the right to use unimproved Lots for temporary parking for prospective purchasers and such other parties as Developer determines. Each Lot and the Common Area is hereby subjected to an easement for the purposes set forth herein.

Section 2. Replatting. It may be necessary for the Developer to replat a portion of the Property. The Developer shall have the right to replat unsold portions of the Property without requiring the joinder or consent of any Owner or mortgagee holding a mortgage on any Lot.

**Section 3. Utility and Construction Payments and/or Deposits.** In the event a utility company or governmental authority requires a deposit to be made by the Developer, and such deposit shall be refunded at some time in the future, then the Developer (and not the Association) shall be entitled to receipt of the refunded funds. In addition, should construction payments made by the Developer be refunded by a utility company or governmental authority at some time in the future, then the Developer (and not the Association) shall be entitled to receipt of the refunded funds or the Association shall reimburse the Developer for such payments prior to the time that Owners other than the Developer elect a majority of the members of the Board of Directors of the Association.

**Section 4. Developer's Right to Common Areas.** Developer shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent Property and for the purpose of construction of any facilities on the Common Areas that Developer elects to build. Developer may grant easements to Lot Owners adjacent to Common Areas for overhangs, protrusions and encroachments of any portion of the improvements to a Lot which are constructed by Developer. The Developer shall have the right to dedicate the Common Areas or a portion thereof to any governmental authority or utility company, or to grant an easement over the Common Areas in favor of any governmental authority or utility company, without requiring the joinder or consent of any other Owner or mortgagee holding a mortgage on any Lot.

**Section 5. Assignment of Developer Rights.** The Developer shall have the right to assign to any other person or entity any or all of the Developer's rights reserved in this Declaration, in whole or in part, with respect to all or any portion of the Property. In the event of an assignment, the assignee shall not be liable for any action of a prior developer. Acquisition, development or construction lenders acquiring title to the Property or any portion thereof by foreclosure or deed in lieu of foreclosure shall have the right, but not the obligation, to assume the Developer's rights. Such acquisition, development or construction lender shall have the right to assign the Developer's rights to a subsequent purchaser, regardless of whether or not the Developer's rights were assumed by the lender.

**Section 6. Developer Approval of Board Action.** In the event the Developer no longer controls the Board of Directors but continues to own a portion of the Property, then the Developer shall have the right to veto any action taken by the Board if the Developer determines that such action materially and adversely affects the Developers interest in the community. Action of the Board shall be submitted to the Developer within ten (10) days of adoption of such action. In the event a written veto is not delivered by the Developer to the Board within ten (10) days of actual receipt of the action, then the action shall be deemed approved.

## **ARTICLE XII**

### **MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Lots in the Property.



Section 1. Notices of Action. An Institutional holder, insurer, or guarantor of a first mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number), therefore becoming an "Eligible Holder"), will be entitled to timely written notice of:

A. any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

B. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the mortgage of such eligible holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

C. any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

D. any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. No Priority. No provision of this Declaration or the bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 4. Applicability of Article XII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Florida law for any of the acts set out in this Article.

Section 5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

### ARTICLE XIII.

#### GENERAL PROVISIONS

Section 1. Duration. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the

Association or the Owner of any Lot subject to this Declaration, and their assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of two-thirds of the Lots and an instrument signed by the then Mortgagees of two-thirds of the mortgaged Lots have been recorded, agreeing to change or terminate said covenants and restrictions in whole or in part.

Section 2. Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed (postpaid), transmitted by way of telecopy, or sent by overnight courier, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants and failure by the Developer, the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. These covenants may also be enforced by the Architectural Control Board. The Association is hereby empowered to adopt reasonable rules and regulations for the imposition of fines to be levied against any Owner for failure to comply with the terms of this Declaration or rules and regulations of the Association. Any rule or regulation subjecting any Owner to fines shall include provisions for notice, hearing, appeal and fines. Fines shall constitute an assessment due to the Association and upon failure to pay such fine within the period prescribed by the Association shall become a charge and continuing lien upon the Owner's Lot.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5. Common Areas. To the extent the Association has claims of defects within the Common Areas that the Developer has a legal obligation to repair or replace, the Association shall specify any claims in writing and deliver such claims to the Developer within 90 days after the date of the turnover of control of the Association. Any claims which are not brought to the attention of the Developer, in writing, within such 90 day period shall thereafter be barred and the Developer shall have no further liability with respect to such defects.

Section 6. Amendment. For so long as the Developer has the right to appoint the entire Board of Directors of the Association, the Developer may unilaterally amend this Declaration. At such time as the Developer no longer has right to appoint the entire Board of Directors of the Association this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing two-thirds of the total votes of the Association. Every amendment must have the written joinder and consent of the Developer for so long as the Developer owns any portion of the Property. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment must be

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recorded in the Public Records of Lee County, Florida. No amendment may prejudice or impair the rights or priorities of Institutional Lenders granted hereunder unless all Institutional Lenders join in the execution of the amendment. No amendment shall make any changes which would in any way affect any of the rights, privileges, powers or options herein provided in favor of, or reserved to, Developer, unless Developer joins in the execution of the amendment. Any amendment that will affect any aspect of the Stormwater Drainage Facility or system including water management portions of the Common Areas, must receive prior approval from the SFWMD or other applicable authority.

Section 7. Effective Date. This Declaration shall become effective upon its recordation in the Lee County Public Records.

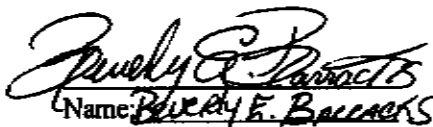
#### ARTICLE XIV.

#### TELECOMMUNICATIONS SERVICES

Section 1. Right to Contract for Telecommunications Services. Association shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more Telecommunications Services for all or any part of the Property. For so long as the Developer has the right to appoint the entire Board of Directors of the Association, all contracts between a Telecommunications Provider and Association shall be subject to the prior written approval of Developer. Developer and/or its nominees, successors, assigns, affiliates, and licensees may contract with Association and act as a Telecommunications Provider for one or more Telecommunications Services, subject only to the requirements of all applicable laws, statutes, and regulations.

