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**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS,**

**RESTRICTIONS AND EASEMENTS FOR**

**ESPLANADE**

**(n/k/a ESPLANADE GOLF & COUNTRY CLUB AT**

**LAKEWOOD RANCH)**

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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR ESPLANADE GOLF & COUNTRY CLUB  
AT LAKEWOOD RANCH**

(SUBSTANTIAL REWORDING OF DECLARATION. PLEASE SEE ORIGINAL DECLARATION AS RECORDED IN OFFICIAL RECORDS BOOK 2412, PAGE 3793, ET SEQ., OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.)

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ESPLANADE GOLF & COUNTRY CLUB AT LAKEWOOD RANCH ("Declaration") is made as of the 23<sup>rd</sup> day of August, 2013, by TAYLOR MORRISON OF FLORIDA, INC., a Florida corporation, its successors and assigns ("Declarant"), and is joined in by ESPLANADE GOLF & COUNTRY CLUB AT LAKEWOOD RANCH, INC., a Florida corporation not for profit f/k/a Esplanade Community Association, Inc. ("Club"). SMR North 70, LLC, a Florida limited liability company, also joins in and consents to this Declaration as the owner of a mortgage on the "Property" (as defined below) as evidenced by Exhibit "L" attached hereto and made a part hereof.

WHEREAS, that certain Declaration of Covenants, Conditions, Restrictions and Easements for Esplanade was recorded on the 15<sup>th</sup> day of March, 2012, in Official Records Book 2412, Page 3793, et seq., as amended by First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements for Esplanade recorded in Official Records Book 2435, Page 6962, et seq., as supplemented by those certain Supplemental Declarations to Declaration of Covenants, Conditions, Restrictions and Easements for Esplanade recorded in Official Records Book 2460, Page 2994, and in Official Records Book 2464, Page 7025, all of the Public Records of Manatee County, Florida (collectively referred to herein as the "Original Declaration"); and

WHEREAS, pursuant to Article XIV, Section 8.1, of the Original Declaration, until the Turnover Date, all amendments or modifications shall be made by Declarant only without the requirement of the Club's consent or the consent of the Owners so long as such amendments or modifications to not materially impair the common plan of development of Esplanade; and

WHEREAS, Declarant is desirous of amending and modifying the Original Declaration by restating in its entirety the provisions thereof, it being the intent hereof, that this Declaration shall replace the provisions of the Original Declaration thereto, in its entirety and this Declaration shall constitute the covenants, conditions, restrictions and easements for Esplanade; and

WHEREAS, Declarant desires to develop a planned community to be known as "ESPLANADE" (as hereinafter defined) on certain real property more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

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

WHEREAS, the Club is joining in this Declaration in order to acknowledge its duties, responsibilities and obligations hereunder.

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

#### **ARTICLE I** **DEFINITIONS**

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

Section 1. "ADDITIONAL PLAT" shall mean the plat of any portion of the Property which is not included in the Plat, if any, and the plat of any Additional Property provided a Supplemental Declaration for such Additional Property is recorded amongst the Public Records of the County. "Additional Plat" shall also mean the replat of all or any portion of the Plat or any other plat of all or any portion of the Property.

Section 2. "ADDITIONAL PROPERTY" shall mean any real property (other than the Property) that may be submitted by Declarant to the terms and provisions of this Declaration by a Supplemental Declaration which shall be executed by the owner of the Additional Property and need not be joined in by any other person or Owner. No portion of any Additional Property shall be encumbered by this Declaration unless and until such property is added by a Supplemental Declaration executed by the fee owner thereof and Declarant. In the event any Additional Property becomes encumbered by this Declaration, then, and only then in such event, the term "Property" as used herein shall also mean the Additional Property.

Section 3. "AMENDMENT(S)" shall mean any and all amendments to this Declaration, all of which shall be consecutively numbered beginning with the "First Amendment to the Declaration of Covenants, Conditions, Restrictions and Easements for Esplanade" and each of which shall be properly adopted pursuant to the terms of the Esplanade Documents and recorded in the Public Records of the County; provided, however, the failure to so consecutively number such amendments shall not impair their validity hereunder and such amendments to the extent not otherwise numbered will be deemed to have been numbered in chronological order of their appearance in the Public Records of the County. "Amendment(s)" shall also mean any and all amendments to any Supplemental Declaration, as recorded in the Public Records of the County.

Section 4. "ARCHITECTURAL CONTROL COMMITTEE" or "COMMITTEE" shall mean the committee created pursuant to Article VIII hereof.

Section 5. "ARTICLES" shall mean the Amended and Restated Articles of Incorporation of Esplanade Golf & Country Club at Lakewood Ranch, Inc., f/k/a Esplanade Community Association, Inc., filed in the Office of the Secretary of State of the State of Florida, a true copy of which are attached hereto as Exhibit "B" and incorporated herein by this reference, as such Articles may be amended from time to time.

Section 6. "ASSESSMENT" shall mean assessments for which all Owners are obligated to pay to the Club and includes "Individual Lot Assessments," "Individual Golf Property Assessments," "Benefited Assessments" and "Special Assessments" (as such terms are defined in Article VII hereof) and any and all other assessments which are levied by the Club in accordance with the Esplanade Documents.

Section 7. "BOARD" shall mean the board of directors or other legally recognized governing body of the Club.

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

Section 9. "CLUB" shall mean and refer to ESPLANADE GOLF & COUNTRY CLUB AT LAKEWOOD RANCH, INC., a not-for-profit Florida corporation, f/k/a Esplanade Community Association, Inc., its successors and assigns, existing pursuant to the Articles, which Club is responsible for the ownership, administration, operation, maintenance, preservation, enforcement and architectural control of Esplanade as provided in this Declaration.

Section 10. "CLUB MEMBER" shall mean the Owners of Club Member Lots within Esplanade to which a Club Membership has been made an appurtenance. Club Members shall have all rights and privileges to use the Club Property, such as the Amenities Center, and shall have access to certain portions of the Golf Property (specifically the clubhouse, restaurant(s) and pro shop). Club Members shall not have golfing privileges, except that they may use the golf course only on a "space available" basis, upon payment of greens fees, cart fees and any other fees established by the Board.

Section 11. "CLUB MEMBER LOT" shall mean those Lots within Esplanade to which a Club Membership has been made an appurtenance. A Club Membership shall not be transferable other than through the sale, lease or conveyance of record legal title to the Lot to which it is appurtenant; however, a Club Member may delegate his or her Membership privileges to a tenant residing in the Club Member's Home. Declarant will designate which Lots are Club Member Lots as provided in Article V, Section 2.G below.

Section 12. "CLUB PROPERTY" shall mean such portions of the Club Property which are not included in any Lot, except those areas dedicated to the public by the Plat or Additional Plat, if any, and which are or shall be owned or maintained by the Club or the Stewardship District, as



set forth in this Declaration and/or the Plat or Additional Plat, if any, together with landscaping, personal property and any other Improvements thereon, including, without limitation, all of the following if and to the extent located thereon, all structures, gatehouses and other entranceways, the Amenity Center more particularly described in Article II, Section 2.A hereof, open spaces, private streets, bike paths, sidewalks, irrigation facilities, "Decorative Street Lights" (as hereinafter defined), perimeter fences and walls, entry or other lighting, entrance features, buffer tracts, monument walls, monument signs, site walls, retaining walls, fountains, littoral plantings, and decorative street signs, if any, but specifically excluding the "Golf Property" (as hereinafter defined), any public utility installations thereon, and all portions of any "Community Systems" (as hereinafter defined) not made Club Property pursuant to Article II, Section 10 hereof, and any other property of Declarant not intended to be made Club Property. "Club Property" shall also include such portions of the Property as are declared to be Club Property in any Supplemental Declaration, less whatever portions of the Property are declared to be withdrawn from the provisions of this Declaration in any Supplemental Declaration. Club Property does not include any common elements of a Condominium (as hereinafter defined).

Section 13. "COMMUNITY SYSTEMS" shall mean and refer to any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm monitoring, gas, utility or other lines, conduits, wires, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known) installed by Declarant, an affiliate of Declarant, any other entity in which Declarant or an affiliate of Declarant may have an interest (financial or otherwise), or any third party expressly granted the rights by Declarant or Club to provide Community Systems within the Property, or pursuant to any grant of easement or authority by Declarant or Club and serving the Club Property and/or more than one Lot.

Section 14. "COMPLETED LOT" shall mean a Lot on which the construction of a Home has been completed, for which Home a certificate of occupancy or equivalent therefor has been issued by the appropriate governmental agency, and the title to such Lot has been conveyed by Declarant. If a Completed Lot is destroyed, such Completed Lot shall remain classified as a Completed Lot regardless of whether or not the Owner has reconstructed the Home.

Section 15. "COMPLETED LOT OWNER" shall mean the Owner of a Completed Lot or a Contributing Condominium Unit.

Section 16. "CONDOMINIUM" shall mean any condominium that may be created within Esplanade by the recording of a Condominium Declaration.

Section 17. "CONDOMINIUM DECLARATION" shall mean a declaration of condominium, and any amendments thereto, by which a portion of Esplanade is submitted to the condominium form of ownership.

Section 18. "CONDOMINIUM UNIT" shall mean a condominium unit in a Condominium created within Esplanade.

Section 19. "CONTRIBUTING CONDOMINIUM UNIT" shall mean any Condominium Unit conveyed by Declarant to an Owner which has been issued a certificate of occupancy by the

appropriate governmental agency, except if conveyed to an Institutional Mortgagee by foreclosure or a deed in lieu of foreclosure, upon which an affirmative covenant to pay Assessments, as more particularly set forth herein, is imposed.

Section 20. "COUNTY" shall mean Manatee County, Florida.

Section 21. "DECLARANT" shall mean and refer to Taylor Morrison of Florida, Inc., a Florida corporation, and any successor or assign thereof to which Taylor Morrison of Florida, Inc., specifically assigns all or part of the rights of Declarant hereunder by an express written assignment, whether recorded in the Public Records of the County or not. The written assignment may give notice as to which rights of Declarant are to be exercised and as to which portion of the Property. In any event, any subsequent declarant shall not be liable for any default or obligations incurred by any prior declarant, except as may be expressly assumed by the subsequent declarant. An Owner shall not, solely by the purchase of a Home and/or Lot, be deemed a successor or assign of Declarant under the Esplanade Documents unless such Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Declarant.

Section 22. "DECLARATION" shall mean this instrument as it may be amended from time to time, together with any Supplemental Declaration(s) or Amendments hereto, which may be recorded amongst the Public Records.

Section 23. "DIRECTOR" shall mean a member of the Board.