Section 2. Payment of Costs of Telecommunications Services. If, and to the extent, Telecommunications Services provided by such Telecommunications Systems are to serve all of the Property, then the cost of the Telecommunications Services may be operating costs of Association and shall be assessed as a part of the General Assessments.

EXECUTED the date first above written. :

  
Name: BEVERLY E. BALLACKS

  
Name: EDSON MENA

Levitt and Sons of Lee County, LLC, a  
Florida limited liability company

By:   
Name: Alfred G. West  
Title: Senior Vice President

STATE OF FLORIDA)

SS:

COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me, this 9<sup>th</sup> day of October, 2006, by Alfred G. West, as Senior Vice President of Levitt and Sons of Lee County, LLC, a Florida limited liability company, on behalf of the company, who has produced \_\_\_\_\_ as identification or is personally known to me.



Notary Public / State of Florida

Print Name: SUSAN J. ROBES

My Commission Expires:



Susan J. Robes  
MY COMMISSION # DD247049 EXPIRES  
November 15, 2007  
BONDED THROUGH FARM INSURANCE, INC.

**EXHIBIT "A"**

**Legal Description of the Property**

Parcel in  
Section 33, Township 44 South, Range 25 East  
City of Fort Myers,  
Lee County, Florida

A tract or parcel lying in Section 33, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida, being the tract or parcel of land described in Official Record Book 2272 at page 1062 and Official Record Book 2272 at page 1142, Lee County Records and further bounded and described as follows:

Commencing at the South Quarter Corner of said Section 33, run N00°50'42"W along the West line of the Southeast Quarter (SE ¼) of said Section 33 for 2,438.27 feet to an intersection with the center line of Challenger Boulevard; thence run S65°54'00"W along said center line for 282.80 feet; thence run N16°06'00"W for 75.74 feet to an intersection with the Northerly right of way line of said Challenger Boulevard (150 feet wide) and the POINT OF BEGINNING.

From said Point of Beginning run S65°54'00"W along said Northerly right of way line for 716.81 feet to a point of curvature; thence run northwesterly along an arc of curve to the right connecting said Northerly right of way line of Challenger Boulevard with the Easterly right of way line of Winkler Avenue Extension (150' wide) of radius 50.00 feet (delta 105°00'00") (chord bearing N61°36'00"W)(chord 79.34 feet) for 91.63 feet to a point of tangency; thence run N09°06'00"W along said Easterly right of way line of Winkler Avenue Extension for 996.82 feet to a point of curvature; thence run northerly along said Easterly right of way line along an arc of curve to the left of radius 1,507.40 feet (delta 14°49'17") (chord bearing N16°30'38"W)(chord 388.85 feet) for 389.94 feet; thence run N48°13'09"E along a non-radial line for 699.22 feet to an intersection with the North line of the Southeast Quarter (SE ¼) of the Northwest Quarter (NW ¼) of said Section 33; thence run N88°37'40"E along said North line for 501.59 feet; thence run S01°06'54"E for 906.55 feet to a point of curvature; thence run southerly along an arc of curve to the right of radius 300.00 feet (delta 11°01'56") (chord bearing S04°24'04"W)(chord 57.68 feet) for 57.76 feet to a point of tangency; thence run S09°55'02"W for 416.14 feet to a point of curvature; thence run southerly along an arc of curve to the left of radius 300.00 feet (delta 26°01'02") (chord bearing S03°05'29"E)(chord 135.06 feet) for 136.23 feet to a point of tangency; thence run S16°06'00"E for 74.26 feet to the POINT OF BEGINNING.

Containing 33.25 acres, more or less.

Bearings hereinabove mentioned are based on the West line of the Southeast Quarter (SE ¼) of said Section 33 to bear N00°50'42"W.

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**EXHIBIT "B"**

**Common Areas**

That real property dedicated to the Association on a plat or plats of the Property, and any real property conveyed to or acquired by the Association.

**EXHIBIT "C"**

**SFWMD Permit**

**[INTENTIONALLY OMITTED]**

**EXHIBIT "D"**

**Articles of Incorporation for San Simeon Phase 1 Resident's Association, Inc.**





I certify the attached is a true and correct copy of the Articles of Incorporation of SAN SIMON PHASE 1 RESIDENTS' ASSOCIATION, INC., a Florida corporation, filed on October 4, 2005, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number N05000234726. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N05000010244.

Authentication Code: 805A00060502-100505-N05000010244-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Fifth day of October, 2005



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

**ARTICLES OF INCORPORATION  
FOR  
SAN SIMEON PHASE 1 RESIDENTS' ASSOCIATION, INC.  
(a corporation not-for-profit)**

The undersigned, acting as Incorporator(s) of a corporation pursuant to Chapter 617, Florida Statutes, adopt(s) the following Articles of Incorporation:

**ARTICLE I**

**NAME**

The name of the corporation shall be San Simeon Phase 1 Residents' Association, Inc., a Florida corporation not for profit (the "Association").

**ARTICLE II**

**PRINCIPAL PLACE OF BUSINESS AND MAILING ADDRESS**

The initial principal place of business and mailing address of the corporation shall be 7777 Glades Road, Suite 410, Boca Raton, Florida 33434.

**ARTICLE III**

**PURPOSE(S)**

The corporation is organized as a corporation not-for-profit under Chapter 617, Florida Statutes, for the purpose of providing an entity under Chapter 720, Florida Statutes, the operation of that certain residential community referred to as San Simeon Phase 1.. The specific purposes for which the corporation is organized are:

1. To promote the health, safety and social welfare of the Owners of Property within that residential area referred to as San Simeon Phase 1 and described in the Declaration of Restrictions and Protective Covenants for San Simeon Phase 1 (the "Declaration") by Levitt and Sons of Lee County, LLC, a Florida limited liability company, to be recorded in the Public Records of Lee County, Florida.
2. To own and maintain, repair and replace the general and/or Common Area, landscaping and other improvements in and/or benefiting the property for which the obligation to maintain and repair has been delegated and accepted.
3. To control the specifications, architecture, design, appearance, elevation and location of, and landscaping around, all buildings and improvements of any type, including walls, fences, swimming pools, antennae, sewers, drains, disposal systems or other structures constructed, placed or permitted to remain in the Property, as well as the alteration, improvement, addition or change thereto.

4. To operate without profit for the benefit of its members.
5. To perform those functions reserved by the Association in the Declaration.

#### ARTICLE IV.

##### **GENERAL POWERS**

The general powers that the Association shall have are as follows:

1. To hold funds solely and exclusively for the benefit of the members for the purposes set forth in these Articles of Incorporation.
2. To promulgate and enforce rules, regulations, bylaws, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized.
3. To delegate power or powers where such is deemed in the interest of the Association.
4. To affix assessments to be levied against Lots within the Property and the costs of effectuating the objects and purposes of the Association and to create reasonable reserves for such expenditures, and to authorize its Board of Directors, in its discretion, to enter into agreements with mortgage companies and other organizations for the collection of such assessments.
5. To pay taxes and other charges, if any, on or against the Common Area.
6. To operate, maintain and manage surface water or stormwater management systems in a manner consistent with the South Florida Water Management District ("SFWMD") requirements and applicable SFWMD rules, and shall assist in the enforcement of the Declaration of Restrictions and Protective Covenants which relate to the surface water or stormwater management systems.
7. To levy and collect adequate assessments from the members of the Association for the costs of maintenance and operation of the surface water or stormwater management systems.
8. To sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.
9. To have all powers conferred upon a corporation by the laws of the State of Florida, except as prohibited herein. The Common Area cannot be mortgaged or conveyed without the affirmative vote of at least two-thirds of the Class A Membership.

#### ARTICLE V.

##### **MANNER OF ELECTION OF DIRECTORS**



As long as Developer shall have the right to appoint the Board of Directors, Directors need not be Members of the Association and need not be residents of the State of Florida. All Directors appointed by the Developer shall serve at the pleasure of the Developer, and may be removed from office, and a successor Director may be appointed at any time by the Developer. At the first annual election to the Board of Directors where Directors are elected by the Members, the Members shall elect seven (7) Directors and the term of office of the three elected Directors receiving the highest plurality of votes shall be established at two (2) years, with the other elected Directors to serve for a term of one (1) year. Elections shall be by plurality votes. All Directors shall hold office until the election of new directors at the next annual meeting or resignation of said Director. Each year thereafter, as many Directors shall be elected and appointed, as the case may be, as there are regular terms of office of Directors expiring at such time, and the term of the Director so elected or appointed at each annual election shall be for two (2) years expiring at the second annual election following their election, and thereafter until their successors are duly elected and qualified, or until removed from office with or without cause by the affirmative vote of a majority of the Members which elected or appointed them. Any Director appointed by the Class B Member shall serve at the pleasure of the Class B Member and may not be removed except by action of the Class B Member, and may be removed from office, and a successor director may be appointed, at any time by the Class B Member.

#### **ARTICLE VIII**

##### **OFFICERS**

The Officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time, by resolution, create. Any two or more offices may be held by the same person except the offices of President and Secretary. Officers shall be elected for one (1) year terms in accordance with the procedures set forth in the Bylaws. The names of the Officers who are to manage the affairs of the Association until the first annual meeting of the Board of Directors and until their successors are duly elected and qualified are:

President	Alfred G. West
Vice President	Bruce J. Parker
Secretary/Treasurer	Doug Flinn

#### **ARTICLE IX**

##### **INITIAL REGISTERED AGENT AND STREET ADDRESS**

The street address of the Corporation's initial registered office is: 7777 Glades Road, Suite 410, Boca Raton, Florida 33434 and the name of the initial Registered Agent at such address is: Alfred G. West.

**ARTICLE X.**

**INCORPORATOR**

The name and street address of the Incorporator for these Articles of Incorporation is:  
Alfred G. West, 7777 Glades Road, Suite 410, Boca Raton, Florida 33434.

**ARTICLE XI.**

**CORPORATE EXISTENCE**

The existence of the Association shall commence with the filings of these Articles of Incorporation and shall have perpetual existence. If the Association is dissolved, the property consisting of the surface water management system will be conveyed to an appropriate agency of local government. If this is not accepted, then the surface water management system will be dedicated to a similar non-profit corporation.

**ARTICLE XII.**

**BYLAWS**

The Board of Directors shall adopt Bylaws consistent with these Articles.

**ARTICLE XIII.**

**AMENDMENTS TO ARTICLES OF INCORPORATION AND BYLAWS**

1. For so long as the Developer has the right to appoint the entire Board of Directors of the Association, the Developer may unilaterally amend these Articles. At such time as the Developer no longer has the right to appoint the entire Board of Directors of the Association, amendment of these Articles requires the approval of at least two-thirds of the membership votes. No amendment affecting the Developer or its successor or assign of Developer of the Property shall be effective without the prior written consent of said Developer or its successors or assigns, as Developer.

**ARTICLE XIV.**

**INDEMNIFICATION OF OFFICERS AND DIRECTORS**

1. The Association hereby indemnifies any Director or officer made a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding:

a. Whether civil, criminal, administrative or investigative, other than one by or in the right of the Association to procure a judgment in its favor, brought to impose a liability or penalty on such person for any act alleged to have been committed by such person in his

capacity of Director or officer of the Association, or in his capacity as a Director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees, actually and necessarily incurred as a result of such action, suit or proceeding or any appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association, and in criminal actions or proceedings, without reasonable ground for belief that such action was unlawful. The termination of any such action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not in itself create a presumption that any such Director or officer did not act in good faith in the reasonable belief that such action was in the best interests of the Association or that he had reasonable grounds for belief that such action was unlawful.

b. By or in the right of the Association to procure a judgment in its favor by reason of his being or having been a Director or officer of the Association, or by reason of his being or having been a Director, officer, employee or agent of any other corporation, partnership, joint venture, trust or other enterprise which he served at the request of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense or settlement of such action, or in connection with an appeal therein, if such person acted in good faith in the reasonable belief that such action was in the best interests of the Association. Such person shall not be entitled to indemnification in relation to matters as to which such person has been adjudged to have been guilty of negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court, administrative agency, or investigative body before which such action, suit or proceeding is held shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expenses which such tribunal shall deem proper.