Section 24. "DOMINANT LOT" shall mean a Lot to which an easement over a Servient Lot created by Article IV of this Declaration is appurtenant (i.e., a Lot owned by an Owner entitled to access such Owner's Lot over certain portions of an adjoining Lot). A Lot may be both a Dominant Lot and a Servient Lot as to different easements created by Article IV hereof, but not as to the same easement.

Section 25. "DRAINAGE SYSTEM" shall mean a system of structures and other improvements, including, without limitation, control structures, culverts, headwalls and/or swales, which is designed and constructed or installed to collect and convey rain water runoff from Esplanade to the water management tracts (i.e., "Lakes," as hereinafter defined) within the Property and/or lakes adjacent to the Property. The Drainage System is located upon and designed to serve the Property.

Section 26. "ESPLANADE" shall mean that planned development located in the County which encompasses the Property, and is presently intended to consist of Lots, Homes, Club Property and Golf Property. Esplanade will initially consist of the Property and may be expanded to include Additional Property or reduced by withdrawal of property, all by the recording of one or more Supplemental Declaration(s).

Section 27. "ESPLANADE DOCUMENTS" shall mean in the aggregate this Declaration, the Articles, the Bylaws, the Plat, the Additional Plat, if any, and all of the instruments and documents referred to herein and therein, including, but not limited to, any Amendment(s) and

Supplemental Declaration(s), all as may be further amended and/or supplemented from time to time.

Section 28. "GOLF MEMBER" shall mean the Owners of Lots within Esplanade to which a Golf Membership has been made an appurtenance. Golf Members shall have full rights of use in the Club Property and Golf Property and facilities, including full golfing privileges.

Section 29. "GOLF MEMBER LOT" shall mean those Lots within Esplanade to which a Golf Membership has been made an appurtenance. A Golf Membership shall not be transferable other than through the sale, lease or conveyance of record legal title to the Lot to which it is appurtenant; however, a Golf Member may delegate his or her Membership privileges to a tenant residing in the Golf Member's Home. Declarant will designate which Lots are Club Member Lots as provided in Article V, Section 2.G below.

Section 30. "GOLF PROPERTY" shall mean the golf course, golf cart facilities, and other facilities and property directly related to the golf course (except the clubhouse, which includes the pro shop and restaurant) and designated by Declarant as Golf Property.

Section 31. "HOME" shall mean a shall mean a portion of the Property intended for development, use, and occupancy as an attached or detached residence for a single family, and shall, unless otherwise specified, include within its meaning (by way of illustration, but not of limitation) condominium units, townhouse units, cluster homes, patio or zero lot line homes, and single-family detached houses on separately platted Lots, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or a part of the Property. The term shall include all portions of a Lot owned, including any structure thereon. In the case of a structure which contains multiple units, each unit shall be deemed to be a separate Home. For purposes of Assessments, a Home is either a Completed Lot, an Incomplete Lot, a Contributing Condominium Unit or an Incomplete Condominium Unit. No portion of any Community System, even if installed in a Home, shall be deemed to be a part of a Home unless and until same is made such pursuant to Article II, Section 10 hereof, if at all. Upon completion of construction of a Home on a Lot or a Condominium Unit, the Lot and the Improvements thereon and the Condominium Units are sometimes collectively referred to as a Home in this Declaration and the Esplanade Documents.

Section 32. "IMPROVEMENT" shall mean all structures or artificially created conditions and appurtenances thereto of every type and kind located within Esplanade, including, but not limited to, buildings, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouses, streets, drives, roads, roadways, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, sheds, play structures, tennis courts, basketball courts, backboards and hoops, soccer goals, jogging, bicycling and walking paths, swing sets, gym sets, athletic/play equipment, site and perimeter walls, gazebos, benches, mailboxes, topographical features, landscaping, lawn sculptures, fences, swimming pools, covered patios, screened enclosures, Street Lights and Decorative Street Lights and signs.

Section 33. "INCOMPLETE CONDOMINIUM UNIT" shall mean any Condominium Unit which has not been issued a certificate of occupancy by the appropriate governmental agency.

Section 34. "INCOMPLETE LOT" shall mean a Lot which is not a Completed Lot.

Section 35. "INCOMPLETE LOT OWNER" shall mean the Owner of an Incomplete Lot.

Section 36. "INSTITUTIONAL MORTGAGE" shall mean a mortgage held by an Institutional Mortgagee on any property within Esplanade.

Section 37. "INSTITUTIONAL MORTGAGEE OR INSTITUTIONAL LENDER" shall mean any lending institution owning a first mortgage encumbering any Home or Lot within Esplanade, which owner and holder of said mortgage shall either be a bank, life insurance company, federal or state savings and loan association, real estate or mortgage investment trust, building and loan association, mortgage banking company licensed to do business in the State of Florida, or any subsidiary thereof, licensed or qualified to make mortgage loans in the State of Florida or a national banking association chartered under the laws of the United States of America or any "secondary mortgage market institution," including the Federal National Mortgage Association ("FNMA"), Government National Mortgage Club ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC") and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; any and all lenders, and the successors and assigns of such lenders, which have loaned money to Declarant and which hold a mortgage on any portion of the Property securing any such loan; any pension or profit-sharing funds qualified under the Internal Revenue Code; the Veterans Administration, the Federal Housing Administration or the Department of Housing and Urban Development or such other lender as is generally recognized in the community as an institutional lender; or Declarant, its successors and assigns.

Section 38. "INTEREST" shall mean the maximum non-usurious interest rate allowed by law on the subject debt or obligation, and if no such rate is designated by law, then eighteen percent (18%) per annum.

Section 39. "LAKES" shall mean those portions of the Property designated on the Plat and/or Additional Plat, if any, as lakes, lake tracts or storm water management tracts.

Section 40. "LAKE LOT" shall mean a Lot within Esplanade abutting one of the Lakes.

Section 41. "LEGAL FEES" shall mean reasonable fees for attorney and paralegal services and all court costs through and including all trial and appellate levels and post-judgment proceedings incurred in connection with: (i) negotiation and preparation for mediation, arbitration or litigation, whether or not an action is actually begun, and (ii) collection of past due Assessments including, but not limited to, preparation of notices and liens.

Section 42. "LOT" shall mean and refer to any parcel of land within Esplanade which has been platted, upon which a Home is permitted to be constructed, together with the Improvements thereon, and any portion of the Property within Esplanade that is declared to be a Lot by a Supplemental Declaration and is not subsequently withdrawn from the provisions of this Declaration by a Supplemental Declaration; provided, however, that no portion of any Community System shall be deemed to be part of a Lot unless and until such Community System

(or portion thereof) is made a part of a Lot pursuant to Article II, Section 10 hereof, if at all. The boundaries of each Lot are shown on the Plat; however, in the case of a building containing multiple Homes for independent sale (*e.g.*, *Condominium Units*), each Home that may be sold independently shall be a separate Lot used interchangeably with the term "Condominium Unit." Upon completion of construction of the Home on a Lot, such Lot and the improvements thereon shall collectively be considered to be a Home for purposes of this Declaration and the other Esplanade Documents. For purposes of Individual Lot Assessments, a Lot is either a Completed Lot or an Incomplete Lot. Upon completion of construction of a Home on a Lot, such Lot and the Improvements thereon are sometimes collectively referred to as a Lot in this Declaration and the Esplanade Documents.

Section 43. "MEMBERS" shall mean and refer to all of the Owners who are also members of the Club, as provided herein.

Section 44. "NEIGHBORHOOD" shall mean and refer to each separately developed and denominated residential area subject to this Declaration comprised of one (1) or more housing types, whether or not governed by an additional owners association, in which Owners may have common interests other than those common to all Members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not available for use by all Members. For example, and by way of illustration and not of limitation, each Condominium shall constitute a separate Neighborhood.

Section 45. "NEIGHBORHOOD ASSOCIATION" shall mean any homeowners, condominium or other common interest association which is formed for a particular Neighborhood to govern the business affairs of any property within that Neighborhood.

Section 46. "NOTICE AND HEARING" shall mean written notice and a public hearing before a tribunal appointed by the Board at which the Owner concerned shall have an opportunity to be heard in person or by counsel, at Owner's expense, in the manner set forth in Section 1 of Article X herein.

Section 47. "OPERATING EXPENSES" shall mean the expenses for which Owners are liable to the Club as described in this Declaration and any other Esplanade Documents and include, but are not limited to: (a) the costs and expenses incurred by the Club in owning, administering, operating, maintaining, financing, or repairing (but not reconstructing, replacing or improving) the Club Property or any portion thereof and Improvements thereon, all other property owned by the Club (including, without limitation, the Drainage System), and (b) all costs and expenses incurred by the Club in carrying out its powers and duties hereunder or under any other Esplanade Documents. Golf Members and Golf Member Lots shall also be responsible for the costs and expenses incurred by the Club in operating and maintaining the Golf Property.

Section 48. "ORIGINAL RESIDENT MEMBER" shall mean the Owners of Original Resident Member Lots within Esplanade to which an Original Resident Membership has been made an appurtenance. Original Resident Members shall have all rights and privileges to use the Club Property, such as the Amenities Center, and shall have access to certain portions of the Golf Property (specifically the clubhouse, restaurant(s) and pro shop). Original Resident Members shall not have golfing privileges. If an Original Resident Member conveys the Original Resident

Member Lot to a new owner, such new owner will automatically become a Club Member and the Original Resident Lot will become a Club Member Lot.

Section 49. "ORIGINAL RESIDENT MEMBER LOT" shall mean those Lots within Esplanade to which an Original Resident Membership has been made an appurtenance. An Original Resident Membership shall not be transferable other than through the sale, lease or conveyance of record legal title to the Lot to which it is appurtenant; however, an Original Resident Member may delegate his or her Original Resident Membership privileges to a tenant residing in the Original Resident Member's Home. Declarant will designate which Lots are Original Resident Member Lots as provided in Article V, Section 2.G of the Declaration.

Section 50. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or Condominium Unit within Esplanade, and includes Declarant for as long as Declarant owns fee simple title to a Lot or Condominium Unit, but excluding therefrom those having such interest as security for the performance of an obligation.

Section 51. "PLAT" shall mean the plats of Esplanade, Phase I recorded in Plat Book 55, Pages 11 through 21; Esplanade, Phase I Subphase H & I recorded in Plat Book 55, Pages 130 through 135; and Esplanade, Phase II recorded in Plat Book 55, Pages 146 through 150, all of the Public Records of the County. In the event an Additional Plat is recorded in the Public Records of the County, then the term "Plat" as used herein shall also mean and refer to the Additional Plat(s).