2. The Board of Directors shall determine whether amounts for which a Director or officer seeks indemnification were properly incurred and whether such Director or officer acted in good faith and in a manner he reasonably believed to be in the best interests of the Association, and whether, with respect to any criminal action or proceeding, he had no reasonable ground for belief that such action was unlawful. Such determination shall be made by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding.

3. The foregoing rights of indemnification shall not be deemed to limit in any way the powers of the Association to indemnify under applicable law.

4. The Association shall obtain directors and officers liability insurance providing such coverage as the Board of Directors of the Association may determine from time to time.

**ARTICLE XV.**

**TRANSACTIONS IN WHICH DIRECTORS OR OFFICERS ARE INTERESTED**

1. With the exception of Directors and Officers appointed by the Class B Members, any financial or familial interest of an Officer or Director in any contract or transaction between the Association and one (1) or more of its Directors or officers, or between the Association and any other corporation, partnership, association or other organization in which one (1) or more of its Directors or officers are directors or officers, or have a financial interest, shall be disclosed, and further shall be voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee thereof which authorized the contract or transaction or solely because his or their votes are counted for such purpose. No Director or officer of the Association shall incur liability by reason of the fact that he is or may be interested in any such contract or transaction.

2. Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorized the contract or transaction, but must abstain from voting on the issue.

**ARTICLE XVI.**

**DISSOLUTION**

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of each class of members. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.


IN WITNESS WHEREOF, the undersigned Incorporator has executed these Articles of Incorporation this 3<sup>rd</sup> day of October, 2005.

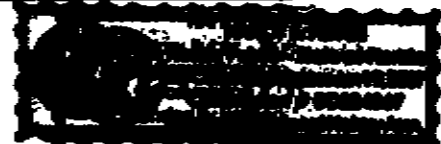
  
Alfred G. West

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 3<sup>rd</sup> day of October, 2005, by Alfred G. West, who is personally known to me or who has produced a Florida driver's license as identification.

Serial Number: DD224367  
Commission Expires: 6/19/17

  
Notary Public  
Name: Nancy J. Patten

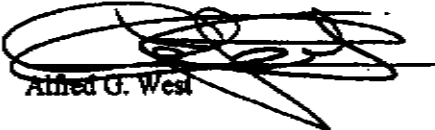




Fax Audit Number H05000234726 3

**REGISTERED AGENT**

The undersigned hereby accepts appointment as Registered Agent of San Simeon Phase 1 Residents' Association, Inc. this 3<sup>rd</sup> day of OCTOBER, 2005.

  
Alfred G. West

Fax Audit Number H05000234726 3

**EXHIBIT "E"**

**By-Laws of San Simeon Phase 1 Residents' Association, Inc.**

**BYLAWS**  
**OF**  
**SAN SIMEON PHASE 1**  
**RESIDENTS' ASSOCIATION, INC.**

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**BYLAWS  
OF  
SAN SIMEON PHASE 1  
RESIDENTS' ASSOCIATION, INC.**

**ARTICLE I**

**DEFINITIONS**

All defined terms used in these Bylaws shall have the meaning assigned to them in the Declaration of Restrictions and Protective Covenants for San Simeon Phase 1.

**ARTICLE II**

**LOCATION**

Section 1. The principal office of the Association shall be 7777 Glades Road, Suite 410, Boca Raton, Florida 33434.

**ARTICLE III**

**MEMBERSHIP**

Section 2. Membership of the Association is as set forth in the Declaration.

Section 3. The rights of membership are subject to the payment of annual and special assessments levied by the Association, the obligation of which assessment is imposed against each Owner of, and becomes a lien upon, the Properties against which such assessments are made as provided in the Declaration to which the Properties are subject.

**ARTICLE IV**

**FISCAL YEAR**

Section 4. The fiscal year of the Association shall be the calendar year.

**ARTICLE V**

**BOARD OF DIRECTORS**

Section 5. Subsequent to the appointment of directors by the Class B Member, as provided in the Articles of Incorporation, the directors of the Association shall be elected at the annual meeting of the members. The election procedure is set forth in Article VII of these Bylaws.

Section 6. Any director may be removed from office at any time with or without cause by the affirmative majority vote of the Association membership, except that the directors elected by the Class B Member including those named in the Articles of Incorporation may be removed only by the Class B Member.

Section 7. The first meeting of the duly elected Board of Directors, for the purpose of organization, shall be held immediately after the annual meeting of association members, provided the majority of the members of the elected Board are present. Any action taken at such meeting shall be by a majority of the Board. If the majority of the members of the Board elected shall not be present at that time, or if the directors shall fail to elect officers, the meeting of the Board to elect officers shall then be held within thirty days after the annual meeting of members upon three days' notice in writing to each member of the Board elected, stating the time, place and object of such meeting.

Section 8. Regular meetings of the Board of Directors may be held at any place or places within Lee County, Florida, on such days and at such hours as the Board of Directors may, by resolution, appoint.

Section 9. Notice of meetings shall be posted in a conspicuous place on the Association property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments against Lots are to be established shall specifically contain a statement that assessments shall be considered and a statement of the nature of such assessments.

Section 10. Special meetings of the Board of Directors may be called at any time by the President or by a majority of the Board and may be held at any place or places within Lee County, Florida, and at any time.