Section 52. "PROPERTY" shall initially mean and refer to that certain real property described in Exhibit "A" attached hereto and made a part hereof, and thereafter, as applicable, to such additions thereto as may be brought within the jurisdiction of this Declaration and/or the Club; provided, however, Declarant reserves the right to withdraw from the provisions hereof such portion or portions of the Property as Declarant from time to time elects, upon the execution by Declarant of a Supplemental Declaration.

Section 53. "SERVIENT LOT" shall mean a Lot within Esplanade over which an easement is created by Article IV of this Declaration in favor of a Dominant Lot (i.e., a Lot over certain portions of which the Owner of an adjoining Lot has a right of access). A Lot may be both a Servient Lot and a Dominant Lot as to different easements created by Article IV hereof, but not as to the same easement.

Section 54. "STEWARDSHIP DISTRICT" shall mean Lakewood Ranch Stewardship District, an independent special district created pursuant to Chapter 2005-338, Laws of Florida. Owners acknowledge that Chapter 2005-338, Laws of Florida, as amended by Chapter 2009-263, Laws of Florida, constitutes the organizational document of the Stewardship District, and that such documents are publicly available.

Section 55. "SUPPLEMENTAL DECLARATION" shall mean any instrument executed by Declarant which, when recorded in the Public Records of the County, shall: (a) commit Additional Property, if any (provided Declarant is the owner thereof) to the provisions of this Declaration, and shall be the only method of committing such property to the provisions of this

Declaration, (b) withdraw any portion(s) of the Property from the lien and effect of this Declaration, (c) designate portion(s) of the Property or Additional Property to be or not to be Club Property or Golf Property hereunder, and/or (d) be for such other purposes as are provided in this Declaration. A Supplemental Declaration may also be used to impose additional covenants, restrictions, reservations, regulations, burdens, liens and easements upon the Property or any portion thereof and/or remove any of same. The Club shall join in the execution of any Supplemental Declaration at the request of Declarant but such joinder shall not be required to make any such Supplemental Declaration effective. The Owners shall not be required to join in the execution of any Supplemental Declaration but shall nevertheless be bound thereby.

Section 56. "TURNOVER DATE" shall mean the date upon which "Class A Members" (as defined in Article V.D.1 of the Articles), including Declarant, shall assume control of the Club and elect the Board, as more particularly described in Article V.D.2 of the Articles.

Section 57. "WATER MANAGEMENT DISTRICT" shall mean the Southwest Florida Water Management District.

Section 58. "WATER MANAGEMENT DISTRICT PERMIT" shall collectively mean those certain permits issued by the Water Management District under Permit Nos. 44003052.200, 44003052.207 and 44003052.208, as same may be amended, modified or supplemented from time to time. Copies of the Water Management District Permit and any future Water Management District actions shall be maintained by the Club's Registered Agent for the Club's benefit.

## **ARTICLE II**

### **DESCRIPTION OF ESPLANADE**

Section 1. GENERAL PLAN OF DEVELOPMENT. Esplanade comprises the Property encompassing, or which will encompass, Lots, Homes, the Club Property and the Golf Property as more particularly defined by this Declaration and, in addition, lands which Declarant may add, but shall in no way be obligated to add, by one or more Supplemental Declaration(s). The Property initially declared hereunder is described in Exhibit "A" attached hereto. It is presently anticipated that Esplanade will contain single-family Homes, some being side entry Homes, and Condominium Units. Notwithstanding the foregoing, however, Declarant reserves the right to modify its plan of development of Esplanade (including, without limitation, the right to modify the site plan of Esplanade and the right to change the recreational facilities, amenities, Home product types and the number of Homes to be constructed within Esplanade) and/or the right to add land to Esplanade or to withdraw land from Esplanade in its sole and absolute discretion. Therefore, in the event Declarant modifies its plan of development of Esplanade, adds land to Esplanade and/or withdraws land from Esplanade, the number of Lots, the layout of Lots and/or the size of Lots within Esplanade may change and as a result of any changes in the number of Lots, the Assessments required to be paid pursuant to this Declaration may increase or decrease as appropriate. Declarant's general plan of development further contemplates that such Homes shall be whatever types of structures Declarant may choose which are in conformance with this Declaration. Declarant's general plan of development of Esplanade may also include whatever facilities and amenities Declarant considers in its sole judgment to be appropriate to Esplanade, as well as any changes thereto.

Additional Property will become a part of Esplanade if, and only if, Declarant in its sole discretion adds Additional Property to Esplanade by recording a Supplemental Declaration to such effect. Declarant hereby reserves an easement for ingress and egress and for utilities, Community Systems and drainage over, under and across the Property for the benefit of any Additional Property; provided, however, no such easement may be granted upon any portion of the Property that lies directly beneath a Home.

Declarant expressly reserves the right as to the Property to (i) commence construction and development of the Property if and when Declarant desires; (ii) develop the Property (including, without limitation the recreational facilities and amenities), upon such timetable as Declarant, in its sole discretion, chooses; and (iii) modify the plan of development of the Property (including, without limitation, the right to modify the site plan and/or master plan of Esplanade, the right to change the recreational facilities and amenities, and the right to change the Home product types and number of Homes to be constructed within Esplanade) in such manner as Declarant, in its sole discretion, chooses. Nothing contained herein shall be construed as obligating Declarant to construct Esplanade according to the present plan of development or as obligating Declarant to declare any Additional Property to be Property.

Section 2. CLUB PROPERTY. The Club Property shall consist of: (a) the property indicated on the Plat and Additional Plat(s), if any, as Club Property or as property reserved for or dedicated to the Club, and (b) any other property designated as Club Property in this Declaration or any Supplemental Declaration. The Club Property shall be used for recreational and social purposes as well as other proper purposes by the Club and the Owners and their family members, guests, invitees and tenants in accordance with the Esplanade Documents. Club Property may not be altered, modified, removed or replaced by Owners or their family members, guests, invitees or tenants.

The portions of Esplanade described in this Section 2 shall constitute Club Property and shall be used solely in accordance with the covenants, restrictions, reservations, regulations and burdens imposed upon the Club Property including, without limitation, the following:

A. Amenity Center. Esplanade is planned to contain one (1) active Amenity Center and one (1) clubhouse (together, the "Amenity Center"). The Amenity Center shall be part of the Club Property and shall be used for recreational purposes by the Club, and the Owners and their family members, guests, invitees and tenants. Such portions, if any, of the Amenity Center upon which Declarant has constructed or hereafter constructs Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located or to be located thereon. The Amenity Center shall always be kept and maintained by the Club for recreational uses or beautification and attendant uses (e.g., parking spaces within any of the Amenity Center shall be used for proper purposes by those using the recreational facilities but only while using such facilities), and shall be used for such purposes and not for residential, commercial or industrial construction of any kind. The Amenity Center shall be maintained, administered, operated and ultimately owned by the Club.

Declarant reserves the right, but shall not be obligated, to construct additional recreational facilities upon the Amenity Center, and to modify or reduce the facilities and



amenities planned for the Amenity Center. Declarant, at its sole discretion, hereby expressly reserves the right to reduce and/or modify the planned facilities, and to determine the timing of construction of the recreational facilities and installation of amenities. The decision as to whether to construct additional recreational facilities or amenities, to modify the planned facilities or amenities, to reduce the planned facilities, and/or the timing of the construction thereof, shall be in the sole discretion of Declarant.

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

Declarant, its successors and/or assigns, shall have access to the Amenity Center at all times during the development and sale period and the Club shall not impede any such access, and no Owner nor the Club shall do any act which may interfere with Declarant having access to the Amenity Center. Until such time as Declarant no longer owns any portion of the Property, Declarant shall be allowed to use the Amenity Center for sales meetings and sales related functions and for other business purposes or functions Declarant determines in its sole discretion.

B. Roads. The streets, drives and roads ("Roads") which are reserved for or dedicated to the Club on any plat, but specifically excluding any Roads dedicated to the public, shall be Club Property. The Roads shall be used as private roads by Declarant, the Club and the Owners, their family members, guests, invitees and tenants in accordance with the provisions of this Declaration. The Roads shall be maintained, administered, operated and ultimately owned by the Club. Notwithstanding anything to the contrary, each Owner shall be responsible for the maintenance, repair and replacement of the driveway serving his or her Lot, including that portion of the driveway in a Road, if any, unless the driveway was damaged by the Club in the fulfillment of its obligations and duties under this Declaration. The Club shall be responsible for the maintenance, repair and replacement of the common sidewalks within the Property. Any paved pathway leading from the street or driveway to the Home shall be maintained, repaired and replaced by the Owner of the Home to which such paved pathway leads.

C. Landscaped Areas or Grassed Areas. The landscaped areas and grassed areas which are reserved for or dedicated to the Club on any plat shall be Club Property and are to be used, kept and maintained as such by Declarant, the Club, and the Owners within Esplanade, their family members, guests, invitees and tenants, in accordance with the provisions of this Declaration. Such landscaped areas and grassed areas shall be ultimately owned by the Club, and shall be maintained, administered and operated by the Club in accordance with the provisions of this Declaration and the requirements of the appropriate governmental agencies. No Owner may install landscaping or any other improvements in such landscaped areas or grassed areas.

D. Decorative Street Lights. Declarant reserves the right, but shall not be obligated, to install "Decorative Street Lights" in or near the entranceways and gatehouses to Esplanade. The Decorative Street Lights, if installed by Declarant, shall be repaired, replaced, relocated, maintained and owned by the Club. If installed, such Decorative Street Lights will not

be typical of what will be installed in and around the Lots. Nothing in this Declaration shall be construed to require Declarant or the Club to install Decorative Street Lights within Esplanade.

E. Gatehouse, Entranceway(s) and Entry Gate(s). Esplanade may include gatehouse(s), entranceway(s) and entry gate(s) installed by Declarant. Such gatehouse(s), entranceway(s) and/or entry gate(s) shall be deemed Club Property and shall be administered, maintained, operated, repaired and/or replaced by the Club and the expense thereof shall be included as an Operating Expense. The gatehouse and/or entry gate(s), if any, may or may not be staffed, as determined in the sole discretion of the Club. All other portions of the entranceway(s) shall also be owned and maintained by the Club. Neither Declarant nor the Club makes any representations whatsoever as to the security of the Property or the effectiveness of any gatehouse and/or entry gate(s). All Owners agree to hold Declarant and the Club harmless from any loss or claim arising within the Property from the occurrence of a crime or other act. The Owners acknowledge that the gatehouse and entry gate(s) are designed only to restrict vehicular access to Esplanade, and will not be able to prevent crime. Notwithstanding anything herein to the contrary, neither Declarant nor the Club makes any representations whatsoever to commence, complete, construct or staff any gatehouse(s) or entry gate(s) within any specific time period.

Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers shall have access to the Esplanade property at all times and the Club shall not impede any such access. Any gatehouse(s), entranceway(s) and entry gate(s) installed shall remain open during construction and sales hours to allow Declarant, its successors, assigns, employees, contractors, sub-contractors and potential purchasers access to the Esplanade property. Declarant hereby reserves and grants an easement in favor of itself, its successors and/or assigns throughout all portions of Esplanade as may be necessary for the purpose of accessing the Property during the development and sale period and no Owner or the Club shall do any act which may interfere with Declarant having access through the gatehouse(s), entranceway(s) and entry gate(s). Declarant hereby reserves and grants an easement in favor of the Club throughout all portions of Esplanade as may be necessary for the purpose of accessing the Property, maintaining and administering the gatehouse(s), entranceway(s) and entry gate(s), and no Owner shall do any act which may interfere with the performance by the Club of its obligations hereunder or to interfere with access to through the gatehouse(s), entranceway(s) and entry gate(s).

F. Buffers. The "Buffers" are those portions of the Property which run along the outer perimeter of the Property, or adjacent to certain Roads. The Buffers shall be maintained by the Club in accordance with the provisions of this Declaration and the requirements of the appropriate governmental authorities. In order to preserve the aesthetic image of Esplanade and to help maximize the Owners' use and enjoyment thereof, no Improvements, landscaping or other additions and/or deletions are permitted within the Buffers without the prior written consent of the Club and appropriate governmental agencies, excepting any Improvements, landscaping or other additions made or installed by Declarant and/or the Club, such as, but not limited to, berms, landscaping, fences, sod, signs, walkways, walls and light poles, excluding the post lights installed in the front yards of Homes by Declarant, which shall be maintained, repaired and replaced by the Owners.

G. Drainage System. The Club shall be responsible for all costs associated with all cleaning, maintenance, repair and replacement of any portion of the Drainage System on the Property owned by the Club and necessary to maintain the system in its original condition and use. The Stewardship District shall be responsible for all costs associated with all cleaning, maintenance, repair and replacement of any portion of the Drainage System on the Property owned by the Stewardship District and necessary to maintain the system in its original condition and use.

H. Irrigation System(s). The irrigation system(s) serving the Club Property and any or all of the Lots within Esplanade as described in Article VI, Section 7 hereof.

I. Right to Add Additional Improvements. Such portions of the Club Property upon which Declarant has constructed, or Declarant or the Club hereafter constructs, Improvements shall be kept and maintained for use in a manner consistent with the nature of such Improvements located, or to be located, thereon. Declarant and the Club reserve the right, but shall not be obligated, to construct additional facilities upon the Club Property. Declarant's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of Declarant, and the Club's decision as to whether to construct additional facilities and the construction thereof shall be in the sole discretion of the Club.

Section 3. GOLF PROPERTY. The Club shall operate, maintain and, when deeded by Declarant, hold record legal title to the Golf Property. The Golf Property consists of the golf course, golf cart facilities, maintenance facilities, and other facilities and property directly related to the golf course and designated by Declarant as Golf Property. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Golf Property consistent with the Esplanade Documents. Use of the Golf Property shall be available to all Golf Members and their invitees, guests, family members and tenants, on a non-exclusive basis subject to the rules and the Esplanade Documents. THE COSTS OF OPERATING AND MAINTAINING THE GOLF PROPERTY AND THE FACILITIES LOCATED THEREON, OR CONNECTED THEREWITH, SHALL BE ASSESSED AGAINST THE GOLF MEMBERS ONLY AND GOLF MEMBER LOTS. THE COSTS OF RESERVES FOR REPAIRING AND REPLACING THE GOLF PROPERTY AND THE FACILITIES LOCATED THEREON, OR CONNECTED THEREWITH, SHALL BE ASSESSED AGAINST ALL MEMBERS AND ALL LOTS. The Club shall have, without limitation, the following powers:

A. To lease, assign or otherwise transfer the operating rights to, and any and all profits from, any restaurant, snack bar, pro shop or other facility on the Golf Property to a third party.

B. To restrict or prohibit the recovery of lost golf balls on and around the golf course and in water hazards and to sell or assign the exclusive right to do so to commercial enterprises.

C. To restrict or prohibit use of the cart paths, and the golf course generally, for jogging, cycling, walking pets or other activities not directly related to the playing of golf.

D. To employ personnel as the Club shall determine to be necessary or desirable for the Golf Property.

E. To acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

Section 4. LAKES. The "Lakes," and wetlands, if any, within the Property shall always be kept and maintained as Lakes for water retention, drainage, irrigation, littoral plantings and water management purposes in compliance with all applicable governmental requirements including, without limitation, the requirements of the Water Management District. The Lakes shall be maintained, administered, operated and ultimately owned by the Stewardship District. In furtherance of the foregoing, Declarant hereby reserves and grants an easement in favor of the Stewardship District throughout all portions of Esplanade as may be necessary for the purpose of accessing, maintaining and administering the Lakes and wetlands, if any, and no Owner shall do any act which may interfere with the performance by the Stewardship District of its obligations hereunder.

Water levels in the Lakes within and adjacent to the Property may rise and fall significantly due to, among other things, certain natural causes including, without limitation, rain, sun, and fluctuations in ground water elevations within the surrounding areas. Accordingly, Declarant has no control over such water levels and/or ground water elevations. Each Owner, by acceptance of a deed or title to a Lot, hereby releases Declarant, the Club, the Stewardship District and the County from and against any and all losses, claims, demands, liabilities, damages, costs and expenses of whatever nature or kind (including, without limitation, Legal Fees), related to, arising out of and/or resulting from water levels in the Lakes regardless of the cause thereof.

DECLARANT, THE STEWARDSHIP DISTRICT AND THE CLUB SHALL NOT BE OBLIGATED TO PROVIDE SUPERVISORY PERSONNEL, INCLUDING, BUT NOT LIMITED TO, LIFEGUARDS, FOR THE AMENITY CENTER, THE LAKES, AND/OR ANY OTHER PORTIONS OF THE CLUB PROPERTY OR GOLF PROPERTY. ANY INDIVIDUAL USING THE AMENITY CENTER, THE LAKES, AND/OR ANY OTHER PORTIONS OF THE CLUB PROPERTY OR GOLF PROPERTY SHALL DO SO AT HIS OR HER OWN RISK AND HEREBY HOLDS DECLARANT, THE STEWARDSHIP DISTRICT AND THE CLUB HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS (INCLUDING, WITHOUT LIMITATION, THOSE FROM PROPERTY DAMAGE, INJURY AND/OR DEATH) ARISING FROM SUCH USE.

EACH OWNER, BY THE ACCEPTANCE OF A DEED OR TITLE TO A LOT, ACKNOWLEDGES THAT THE LAKES ARE EXTREMELY DEEP AND DANGEROUS. NEITHER DECLARANT, THE STEWARDSHIP DISTRICT THE CLUB, NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, PARTNERS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF/IN ANY LAKE, POND, CREEK, STREAM OR OTHER WATER BODY WITHIN OR AROUND ESPLANADE, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY

IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES SHALL BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING SAME DOING SO AT THEIR OWN RISK. ALL OWNERS AND USERS OF ANY PORTION OF ESPLANADE SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED OR TITLE TO OR USE OF SUCH PROPERTY, TO HAVE AGREED TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE SAFETY, QUALITY AND LEVEL OF THE WATER IN SUCH BODIES. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES WITHIN OR NEARBY ESPLANADE AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

Notwithstanding anything contained herein to the contrary, and subject to the rights and obligations of the Stewardship District to maintain the Lakes as described in this Declaration for water retention, drainage, irrigation and water management purposes for all of Esplanade, and the right of the Stewardship District to adopt rules from time to time with respect to the use of the Lakes for such purposes, the Lakes shall be reserved for the private use and enjoyment of all Owners, their family members, guests, invitees and tenants, but only in accordance with this Declaration.

No swimming, fishing, boating or other water vehicle or craft shall be permitted on the Lakes, except as described herein. The Club may permit Owners and their family members, guests, invitees and tenants to operate non-motorized watercraft on the Lake adjacent to the Amenity Center parcel and described herein as the Recreation Lake. Watercraft shall be limited in size to eighteen feet (18') in length. No other persons shall be entitled to operate watercraft in the Recreation Lake. Only "catch and release" fishing in the Lakes shall be permitted.

No planting, fencing or other Improvements or additions to the landscaped area or grassed area surrounding a Lake and outside the Lot or within a Lake Maintenance Easement or Lake Maintenance Access Easement is permitted. No installation of sand or other materials intended to simulate a beach shall be permitted along the Lake banks or within the Lake Maintenance Easements or Lake Maintenance Access Easements or rear yards of Lake Lots; provided, however, Declarant shall have the right, but not the obligation, to install sand along the Lake banks (and/or within the Lake Maintenance Easements and/or Lake Maintenance Access Easements) that are adjacent to the Amenity Center, and if Declarant installs such sand, it shall be the Club's obligation to maintain and replace the same, and the expense thereof shall be included as an Operating Expense. The Lake Maintenance Easement is for the use of the Club, the County, the Water Management District, the Stewardship District and any other governmental or quasi-governmental agency for access to the Lakes for maintenance of the Lakes and littoral plantings and other proper purposes. No alteration, relocation, removal or damage to littoral plantings, wetland plantings or upland plantings located in Lake Maintenance Easements is permitted by any Owner.

Section 5. STREET LIGHTS. The "Street Lights" and any associated facilities placed within the Property and any street lights and associated facilities placed within public rights of way by agreement between Declarant or Club and the public utility responsible therefor, are or shall be installed by the public utility responsible therefor, and if installed, will be repaired, replaced, relocated, maintained and owned by the public utility responsible therefor, but the Club shall be responsible to pay all fees associated with the leasing of such Street Lights and for the furnishing of electricity thereto, at a set rate pursuant to a street lighting agreement entered into or to be entered into with such public utility. If Declarant installs Street Lights, the Club will own the Street Lights and the Club will be responsible for the costs of maintaining, repairing and replacing the Street Lights. Nothing in this Declaration shall be construed to require Declarant to install Street Lights within Esplanade.

Declarant intends to install post lights in the front yards of Homes. The Club shall control the timers for such post lights, however Owners are responsible for the replacement of the light bulbs, and the maintenance, repair and replacement of the post lights. Owners are required to immediately replace any burned out bulbs in such post lights. If the Owner fails to perform its maintenance responsibility as required herein the Club may perform such maintenance and assess the costs against the Owner as a Benefited Assessment.