Section 11. Notice of each special meeting of the Board of Directors, stating the time, place and purpose or purposes thereof, except in the event of an emergency, shall be (i) posted in a conspicuous place or on Association property at least 48 hours in advance or (ii) shall be given by or on behalf of the President or by or on behalf of the Secretary or by or on behalf of a majority of the members of the Board to each member of the Board not less than seven days prior to the scheduled date of the special meeting by mail, telegraph, overnight courier, hand delivery or telecopy. Emergency meetings of the Board may also be held at any place and time without notice by unanimous waiver of notice by all the directors. Notices of all meetings of the board of directors will comply with Chapter 720, Florida Statutes.

Section 12. No Director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

Section 13. Subject to the provisions of Section 10 of this Article, all meetings of the Board shall be open to all Members, but no Member other than Directors may participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Director. In such case, the Board may limit the time that any Member may speak.

Section 14. Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

Section 15. The Board of Directors shall be responsible for maintaining the official records of the Association in accordance with Florida Statute § 720.303, as may be amended from time to time. The said official records of the Association shall be available for examination by the owners and mortgagees, their duly authorized agents, accountants, or attorneys, during reasonable times and places which shall be at least ten (10) business days after receipt of a written request for examination. Further the Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association affairs and as provided by law.

The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the Managing Agent or Manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by Chapter 720, Florida Statutes, together with these Bylaws, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment, which may be payable in annual, semi-annual, or quarterly installments, as determined by the Board of Directors;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; the reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the other provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association after receiving the proper authorization, if any, required by the Declaration;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable to Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board of Directors for the general knowledge of the owners. All books and records shall be kept in accordance with generally accepted accounting practices;

(m) make available for review to any prospective purchaser of a Lot, any Owner of a Lot, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules governing the Lot and all other books, records, and financial statements of the Association; and

(n) permit utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties.

(o) exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to members in the Declaration of Restrictions and Protective Covenants for the Property or in the Articles of Incorporation of the Association.

Section 16. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in subparagraphs a, b, f, g and i of Section 11 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager. No management contract may have a term in excess of one (1) year and must permit termination by either party without cause and without termination fee on ninety (90) days, or less, written notice.

Section 17. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:



(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) disbursements by check requiring two (2) signatures, and (ii) cash disbursements limited to amounts of Seventy-Five (\$75.00) Dollars and under;

(c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by a managing agent from vendors, independent contractors, or others Providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which a managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors; and

(f) an annual report consisting of at least the following shall be prepared within sixty (60) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income ) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. However, if the holder, insurer or guarantor of any first mortgage that is secured by a Unit submits a written request for an audited statement, the Association must provide one.

Section 18. The Board of Directors shall have the power to borrow money for the purpose of repair or restoration of the Common Areas without the approval of the Members of the Association; provided, however, the Board shall obtain Member approval in the same manner provided in the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed five (5%) percent of the budgeted gross expenses of the Association for that fiscal year.

Section 19. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. In the event that any occupant of a Lot violates the Declaration, Bylaws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall constitute a lien upon the Lot in which the occupant resides, and the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than fourteen (14) days within which the alleged violator may present a written request to the committee designated by the Board, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within fourteen (14) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session before the body specified in the notice which shall afford the Owner a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or his designated representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The hearing shall be conducted in accordance with Florida Statute 720.305.

(c) Appeal. If the hearing is held before a body other than the Board, then the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation for abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

## ARTICLE VI

### OFFICERS

Section 20. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article VII.

Section 21. Any officer may be removed at any time by the affirmative vote of a majority of the Board of Directors at any duly called regular or special meeting of the Board.

Section 22. The President shall be the chief executive officer of the Association. The President shall preside at all meetings of the members of the Association and of the Board of Directors. He shall have the general powers and duties of supervision and management of the Association which usually pertain to his office, and shall perform all such duties as are properly required of him by the Board of Directors. The Board of Directors shall elect one Vice President, who shall have such powers and perform such duties as usually pertain to such office or as are properly required of him by the Board of Directors. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President. The Secretary shall issue notices of all meetings of the membership of the Association and the Board of Directors where notice of such meetings is required by law or in these Bylaws. He shall keep the minutes of the meetings of the membership and of the Board of Directors.

Section 23. The Treasurer shall have the care and custody of all the monies and securities of the Association. He shall enter on the books of the Association, to be kept by him for that purpose, full and accurate accounts of all monies received by him and paid by him on account of the Association. He shall sign such instruments as require his signature and shall perform all such duties as usually pertain to his office or as are properly required of him by the Board of Directors.

Section 24. Vacancies in any office arising from any cause may be filled by the Board of Directors for the unexpired portion of the term.

Section 25. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## **ARTICLE VII**

### **MEETINGS OF MEMBERS**

Section 26. Subsequent to such time the Class A Members are entitled to elect a director, a meeting of members shall be held annually during the month in which the Declaration was recorded at such time and place as shall be determined by the Board of Directors.

Section 27. For election of members of the board of directors, members shall vote in person at a meeting of the members or by a ballot that the homeowner personally casts.

Section 28. Members may not vote by general proxy, but may vote by limited proxy. Limited proxies and general proxies may be used to establish a quorum. Limited proxies may also be used for votes taken to amend the articles of incorporation or bylaws or for any matter that requires or permits a vote of the members. A proxy may not be used for the election of the members of the board of directors as provided in Section 2 hereof.

Any proxy shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid for a period longer than 90 days after the date of the first meeting for which it was given. A proxy is revocable at any time at the pleasure of the member who executes it.

Section 29. Special meetings of the members may be called for any purpose at any time by the President or a majority of the members of the Board of Directors.

Section 30. Notice may be given to the member either personally, or by sending a copy of the notice through the mail, (postage thereon fully paid), by overnight courier or by telecopy transmittal, to his address appearing on the records of the Association. Each member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any meeting, regular or special, shall be mailed, personally delivered, overnight couriered or telecopied at least six (6) days in advance of the meeting and shall set forth the general nature of the business to be transacted, provided, however, that if any business of any meeting shall involve any action governed by the Articles of Incorporation, notice of such meetings shall be given or sent as therein provided.

Section 31. The presence at the meeting of members entitled to cast thirty-three and one-third percent (33 1/3%) of the Class A membership votes shall constitute a quorum for any action governed by these Bylaws.

Section 32. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members representing at least twenty-five (25%) percent of the total votes of the Association remain present, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

Section 33. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat. Roberts Rules of Order shall govern the conduct of meetings.

Section 34. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Members.

## **ARTICLE VIII**

### **COMMITTEES**

Section 35. The Architectural Control Board shall be a standing committee of the Association. The Board of Directors may appoint such other committees as it deems advisable.

Section 36. The Architectural Control Board shall be appointed, shall serve and shall have the duties and functions as described in the Declaration. A party aggrieved by a decision of the Architectural Control Board shall have the right to make a written request to the Board of Directors, within thirty (30) days of such decision, so that the Board of Directors may review such decision. The determination of the Board of Directors, upon reviewing such decision of the Architectural Control Board, shall in all events be dispositive.

## **ARTICLE IX**

### **BOOKS AND PAPERS**

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any member of the Association.

## **ARTICLE X**


### **AMENDMENTS**

Section 37. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of members present in person or by proxy, provided that the notice to the members of the meeting disclosed the information that the amendment of the Bylaws was to be considered; provided, however, the provisions which are governed by the Articles of Incorporation of this Association may not be amended except as provided in the Articles of Incorporation or applicable law; and provided further that any matters stated herein to be or which are in fact governed by the Declaration of Restrictions and Protective Covenants referred to herein may not be amended except as provided in such covenants. Notwithstanding anything herein to the contrary, for so long as the Class B Member exists, as described in the Articles of Incorporation of the Association shall be permitted to unilaterally amend these Bylaws at any time. For so long as Developer owns any portion of the property, no amendment affecting the rights of the Developer or its successors or assigns, granted hereunder, shall be effective without the prior written consent of the Developer, as applicable.

Section 38. In case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the said Declaration shall control.

\*\*\*\*\*

I hereby certify that the foregoing Bylaws of San Simeon Phase 1 Residents' Association, Inc. were duly adopted by the Board of Directors of said association in a meeting held for such purpose on this 4<sup>th</sup> day of October, 2005.

  
\_\_\_\_\_  
Alfred G. West, President

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**EXHIBIT "F"**

**Conservation Easement**

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Prepared by and Return to:  
Richard B. McFarland, P.A.  
Broad and Cassel  
7777 Glades Road, Suite 300  
Boca Raton, FL 33434

INSTR # 6932798  
OR BK 84435 Pgs 3348 - 3353 (6pgs)  
RECORDED 06/06/2005 03:26:20 PM  
CHARLIE GREEN, CLERK OF COURT  
LEE COUNTY, FLORIDA  
RECORDING FEE \$2.50  
DEED REC 8.75  
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### DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 28th day of June, 2005, by Levitt and Sons of Lee County, LLC, a Florida limited liability company, ("Grantor") to the South Florida Water Management District ("Grantee" or "District"). As used herein, the term Grantor shall include any and all heirs, successors or assigns of the Grantor, and all subsequent owners of the "Property" (as hereinafter defined) and the term Grantee shall include any successor or assignee of Grantee.

### WITNESSETH

WHEREAS, the Grantor is the owner of certain lands situated in Lee County, Florida, and more specifically described in Exhibit A attached hereto and incorporated herein ("Property"); and

WHEREAS, the Grantor desires to construct San Simeon Phase I ("Project") at a site in Lee County, which is subject to the regulatory jurisdiction of the District; and

WHEREAS, District Permit No. 36-05243-P ("Permit") authorizes certain activities which affect surface waters in or of the State of Florida; and

WHEREAS, this Permit requires the Grantor to not result in adverse secondary impacts to the seagrasses in state waters adjacent to the Project; and

WHEREAS, the Grantor, in consideration of the consent granted by the Permit, is agreeable to granting and securing to the Grantee a perpetual conservation easement as defined in Section 704.06, Florida Statutes (2000), over the Property.

NOW, THEREFORE, in consideration of the issuance of the Permit to construct and operate the permitted activity, and as an inducement to the District in issuing the Permit, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby grants, creates, and establishes a perpetual conservation easement for and in favor of the Grantee upon the Property which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this conservation easement shall be as follows:



1. It is the purpose of this conservation easement to preserve the shoreline so that boat docks or other boat facilities are not constructed or placed on the Property.

To carry out this purpose, the following rights are conveyed to Grantee by this easement:

a. To enter upon the Property at reasonable times with any necessary equipment or vehicles to enforce the rights herein granted in a manner that will not unreasonably interfere with the use and quiet enjoyment of the Property by Grantor at the time of such entry; and

b. To enjoin any activity on or use of the Property that is inconsistent with this conservation easement and to enforce the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

2. Except for restoration, creation, enhancement, maintenance and monitoring activities, or surface water management improvements, which are permitted or required by the permit, the following activities are prohibited in or on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except for the removal of exotic vegetation in accordance with a District approved maintenance plan;

d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;

e. Surface use except for purposes that permit the land or water area to remain in its natural condition;

f. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking and fencing;

g. Acts or uses detrimental to such aforementioned retention of land or water areas;

h. Acts or uses which are detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance;

i. Construction or placing of boat docks or other boating facilities.



TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions and purpose imposed with this conservation easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the Property.

Grantor hereby covenants with said Grantee that Grantor is lawfully seized of said Property in fee simple; that the Property is free and clear of all encumbrances that are inconsistent with the terms of this conservation easement; that Grantor has good right and lawful authority to convey this conservation easement; and that it hereby fully warrants and defends the title to the conservation easement hereby conveyed against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, Bruce J. Parker has hereunto set its authorized hand this 28th day of June, 2005.