Section 6. COSTS. All costs associated with operating, maintaining, repairing and replacing the Club Property and the Golf Property shall be the obligation of the Club. The Club Property and the Golf Property shall be conveyed to the Club in accordance with the provisions of Article III, Section 6 hereof.

Section 7. PRIVATE USE. For the term of this Declaration, the Club Property (except as otherwise specifically provided in this Declaration) is not for the use and enjoyment of the public, but is expressly reserved for the private use and enjoyment of Declarant, the Club, and the Owners, and their family members, guests, invitees and tenants, but only in accordance with this Declaration.

A. Notwithstanding anything in this Declaration to the contrary, however, Declarant hereby expressly reserves for itself and its affiliates the right to use the Club Property (including, without limitation, the Amenity Center and all parking spaces within or adjacent to the Amenity Center, if any) and the Golf Property for such period of time as Declarant determines to be necessary in connection with the sale and marketing by Declarant and/or its affiliates of Homes in Esplanade and/or in any other communities developed or to be developed by Declarant or its affiliates, including, but not limited to, the holding of sales and marketing meetings, the use of "model row(s)" if one or more, the use of design centers, the use of service and construction trailers, and engaging in sales promotions and related sales and marketing activities for the general public.

B. Except to the extent provided herein and elsewhere in the Esplanade Documents, the Club Property and the Golf Property shall be for the sole and exclusive use of the Owners and residents of Esplanade and their family members, guests, invitees and tenants, but with the use of the Golf Property being limited to Golf Members and their family members, guests, invitees and tenants.

C. The administration, management, operation and maintenance of the Club Property and the Golf Property shall be the responsibility of the Club, as provided herein and in the Esplanade Documents.

D. The right to use the Club Property and the Golf Property shall be subject to the rules and regulations established by the Club as the same may be amended from time to time.

Section 8.     INTENTIONALLY OMITTED. .

Section 9.     MODEL ROW. Declarant hereby reserves the right to construct and/or operate a "model row(s)" in Esplanade that contains models for Esplanade. The "model row(s)" may also contain parking, landscaping and fencing across Roads as Declarant may determine in its sole discretion. In the event that Declarant and/or any of Declarant's affiliates constructs a "model row(s)" in Esplanade, such "model row(s)" may be used for such period of time that Declarant and/or any of Declarant's affiliates determine to be necessary in its or their sole discretion. Each Owner, by acceptance of a deed or title to a Lot in Esplanade, acknowledges and agrees that: (i) Declarant and/or any of Declarant's affiliates have a right to construct and/or operate a "model row(s)"; (ii) Declarant and/or any of Declarant's affiliates have an easement over Esplanade for ingress and egress to and from the "model row(s)" and to use and show the models to prospective purchasers in Esplanade or other communities being developed by Declarant and/or any of Declarant's affiliates, for so long as such "model row(s)" exists; and (iii) Owner shall not interfere in any manner whatsoever in the sales process by Declarant and/or any of Declarant's affiliates, including, without limitation, the carrying of signs, the posting of signs on Lots or Homes, or other types of demonstrations in or around Esplanade or any public right-of-way adjacent to the Property. Each Owner acknowledges and agrees that any such activities interfere with the quiet enjoyment of Esplanade by the other Owners, are detrimental to the value of the Homes within Esplanade, and interfere with Declarant's and/or its affiliates' ability to conduct their business.

Section 10.    COMMUNITY SYSTEMS. Declarant shall have the right, but not the obligation, to convey, transfer, sell or assign all or any portion of the Community Systems located within the Property, or all or any portion of the rights, duties or obligations with respect thereto to the Club or any other person or entity (including an Owner, as to any portion of a Community System located on/in such Owner's Lot). Without limiting the generality of this Section 10, if and when any of the aforesaid persons and/or entities receive such a conveyance, sale, transfer or assignment, such person and/or entity shall automatically be deemed vested with such rights of Declarant with regard thereto as are assigned by Declarant in connection therewith; provided, however, that if the Club is the applicable entity, then any Community Systems or portions thereof shall be deemed Club Property hereunder and the Club's rights, duties and obligations with respect thereto shall be the same as those applicable to other Club Property unless otherwise provided by Declarant. Any conveyance, transfer, sale or assignment made by Declarant pursuant to this Section 10: (i) may be made with or without consideration, (ii) shall not require the consent or approval of the Club or any Owner, and (iii) if made to the Club, shall be deemed to have been automatically accepted (with all rights, duties, obligations and liabilities with respect thereto being deemed to have been automatically assumed). In recognition of the intended increased effectiveness and potentially reduced installation and maintenance costs and

user fees arising from the connection of all Lots and Club Property within Esplanade to the applicable Community Systems, each Owner and occupant of a Home shall, by virtue of the acceptance of a deed or title to a Lot or other right of occupancy thereof, be deemed to have consented to and ratified any and all agreements to which the Club is a party which is based upon (in terms of pricing structure or otherwise) a requirement that all Lots be so connected. The foregoing shall not, however, prohibit the Club or Community Systems provider from making exceptions to any such 100% use requirement in its reasonable discretion. WITH RESPECT TO COMMUNITY SYSTEMS, ALL PERSONS ARE REFERRED TO ARTICLE VI, SECTION 6 HEREOF, WHICH SHALL AT ALL TIMES APPLY TO THIS SECTION.

### ARTICLE III

#### **ADDITIONS TO AND WITHDRAWALS FROM THE PROPERTY; CONVEYANCE OF CLUB PROPERTY AND GOLF PROPERTY**

Section 1. **ADDITIONS.** Declarant may from time to time, in its sole discretion, by recording appropriate Supplemental Declaration(s) in the Public Records of the County, add any Additional Property or any other real property to the Property governed by this Declaration, and may declare all or part of such Additional Property or other property (including any Improvements thereon) to be Lots, Club Property or Golf Property. Upon the recording of a Supplemental Declaration, the property described therein shall be deemed part of the Property as if it were originally included therein and subject to this Declaration. Any such Supplemental Declaration may submit any Additional Property or any other real property to such modifications of the covenants, restrictions, reservations, regulations, burdens, liens and/or easements contained in this Declaration as may be necessary or convenient to reflect or adapt to any changes in circumstances or differences in the character of any such Additional Property or other property. Nothing contained in this Section 1 shall be construed to require the joinder by or consent of the Owners or the Club to any such Supplemental Declaration; provided, however, the Club shall join in the execution of any such Supplemental Declaration at the request of Declarant. In addition, nothing herein shall require Declarant to add any Additional Property.

Section 2. **DESIGNATION OF ADDITIONAL CLUB PROPERTY OR GOLF PROPERTY.** Declarant may, from time to time, by recording Supplemental Declarations in the County, designate additional portions of the then existing Property owned by it to be Club Property or Golf Property.

Section 3. **DISCLAIMER OF IMPLICATION.** Only the real property described in Exhibit "A" hereto is submitted and declared as the Property subject to this Declaration. Unless and until a Supplemental Declaration is recorded in the fashion required pursuant to this Declaration, no other property (including any Additional Property) shall in any way be deemed to constitute a portion of the Property or be affected by the covenants, restrictions, regulations, burdens, liens and easements expressly binding the Property as provided by the terms of this Declaration.

Section 4. **ABSENCE OF OBLIGATION.** Nothing in this Declaration shall be construed to require Declarant to add any Additional Property to the Property encumbered by this Declaration or to require Declarant to declare any portion of any properties added to the Property to be Club Property or Golf Property, nor shall anything in this Declaration be construed to require



Declarant to declare any portion or portions of the existing Property as Club Property or Golf Property, except to the extent herein specifically provided.

Section 5. WITHDRAWAL. Notwithstanding anything herein to the contrary, Declarant reserves the absolute right at any time to withdraw portions of the Property from the provisions of this Declaration by recording an appropriate Supplemental Declaration in the County. Any such Supplemental Declaration must be executed by Declarant, the Owner of each Lot located on the Property sought to be withdrawn (if any) and each holder of an Institutional Mortgage on a Lot located on the Property sought to be withdrawn (if any), in order to be effective. Nothing contained in this Section shall be construed to require the joinder by or consent of the Owners of Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, such Owners' Institutional Mortgagees holding mortgages on Lots on the portion of the Property which is not withdrawn by such Supplemental Declaration, or the Club.

Section 6. TITLE TO THE CLUB PROPERTY AND GOLF PROPERTY. To the extent herein provided, the Club Property and the Golf Property is hereby dedicated to the joint and several use in common of the Owners of all Lots (but specifically limiting the Golf Property's use to Golf Members only) that may, from time to time, constitute part of the Property. On or prior to the Turnover Date, Declarant or its successors and assigns shall convey and transfer to the Club, by quitclaim deed, the fee simple title to the Club Property and the Golf Property free and clear of any mortgages and the Club shall accept such conveyance, holding title for the Owners as aforesaid. Such conveyance shall be subject to: (i) real estate taxes and assessments due with respect to the Club Property and the Golf Property from and after the date of recording of this Declaration; (ii) all laws, ordinances, regulations, restrictions, prohibitions and other requirements imposed by governmental authorities, including, without limitation, all building, zoning, land use and environmental laws, ordinances, codes and regulations; (iii) matters which would be disclosed by an accurate survey of the Club Property and the Golf Property; (iv) easements, covenants, conditions, restrictions, reservations, limitations and other matters of record; and (v) the terms and provisions of this Declaration, as the same may have been modified, amended and/or supplemented from time to time. Declarant is not obligated to provide the Club with a survey.

At the time of conveyance of the Club Property and the Golf Property or any portion thereof, the Club shall be required to accept the Club Property and the Golf Property, together with the personal property and Improvements appurtenant thereto, if any. The Club hereby agrees to accept the Club Property and the Golf Property and the personal property and Improvements appurtenant thereto in "AS IS" "WHERE IS" condition, without any representation or warranty, expressed or implied, in fact or by law, as to the condition or fitness of the Club Property and the Golf Property or any portions thereof, and the personal property and Improvements appurtenant thereto being conveyed. IN THAT REGARD, THE CLUB AND EACH OWNER KNOWINGLY AND VOLUNTARILY RELINQUISHES AND WAIVES, AND DECLARANT EXPRESSLY DISCLAIMS, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED) AS TO THE CLUB PROPERTY, THE GOLF PROPERTY AND PERSONAL PROPERTY AND IMPROVEMENTS WHETHER ARISING FROM CUSTOM, USAGE OR TRADE, COURSE OF CONDUCT, COURSE OF DEALING, CASE LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF HABITABILITY,

ANY IMPLIED WARRANTY OF MERCHANTABILITY OR ANY IMPLIED WARRANTY OF FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE.