Signed, sealed and delivered  
in our presence as witnesses:

Dawn Applebee  
Dawn Applebee

Print Name:

Kathleen Maxwell  
Print Name: Kathleen Maxwell

Levitt and Sons of Lee County,  
a Florida limited liability company

By: Bruce J. Parker

Print Name: Bruce J. Parker

Title: Vice President

STATE OF FLORIDA

ss:

COUNTY OF PALM BEACH

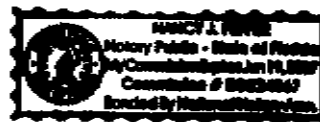
On this 28th day of June, 2005, before me, the undersigned notary public, personally appeared Bruce J. Parker, personally known to me to be the person who subscribed to the foregoing instrument as the Vice President of Levitt and Sons of Lee County, LLC, a Florida limited liability company, and acknowledged that he executed the same on behalf of said corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY PUBLIC, STATE OF FLORIDA

Nancy J. Parker  
Print Name: NANCY J. PARKER

My Commission Expires: 6/12/07



South Florida Water Management District  
Legal Form Approved  
Date: July, 2001

4 of 4

**DESCRIPTION**

Parcel in  
Section 33, Township 44 South, Range 25 East  
City of Fort Myers,  
Lee County, Florida


A tract or parcel of land lying in Section 33, Township 44 South, Range 25 East, City of Fort Myers, Lee County, Florida, said tract or parcel of land being more particularly described as follows:

From the Northeast corner of the Northeast Quarter (NE-1/4) of the Northwest Quarter (NW-1/4) of said Section 33 run S00°50'42"E along the east line of said fraction for 1,338.76 feet to the Southeast corner of said fraction; thence run S88°37'40"W along the south line of said fraction for 225.88 feet to the Northeast corner of lands described in deed recorded in Official Record Book 2272, at Page 1142, Lee County Records and the POINT OF BEGINNING.

From said POINT OF BEGINNING run S01°06'54"E along the east line of said lands for 466.78 feet; thence run N88°25'10"W for 166.85 feet to a point of curvature; thence run northwesterly along an arc of curve to the right of radius 502.00 feet (delta 46°38'19") (chord bearing N65°06'01"W)(chord 397.44 feet) for 408.63 feet to a point of tangency; thence run N41°46'51"W for 199.68 feet to an intersection with the northwesterly line of said lands; thence run N48°13'09"E along said northwesterly line for 200.87 feet to an intersection with the south line of the Northeast Quarter (NE-1/4) of the Northwest Quarter (NW-1/4) of said Section 33; thence run N88°37'40"E along the south line of said fraction for 501.59 feet to the POINT OF BEGINNING.

Containing 5.446 acres, more or less.

Bearings hereinabove mentioned are based on the East line of the Northeast Quarter (NE-1/4) of the Northwest Quarter (NW-1/4) of said Section 33 to bear S00°50'42"E.

  
Scott A. Wheeler (For The Firm)  
Professional Surveyor and Mapper  
Florida Certificate No. 5949

Lyons - Challenge - Miller 22-cv-01250-Casey, 12/18/12



San Simeon Phase I Residents Association, Inc.  
Rules and Regulations

**Parking**

No vehicle, of any kind or description, shall be permitted to be parked or to be stored on the streets within the Association Property or on the Association's Common Areas (other than in approved parking areas, if any). The parking or storing of vehicles on the streets within the Association Property or on the Association's Common Areas in violation of this rule shall subject the vehicle to towing by the Association (or its agent) in accordance with the Association's Bylaws. Association's Common Areas includes but not limited to streets and Amenity Center parking lot.

This prohibition of parking shall not apply to the temporary parking of vehicles, such as for pick-up and/or delivery. The determination of whether a vehicle is parked in violation of this rule shall be made by the Association's Board of Directors in their sole and absolute discretion. The provisions of this rule shall not apply to the Developer, as defined in the Declaration of Restrictions and Protective Covenants for San Simeon Phase I.

San Simeon Phase I Residents Association, Inc.  
Rules and Regulations

**Amenity Center Area**

Amenity Center area consists of approximately 2,500 square feet building, resort style pool and Tot Lot play area. The Amenity Center area building consists of a Fitness Center and Meeting Room with kitchen.

1) Responsibility:

- a) With respect to the use of Amenity Center, an Owner shall be held responsible for the actions and conduct of him family members, guests, invitees and tenants. Decorum, good conduct and safety shall be observed and shall be strictly enforced.
- b) Any damage to Amenity Center area or equipment therein, which is caused by any Owner or family member, guest, invitee or tenant of the Owner shall be repaired or replaced at the expense of the Owner.
- c) The use of the Amenity Center area by persons other than an Owner or the family members, guests, invitees or tenants of the Owner is strictly prohibited and shall be at the risk of those involved and not, in any event, the risk of the Association or its manager.
- d) The Association shall not be responsible for any personal injury or any loss or damage to personal property at the Amenity Center area regardless of where such property is kept, checked, left or stored on the premises.

2) General Use Restrictions:

- a) The Amenity Center area shall be solely for the use of the Owner and his family members, guests, invitees or tenants, subject to the provisions of the Association Documents.
- b) Any persons fourteen (14) years of age or younger whether tenant, guest or invitees must be accompanied by supervising adult over the age of twenty-one.
- c) Pets shall not be permitted in the Amenity Center areas.
- d) The walkways and entrances of the Amenity Center areas and facilities shall not be obstructed or used for any purpose other than ingress or egress.
- e) No signs, notices or photos shall be posted on any of the walls or windows of the Amenity Center area, other than on bulletin boards, if made available by the Association for that specific purpose.
- f) No smoking in Amenity Center area at any time.

3) Cleanliness:

- a) It is prohibited to litter or cause debris to be put in any of the Amenity Center areas. Owners, their family members, guests, invitees and tenants shall cause to be removed or disposed of all rubbish, garbage, trash, refuse or other waste materials generated during their respective use within any of the Amenity Center areas.
- b) No personal articles shall be allowed to stand overnight in Amenity Center area.
- c) No garbage cans other than those provided by the Association, supplies, water bottles or other articles shall be placed or left within the Amenity Center area.