TO THE EXTENT THAT BY LAW OR OTHERWISE ANY OF THE WARRANTIES RELINQUISHED, WAIVED OR DISCLAIMED CANNOT BE RELINQUISHED, WAIVED OR DISCLAIMED, IN WHOLE OR IN PART, ALL SECONDARY, INCIDENTAL AND CONSEQUENTIAL DAMAGES ARE SPECIFICALLY EXCLUDED AND DISCLAIMED (INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM CLAIMS OF PROPERTY DAMAGE, LOSS OF USE, PERSONAL INJURY OR EMOTIONAL DISTRESS). Without limitation, the Club shall accept all Roads, bridges and sidewalks, including, without limitation, all gutters, curbs and paver bricks located within and adjacent to the Roads and sidewalks, all as installed by Declarant, provided such Roads, bridges, sidewalks, gutters, curbs and paver bricks perform their intended purposes. The Club and all Owners hereby further acknowledge and agree that small cracks in the Roads, bridges, sidewalks, gutters, curbs and paver bricks as well as the ponding or collection of water following periods of rain thereon are normal and shall not be considered to be defects or deficiencies of any kind whatsoever.

The Club and each Owner acknowledges and agrees that Declarant has or will install trees, shrubs, plants and other landscaping that meets or exceeds the requirements of the County Land Development Code ("LDC") and that from the time of such initial installation, such trees, shrubs, plants and other landscaping may mature, expand, decay and/or die from time to time. After the Turnover Date, the Club shall have no claim whatsoever against Declarant and hereby releases any and all claims against Declarant for any trees, shrubs, plants, sod, grass and other landscaping that has decayed or died regardless of the reasons therefor so long as all of the remaining trees, shrubs, plants, sod, grass and other landscaping, when looked at as a whole, exceed the minimum requirements of the LDC.

The Club and each Owner acknowledges and agrees that Declarant has or will install irrigation system(s) for the golf course, the Club Property and the Lots and that the Club shall accept the conveyance of such irrigation system(s) from Declarant in their "as-is" condition. Due to watering restrictions instituted by the Water Management District, Declarant cannot guarantee that the irrigation system(s) pumps will be able to provide adequate water or pressure at all times for the golf course, the Club Property and the Lots. After the Turnover Date, the Club shall have no claim whatsoever against Declarant and hereby releases any and all claims against Declarant for any lack of water pressure or adequate water supply regardless of the reasons therefor.

The Club and each Owner acknowledges and agrees that Declarant has or will install the Drainage System and that the Club shall accept the conveyance of such Drainage System from Declarant in its "as-is" condition. Declarant cannot guarantee that the Drainage System will be able to provide adequate drainage during periods of heavy rain and therefore temporary ponding may occur. After the Turnover Date, the Club shall have no claim whatsoever against Declarant and hereby releases any and all claims against Declarant for any temporary ponding that may occur.

The Club shall accept this conveyance of the Club Property (together with the personal property and Improvements appurtenant thereto) and shall pay all costs of such conveyance including documentary stamps and other taxes of conveyance, recording charges, title insurance expenses and insurance fees. The conveyance shall not, however, impair in any way Declarant's rights and easements as set forth in this Declaration.

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

The Owners (including Declarant as to Lots owned by it) shall have no personal liability for any damages: (i) for which the Club is legally liable, or (ii) arising out of, relating to, or in connection with the existence or use of any Club Property, the Golf Property or any other property required to be maintained by the Club.

Subject to the foregoing, Declarant may mortgage any or all portions of the Club Property and the Golf Property to finance construction and development expenses provided that the mortgagee recognizes the rights of Owners under this Declaration and neither the Club nor any Owner is personally liable for paying the mortgage. In such event, neither the Club nor the Owners shall be required to join in or be entitled to consent to such mortgage. The Club Property and the Golf Property shall be released from any such mortgage no later than the date same is conveyed to the Club.

Section 7. PARKING RIGHTS. The Club may maintain upon the Club Property and the Golf Property parking spaces for Owners, occupants, visitors and guests. The use of such parking spaces by Owners, occupants, visitors and guests shall be subject to duly adopted rules and regulations of the Club, as the same may be amended from time to time.

#### **ARTICLE IV OWNERS' PROPERTY RIGHTS**

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every Owner and family member, guest, tenant, agent or invitee of an Owner shall, except as may otherwise be provided in this Declaration, have a permanent and perpetual, nonexclusive easement for ingress and egress over, enjoyment in, and use of Club Property within the Property (except as may otherwise be specifically provided elsewhere in this Declaration), in common with all other Owners, their family members, guests, tenants, agents and invitees, which easement shall be appurtenant to, and shall pass with a deed and/or title to, each Owner's Lot. This right shall be subject to the following conditions and limitations:

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

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

C. The right of the Club to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the use of the Club Property.

D. The right of the Club to establish, amend and/or abolish from time to time, uniform rules and regulations pertaining to the Lots for the purposes of enhancing the aesthetic uniformity of the Property.

E. The right of the Club in accordance with its Articles, Bylaws, and this Declaration, with the vote or written assent of two-thirds (2/3) of the total voting interests, except as provided to the contrary in this Declaration, to borrow money for the purpose of improving the Club Property and Improvements thereon, and, in aid thereof, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, provided that the rights of such mortgagee shall be subordinated to the use rights of the Owners in the Club Property. Notwithstanding the foregoing, such two-thirds (2/3) vote or written assent of total voting interests shall not be required for such Improvements made for the sole purpose of preservation of, or prevention of damage to Club Property.

F. The right of the Club to dedicate, release, alienate, or transfer all or any part of the Club Property owned by the Club to any public agency, authority, or utility and to grant any covenant, restriction or reservation against the Club Property in favor of any such public agency, authority, or utility; provided, however, no such dedication, release, alienation, or transfer shall be effective unless Members entitled to cast two-thirds (2/3) of the total voting interests agree to such dedication, release, alienation or transfer.

G. The right of the Club, without any vote of the Owners, to grant easements and rights-of-way, where necessary or desirable, for utilities, water and sewer facilities, cable television, irrigation, drainage and other services over the Club Property to serve the Club Property and other portions of the Property without vote of the Owners.

H. The right of Declarant, Declarant's affiliates, and each of their respective officers, directors, partners, employees, agents, licensees, and invitees to the nonexclusive use of the Club Property and the Improvements thereon, without charge, for sales, marketing, display, access, ingress, egress, construction, and exhibit purposes, and to grant (without consent of the Club and/or vote of the Owners) easements and rights-of-way as provided in this Declaration.

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

J. The right, however not the duty, of the Club to replace destroyed trees or other vegetation and plant trees, shrubs, sod, grass and ground cover upon any portion of the Club Property.

K. The right, however not the duty, of the Club by action of the Board to seek the vacation of publicly dedicated streets and/or easements, if any, upon the Property.

L. The right, however not the duty, of the Club, following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees on: (i) any Lot, and/or (ii) any grassed areas located between the front and/or side(s) of such Owner's Lot and the street; all as more particularly set forth in Section 1.G. of Article IX below.

M. The easements provided elsewhere in this Declaration, designated on the Plat, or on the Additional Plat(s), if any, including, but not limited to, those set forth in this Article IV.

N. The right of the Club to provide for the maintenance, preservation and architectural control of Lots, Improvements and other properties as set forth in this Declaration.

O. The right of the Club and Declarant and their respective employees, agents, licensees, and invitees to come upon the Property (including, without limitation, Club Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient for the Club and/or Declarant to carry on their respective duties, obligations, responsibilities under, and all other work referred to in, this Declaration (including, without limitation, Declarant's development and construction of Esplanade and Homes therein).

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

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

Section 4. EASEMENTS FOR VEHICULAR TRAFFIC. In addition to the general easements for use of the Club Property reserved herein, there shall be, and Declarant hereby reserves, grants, and covenants for itself and all future Owners, their family members, guests, invitees and tenants, Institutional Mortgagees of the Property (or portions thereof), and to the Club, that all of the foregoing shall have a perpetual nonexclusive easement for vehicular traffic over (i) all streets within or upon the Property dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), and (ii) any private Roads within or upon the Property.

Section 5. ACCESS EASEMENT. Declarant hereby reserves perpetual, nonexclusive easements of ingress and egress over and across: (i) any and all streets within or upon the Property dedicated to the public use, if any (as well as alcoves, cul de sacs, and other private, paved areas abutting or serving the same), (ii) any private Roads and driveways within or upon the Property, and (iii) all other portions of the Property, any of the foregoing of which are

necessary or convenient for enabling Declarant to carry on and complete the work and/or exercise its rights referred to in this Declaration. All of the foregoing easements shall be for the use of Declarant, Declarant's employees, contractors and agents, Declarant's successors and assigns, Owners, and the respective tenants, employees, agents, invitees, and licensees of Declarant and Owners.

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

A. Utility and Services Easements. All of the Property shall be subject to an easement or easements to provide for: (i) installation, service, repair and maintenance of the equipment required to provide utility services other than Community Systems to the Club Property, the Golf Property and the Lots, including, but not limited to, electric, telephone, gas, water, sewer, irrigation and drainage, and (ii) governmental services, including, but not limited to, police, fire, mail, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

B. Easement for Encroachment and Sidewalks. All of the Property shall be subject to an easement or easements for encroachment in favor of each Owner in the event any portion of such Owner's Home or appurtenant Improvements installed by Declarant such as stucco, a fence or underground footer now or hereafter encroaches upon any of the Lots as a result of minor inaccuracies in survey or construction, by design, or due to settlement or movement. Such encroaching Improvements installed by Declarant shall remain undisturbed for so long as the encroachment exists. Any easement for encroachment shall include an easement for the maintenance and use of the encroaching Improvements in favor of the Owner thereof or such Owner's designees.

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. Such easement shall permit encroachments between Lots only by a structure or fixture (i) which has been built by Declarant or approved in accordance with Article IV of this Declaration, or (ii) which is unintentionally constructed on another's property. An encroachment easement between Lots shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the person claiming the benefit of such easement. All Lots shall be subject to an easement for any Common Area sidewalks placed upon such Lots by Declarant.

C. Side Entry Maintenance Easements.

(1) Preamble: A portion of the Homes in Esplanade may be designed and site planned as "side entry" Homes, such that each side entry Home is constructed so that all or portions of one side of such Home are situated on or near the side boundary lines of the Lot. Because of this design, it is necessary to provide a means by which the Owner of a Lot

("Dominant Lot") containing such a Home may have access to all sides of the Home (and other portions of such Owner's Lot and Home) in order to maintain portions of the Lot, the side(s) of the Home, the roof and other applicable portions of the Home and Lot, and so that rain water may run off the roof of a particular Home onto the easement area described below. Because such access must be, of necessity, over those portions of the neighboring Lot or Lots ("Servient Lot[s]") adjacent to the side of such a Home near the Servient Lot, Declarant hereby makes provision for the "Maintenance Easements" declared and regulated pursuant to this Section 6 (as well as similar easements for the aforesaid purposes which may, but need not, appear on the Plat).

(2) Creation and Extent of Maintenance Easement: Declarant hereby reserves a permanent and perpetual non-exclusive maintenance easement in favor of each Dominant Lot over the unimproved portion of the Servient Lot(s) adjacent to the building lines of the "side entry" Home located on the Dominant Lot, which building lines are co-extensive with the Lot lines dividing the aforesaid Lots ("Maintenance Easement"). Said Maintenance Easement shall be appurtenant to and pass with the deed or title of the Dominant Lot and the Servient Lot(s). The Maintenance Easement shall be only as extensive as reasonably necessary to permit the Owner of a Dominant Lot to make the uses described in the Preamble above, subparagraph (3) below and for rainwater run-off, but in no event less than seven (7) feet off the face of the Home or as may be otherwise shown as a maintenance, access or similar easement on the Plat. In order for an Owner to access the Maintenance Easement described herein, such Owner must provide the neighboring Owner with at least 48 hours, except in the case of an emergency, advance notice of needing to utilize the Maintenance Easement.

(3) Use and Conditions of Maintenance Easement: The Owner of a Dominant Lot, such Owner's guests, invitees, contractors, subcontractors, suppliers, laborers and other service personnel, shall be entitled to enter onto the appurtenant Maintenance Easement for purposes of maintaining, repairing and replacing portions of such Owner's Lot and Home including, without limitation, the Home's walls, roof, fence, landscaping and other installations which cannot be conveniently or properly maintained, repaired or replaced solely from the Dominant Lot. The right of each Owner of the Dominant Lot to use the Maintenance Easement shall be limited to the aforesaid uses, and such Owner shall not do anything within the Servient Lot(s) which shall cause damage to the Servient Lot(s) or any Improvement or landscaping thereon which is not promptly and fully remedied by said Owner by returning such damaged Improvement or landscaping to the condition immediately preceding said damage, shall create an undue hazard to persons or pets located on or coming into the Servient Lot(s) or is in furtherance of any activity as to the Dominant Lot or the Home thereon which is, or would result in, a violation of the restrictions set forth in the Esplanade Documents. The Owner of the Dominant Lot shall, by virtue of making use of any Maintenance Easement, be deemed to indemnify the Owner of a Servient Lot for any and all losses, costs, expenses or damage to any person or property incurred by reason of the former's violations of the restrictions contained herein.

(4) Servient Lot Owner Duties: Owners of Servient Lots shall not make any Improvement to the Servient Lot, including, without limitation, the placement of fences or landscaping, which would unreasonably interfere with the permissible uses of any maintenance or access easement appurtenant to the adjoining Dominant Lot reserved hereby or with the flowage easement described in this Section 6. Notwithstanding the foregoing, except as

provided in Article X, Section 18 hereof, the Owner of a Servient Lot may install a fence or landscaping thereon provided such installation is approved by the Committee pursuant to Article VIII hereof, and such fence must contain a gate to permit the maintenance or access easement and to permit the Club access for maintenance of the lawn and landscaping.

(5) Reciprocity: Each Owner, by acceptance of a deed or title for a Lot containing a side entry Home, hereby acknowledges and agrees that such Owner's Lot may not only be a Dominant Lot having rights across adjacent Servient Lot(s) as hereinbefore described, but also a Servient Lot encumbered by the easement rights hereinbefore described in favor of the Dominant Lots adjacent to such Owner's Lot.

D. Easement to Enter Upon Lots. An easement or easements for ingress and egress in favor of the Club, including the Board or the designee of the Board, to enter upon the Lots for the purposes of fulfilling its duties and responsibilities of ownership, maintenance and/or repair in accordance with the Esplanade Documents, including, by way of example, the making of such repairs, maintenance or reconstruction as are necessary for the Club Property and the Golf Property and to maintain the landscaping on the Lot as required herein.

E. Easement Over Club Property. An easement of enjoyment in favor of all Owners, their family members, guests, invitees and tenants in and to the Club Property which shall be appurtenant to and shall pass with a deed or title to every Lot in the Property, subject to the following:

(1) the right of the Club to suspend the right to use the Club Property of any Owner and such Owner's family members, guests, invitees and tenants for any period during which Assessments against such Owner's Lot remain unpaid, subject to the notice and hearing provisions in Article X, Section 1 herein;

(2) the right of the Club to grant permits, licenses and easements over the Club Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property; and

(3) all provisions set forth in the Esplanade Documents.

F. Easement Over Golf Property. An easement of enjoyment in favor of all Golf Members, their family members, guests, invitees and tenants in and to the Golf Property which shall be appurtenant to and shall pass with a deed or title to every Golf Member Lot in the Property, subject to the following:

(1) the right of the Club to suspend the right to use the Golf Property of any Golf Member and such Golf Member's family members, guests, invitees and tenants for any period during which Assessments against such Golf Member's Lot remain unpaid, subject to the notice and hearing provisions in Article X, Section 1 herein;

(2) the right of the Club to grant permits, licenses and easements over the Golf Property for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Golf Property; and



(3) all provisions set forth in the Esplanade Documents.

G. Side Entry Home Easement for Roof Overhang. An easement or easements to provide for the roof overhang of a side entry Home constructed in favor of the Owner thereof, including rights of access for persons or equipment necessary to maintain, repair and replace such roof overhang.

H. Drainage Easement. An easement over, under and upon all of the Property for the Drainage System and access to install, operate, maintain, alter, inspect, remove, relocate, repair and/or replace the Drainage System. By this easement, the Club shall have the right to enter upon any portion of a Lot which is part of the Drainage System, at a reasonable time and in a reasonable manner, to operate, maintain and repair the Drainage System as required by the Water Management District or the County. No Owner shall install any plantings, landscaping, fences and/or other Improvements whatsoever in, on, over or across any Drainage Easement.

There are off-site drainage easements as recorded in Official Records Book 2412, Page 3780, and in Official Records Book 2412, Page 3788, of the Public Records of the County.

I. Drainage System Encroachment Easement. An easement for encroachment over, under and upon the drainage easements located within the Lots, as designated on the Plat and Additional Plat(s), if any, in favor of: (i) the Owner of the Lot upon which the drainage easement is located for the existence of any driveway and/or sidewalk or irrigation system or part thereof, encroaching over, under and upon such drainage easement, and (ii) the Club for reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair any driveway and/or sidewalk, or irrigation system or part thereof installed or located over, under and upon such drainage easement. In the event the Club requires access to any Drainage System improvements within a drainage easement located within a Lot upon which any such driveway and/or sidewalk or irrigation system encroaches, the Club has the obligation, at its own cost and expense, to remove and replace any such encroachment, and to return it to its condition immediately preceding such removal and replacement once access to the drainage easement is no longer required. The flowage easements providing for drainage run between each of the Lots parallel to and over the side lot line thereof, draining either from the rear to the front, or from the front to the rear of the Lots. In addition, Declarant may, but is not obligated to, convey easements to the owner(s) of adjacent properties (or portions thereof) to provide legal positive outfall for runoff from such adjacent properties.

J. Irrigation Easement. An easement for irrigation over, under and upon the Property, including, without limitation, each of the Lots, in favor of the Club, including, but not limited to, reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate, repair and/or replace the Irrigation System, including, without limitation, irrigation pipes and related equipment. Notwithstanding the foregoing, in the event of any damage caused by an Owner to the Irrigation System or any part thereof (including, without limitation, any portions located upon such Owner's Lot) the cost of the repairs and/or replacement resulting from such damage shall be paid by such Owner.

K. Lake Maintenance Easements and Lake Maintenance Access Easements. Easements granted in favor of the Club, the County, the Stewardship District and/or the Water Management District for the purpose of accessing the Lakes to perform Lake maintenance and to perform stormwater management and drainage facilities maintenance. The Lake Maintenance Easements and Lake Maintenance Access Easements are the perpetual maintenance obligation of the Club.

L. Non-Exclusive Utility Easement for Lift Station. An off-site Non-Exclusive Utility Easement in favor of the County for ingress, egress and access to and from lift station tract(s) for the installation, repair, maintenance and service of equipment, lines and other structures necessary to supply sanitary sewer services to and from Esplanade, as recorded in Official Records Book 2412, Page 3776, of the Public Records of the County.

M. Buffer Easements. An easement or easements in favor of the Club for landscape, buffer, drainage and utility purposes.

Section 7. EASEMENT FOR COMMUNITY SYSTEMS. Notwithstanding anything to the contrary in this Declaration, Declarant and its affiliates and their respective designees shall have a perpetual exclusive easement over, across, upon and under the Club Property, the Golf Property and the Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of Community Systems.

Section 8. UNDERGROUND UTILITY EASEMENT AGREEMENT. The Property is subject to that certain Underground Utility Easement Agreement by and between Declarant and SMR North 70, LLC, a Florida limited liability company, recorded in Official Records Book 2388, Page 2215, of the Public Records of Manatee County, Florida, for the purpose of SMR installing, using, operating and maintaining utilities including, but not limited to, drainage, potable water, irrigation water, sewer, gas, electric and telecommunications.

Section 9. EASEMENT FOR GOLF BALLS AND OVERSPRAY.

A. Every Lot and the Common Area adjacent to the Golf Property is burdened with an easement permitting golf balls hit from the Golf Property to unintentionally come upon and to fly over the Lot and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of the Lot to retrieve errant golf balls; provided, however, if the Lot is fenced or walled, the golfer shall seek the Owner's or occupant's permission before entry. All Owners, by acceptance and delivery of a deed to a Lot, assume all risks associated with errant golf balls, and all Owners agree and covenant not to make any claim or institute any action whatsoever against Declarant, the Club, the golf course designer, any Builder, or any other party other than the golfer who caused the property damage or personal injury, arising or resulting from any errant golf balls, any property damage or personal injury that may be caused thereby, or for negligent design of the golf course, modification of the golf course or siting of the Lot or improvements thereon. Nothing in this paragraph shall in any way relieve golfers from liability for damages resulting from errant golf balls.

B. The Club, and its agents, shall at all times have a right and non-exclusive easement of access and use over those portions of the Property reasonably necessary to the operation, maintenance, repair and replacement of the Golf Property.

C. The portion of Esplanade immediately adjacent to the Golf Property is hereby burdened with a non-exclusive easement in favor of the Club for overspray of water from the irrigation system serving the Golf Property, from the spraying of fertilizer, pesticides and other chemicals used at the Golf Property and for the incursion onto that portion of Esplanade by maintenance and other vehicles performing work on the Golf Property.