4) Pool Area Use:

- a) General provisions
  - i) **THERE SHALL BE NO LIFEGUARD ON DUTY. ALL PERSONS USING THE POOL DO SO AT THEIR OWN RISK.** The Association and its Board assume no responsibility for any accident or personal injury or for any loss or damage to personal property arising out of or in connection with the use of the pool and/or the pool area. Persons using the pool or pool area agree not to hold the Association or the Board liable for actions of any nature occurring within the pool area.

San Simeon Phase I Residents Association, Inc.  
Rules and Regulations

- ii) Pool hours are from Dawn to Dusk, but in no event later than 9:00 p.m. No use prior to 8:00 a.m. shall be allowed which is deemed disruptive to the peaceful enjoyment of those residents living in close proximity to the pool area.
- iii) Wheelchairs, strollers, child waist and arm flotation devices shall be permitted in the pool area. No rafts and similar flotation devices shall be permitted in the pool area.
- b) Code of Conduct for the Pool Area:
  - i) No nude swimming shall be allowed at any age. Children must be toilet trained, or children who are not toilet trained must wear swim diapers for entry into all swimming pools.
  - ii) No intoxicants shall be permitted in the pool area.
  - iii) No roller skates, skateboards, roller blades, bicycles, scooters and other play or exercise equipment shall be permitted in the pool area, unless the exercise equipment is required in conjunction with an event scheduled by the Association.
  - iv) No dunking, rough play, profane language, diving or jumping in the pool shall be permitted.
  - v) No running, pushing, rough play or profane language in the pool area shall be permitted.
  - vi) No radios, tape or CD players or portable televisions shall be permitted in the pool area without the use of headphones.
- c) Health and Safety Considerations:
  - i) All users shall shower before entering the pool.
  - ii) No soaps, shampoos or personal care products shall be used in the swimming pools or poolside shower.
  - iii) Persons wearing bandages or having colds, coughs, inflamed eyes, infections or open sores shall not use the pool.
  - iv) No glass containers or other breakable objects shall be permitted in the pool area.
  - v) All belongings shall be removed when the user is leaving the pool area. The Association and its Board shall not be responsible for any belongings lost or stolen.
  - vi) All rubbish, garbage, trash, refuse or other waste materials shall be placed into containers around the pool area provided for this purpose or removed from the pool area.
  - vii) A three- (3) foot walking area shall be maintained around the pool at all times. Additionally, walking areas around and through the pool area shall not otherwise be blocked.
  - viii) In accordance with health department regulations, no food, drink or animals are permitted in the pool or on the pool deck.
- d) Use of pool furniture and equipment:
  - i) Pool furniture shall not be removed from the pool area.
  - ii) Pool furniture shall not be reserved for anyone not in the pool area.
  - iii) Pool furniture and equipment shall not be modified, altered or changed in any manner.
  - iv) Towels shall be placed on pool furniture when in use.
  - v) Use of the pool area shall also be governed by all other applicable Rules and Regulations adopted by the Board, including but not limited to those concerning the General Use Restriction and Cleanliness provision noted above.
- 5) Meeting Room Use:
  - a) General provisions
    - i) Meeting Room use is on a reserve basis only or for Association functions.
    - ii) Any sect, cult or group shall not use the Meeting Room at anytime for religious services, with the following exception: In the spirit of respect and togetherness, a lighted Chanukah Menorah and a Christmas tree may be displayed in the Meeting Room during the holiday season.
    - iii) All belongings shall be removed from the Meeting Room when leaving. The Association and its Board shall not be responsible for belongings lost or stolen.
    - iv) No offensive or unlawful use shall be made of the Meeting Room. All laws and regulations of all applicable governmental entities shall be strictly observed.
  - b) Code of Conduct for the Meeting Room:



San Simeon Phase I Residents Association, Inc.  
Rules and Regulations

- i) No smoking in the Meeting Room or any rooms therein shall be allowed.
- ii) Proper attire shall be worn in the Meeting Room.
- c) Renting of the Meeting Room:
  - i) The Board of Directors, in their sole discretion, shall allow or prohibit the renting of the Meeting Room by Owners for their private use.
  - ii) If permitted by the Board, renting of the Meeting Room by Owners for their private use shall be subject to availability and the payment of scheduled fees and deposits as determined by the Board.
  - iii) Renting of the Meeting Room for use by any social, fraternal or political organization shall be prohibited.
  - iv) All reservations of the Meeting Room shall be approved by the Board or, if applicable, the Management Company.
  - v) Any Owner or other authorized person reserving the Meeting Room shall have the care, custody and control of the Meeting Room during the period the facility is reserved and shall, therefore, be responsible for any and all costs for repairs and/or replacement to the Meeting Room, its furniture, equipment, accessories, appliances and the like which are damaged or destroyed for any reason while under their care, custody and control.
  - vi) Owners wishing to reserve the Meeting Room must contact the Management Company to reserve a date and time. A deposit shall be due and payable at the time of reservation. The deposit shall be refunded if there has been no damage, misuse or theft to the Meeting Room or its components and if the facilities and kitchen is left clean. The amount of the required deposit may be amended by the Board at any time and from time to time.
  - vii) Any Owner or authorized person using the Meeting Room shall be responsible for the care and cleaning of the facility, including the kitchen. All furnishings and equipment shall be replaced to their previous locations, but in no event shall they be removed from the Meeting Room.
  - viii) Community meeting dates and other Association functions shall supersede the use of all other events in the Meeting Room.
- 6) Fitness Center Use:
  - a) Fitness Center Hours are from 5:00 a.m. to 11:00 p.m.
  - b) All equipment shall be used at the risk of the person exercising.
  - c) Children sixteen (16) years of age and younger shall not be permitted in the exercise room.
  - d) Residents or tenants shall accompany their guests or invitees.
  - e) Athletic shoes and shirts shall be worn at all time.
  - f) As a courtesy to others, people using exercise equipment are requested to allow others to work in with them.
  - g) A thirty (30) minute time limit shall apply on all cardio-vascular equipment when someone is waiting.
  - h) Equipment shall be wiped down after usage.