D. Non-specific, non-exclusive easements are hereby created for the benefit of users of the golf course over all Lots, Homes and Common Areas adjacent to the golf course to permit every act necessary, incidental or appropriate to the playing of golf. These acts include, without limitation, recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Homes or Common Areas, the use of necessary and usual golf carts and maintenance equipment upon the golf course (and this golf course easement over as herein set out), the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course.

Section 10. ASSIGNMENTS; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Declarant or the Club in whole or in part to any city, county or state government or agency thereof, or any duly licensed or franchised public utility, or any other designee of Declarant. Declarant shall have and hereby reserves the right to grant and/or reserve additional easements over, under and upon the Property or portions thereof (including the portion of Lots where no physical structure of the Home is located) which may be necessary or desirable by Declarant. The Owners hereby authorize Declarant and/or the Club to execute, on their behalf and without any further authorization, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Property or portions thereof in accordance with the provisions of this Declaration.

Notwithstanding anything in this Declaration to the contrary, the easement rights granted to or reserved by Declarant hereunder are not to be construed as creating an affirmative obligation to act on the part of Declarant.

## **ARTICLE V**

### **CLUB MEMBERSHIP AND VOTING RIGHTS**

Section 1. MEMBERSHIP REQUIREMENT. Every Owner within Esplanade shall be either a Golf Member or a Club Member of the Club, except for "Original Resident Members," as described in Section 2.C below. Declarant shall hold "Declarant Membership" and "Charter Membership" as provided for in Sections 2.D and 2.E below. Golf, Club and Original Resident Membership is appurtenant to, and may not be separated from, ownership of a Lot. The rights, powers, duties and privileges of Members shall be as set forth in this Declaration, and in the Articles and Bylaws of the Club.

Section 2. CLASSES OF MEMBERSHIP AND VOTING RIGHTS. The Club will initially have four (4) classes of voting Membership, and at least two (2) classes of non-voting Membership, as follows:

A. Golf Members. The Golf Members shall be the Owners of Golf Member Lots within Esplanade to which a Golf Membership has been made an appurtenance, each of whom shall be entitled to one (1) vote for each Golf Member Lot owned. Only Golf Members are entitled to vote on matters concerning the Golf Property. Golf Members shall have full rights of use in the Club Property and Golf Property and facilities, including full golfing privileges. The actual number of Golf Memberships which may be created is in the discretion of Declarant. Except for temporary delegations as provided below, Golf Membership shall not be assignable and/or transferable by any method other than the sale, lease or conveyance of record legal title to the Golf Member Lot to which it is appurtenant. Upon sale or other transfer of ownership of a Golf Member Lot to which a Golf Membership is appurtenant, the transferor shall be deemed to have automatically assigned and transferred the Golf Membership with his or her property. A Golf Member's rights to use the golf course and other recreation facilities shall be limited as set forth in this Declaration and in the Bylaws. Any attempt to separate the Golf Membership from the interest in real property upon which it is based shall be null and void.

B. Club Members. The Club Members shall be the Owners of Club Member Lots within Esplanade to which a Club Membership has been made an appurtenance, each of whom shall be entitled to one (1) vote for each Lot owned. Club Members shall have all rights and privileges to use the Club Property, such as the Amenities Center, and shall have access to certain portions of the Golf Property (specifically the clubhouse, restaurant(s) and pro shop). Club Members shall not have golfing privileges, except that they may use the golf course only on a "space available" basis, upon payment of greens fees, cart fees and any other fees established by the Board. A Club Membership shall not be transferable other than through the sale, lease or conveyance of record legal title to the Club Member Lot to which it is appurtenant; however, a Club Member may delegate his Club Membership privileges to a tenant residing in the Club Member's Home. CLUB MEMBERS DO NOT PAY GOLF PROPERTY EXPENSES FOR OPERATIONS AND MAINTENANCE OF GOLF PROPERTY ONLY GOLF MEMBERS ARE REQUIRED TO PAY GOLF PROPERTY EXPENSES FOR THE OPERATIONS AND MAINTENANCE OF THE GOLF PROPERTY. GOLF PROPERTY EXPENSES RELATED TO RESERVES AND REPLACEMENT OF GOLF PROPERTY SHALL BE PAID BY ALL MEMBERS.

C. Original Resident Members. The Original Resident Members shall be the Owners of Lots within Esplanade to which an Original Resident Membership has been made an appurtenance, each of whom shall be entitled to one (1) vote for each Lot owned. Original Resident Members shall have all rights and privileges to use the Club Property, but not the Golf Property. Original Resident Members shall not have golfing privileges. An Original Resident Membership shall not be transferable other than through the sale, lease or conveyance of record legal title to the Lot to which it is appurtenant; however, an Original Resident Member may delegate his Membership privileges to a tenant residing in the Original Resident Member's Home.

Upon the sale or conveyance of a Home by an Original Resident Member, the new owner of the Home will automatically become a Club Member and be subject to assessments charged to Club Members by the Club.

D. Declarant Member. Declarant shall be a Declarant Member. Except for the 25 Charter Memberships that Declarant is entitled to hold, own and use for the entire duration of the Esplanade development, Declarant Membership and voting rights shall cease to exist on the Turnover Date, but all of Declarant's other rights and privileges as Declarant, as set forth elsewhere in this Declaration, or in the Bylaws, shall continue as long as Declarant holds any property within Esplanade for sale in the ordinary course of business. Declarant Member shall be entitled to three times the total number of votes of the Golf Members, Club Members and Original Resident Members combined plus one (1). Declarant Membership shall cease and be converted to Golf Membership or Club Membership as determined by Declarant upon the earlier to occur of the following events ("Turnover Date"):

(i) Three (3) months after the conveyance of ninety percent (90%) of the Total Developed Homes (as defined in Article X.C of the Articles) by Declarant, as evidenced by the recording of instruments of conveyance of such Lots amongst the Public Records of the County; or

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

On the Turnover Date, Golf Members, Club Members and Original Resident Members shall assume control of the Club and elect not less than a majority of the Board.

E. Charter Members. Declarant is entitled to hold, own and use for the entire duration of the Esplanade development, twenty-five (25) Charter Memberships. Charter Members have no voting rights. Charter Members are only required to pay for meals and beverages consumed on Club Property and are not obligated to pay any greens fees, cart fees, or other charges of the Club for use of the Golf Property and Club Property.

F. Interim Members. Declarant or the Board shall have the right, but not the obligation, to authorize an unlimited number of Interim Members who are not Owners or residents of Esplanade, and who shall have no voting rights.

G. Designation of Lot Classification. Declarant will designate which Lots are Golf Member Lots, which Lots are Club Member Lots and which Lots are Original Resident Member Lots. Declarant shall provide the Club with a list from time to time as Declarant so designates such Lots and the Club shall maintain that list and upon request shall provide the Owner or purchaser of a Lot with confirmation of the designation of Membership associated with such Lot.

Section 3. USE OF THE GOLF COURSE. The Owners of each Golf Member Lot are entitled to only one (1) Golf Membership. Use rights in the golf course for each such Golf Member shall be limited to the persons comprising one (1) "family." For purposes of this Section 3 only, "family" means one natural person or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and

otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion. Further, the biological or adopted children of only one person shall be entitled to golf privileges if they meet all of the following conditions: (a) said child or children are age 21 or less; and (b) such child or children are not married or co-habiting with any third party; and (c) said children do not have custodial children of their own (i.e., grandchildren of the Member); and (d) said children reside with the Owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university. If a Lot is owned by two or more persons who are not a "family" as described above, or is owned by an entity which is not a natural person, the Owner shall be required to select and designate one (1) family as defined above to utilize the Golf Membership. The Club may restrict the frequency of changes in such designation when there is no change in ownership of the Lot. The Club shall have, without limitation, the following powers:

A. To allow public use of the golf course and clubhouse until control of the Club has been transferred to owners other than Declarant. Thereafter, the Board may determine whether and to what extent public use of the golf course and other Club facilities will be allowed.

B. To lease, assign or otherwise transfer the operating rights to, and any and all profits from, any restaurant, snack bar, pro shop or other facility on the Golf Property to a third party.

C. To restrict or prohibit the recovery of lost golf balls on and around the golf course and in water hazards and to sell or assign the exclusive right to do so to commercial enterprises.

D. To restrict or prohibit use of the cart paths, and the golf course generally, for jogging, cycling, walking pets or other activities not directly related to the playing of golf.

E. To exercise any rights, power or privilege given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom.

F. To acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

Section 4. WAIVER AND DISCLAIMER REGARDING GOLF COURSE. Each Owner shall accept the following inherent risks associated with the golf course:

A. Early or Late Maintenance Operations. Maintenance on the golf course may begin early in the morning and extend late into the evening, ordinarily occurring from sunrise to sunset;

B. Heavy Use of Fertilizers. During certain periods of the year, the golf course will be heavily fertilized.

C. Use of Chemicals. The maintenance of the golf course may require the use of chemicals and pesticides.

D. Use of Reclaimed Water. The golf course may be watered with reclaimed water; and

E. Golf Ball Damage or Injury. Golf balls are not susceptible of being easily controlled and may enter Owners' airspace, strike an Owner, Owner's guests, yard, walls, roof, windows, landscaping and personal property causing personal injury and property damage.

Declarant, the Club and its Members (in their capacity as Members), and any successor in title to the golf course, and any agents, servants, employees, directors, officers affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such party ("Released Parties"), all are not in any way be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever, including, without limitation, actions based on (a) any invasion of the Owner's use or enjoyment of the Lot, (b) improper design of the golf course, (c) the level of skill of any golfer (regardless of whether such golfer has the permission of the management to use the golf course), or (d) trespass by any golfer on the Lot, that may result from property damage or personal injury from golf balls (regardless of number) hit on the Lot or adjacent areas, or from the exercise by any golfer or the easements granted herein.

Furthermore, each Owner hereby assumes the risk inherent in owning property adjacent to or nearby a golf course, including, without limitation, the risk of personal injury and property damage from errant golf balls, and hereby indemnifies and agrees to hold the Released Parties harmless from any and all loss arising from claims by such Owner, or persons using or visiting such Owner's Lot, for any personal injury or property damage. The Club shall indemnify and hold Declarant harmless from any and all loss arising from claims brought against Declarant by persons claiming any personal injury or property damage by reason of Declarant holding legal title to the golf course or otherwise.

Section 5. RIGHTS OF CLUB. Golf Members and Club Members in good standing have the non-exclusive right to use the portions of the Property applicable to such Membership, as herein provided, subject to:

A. Right to Budget and Assess. The Club may adopt the annual budget and determine the annual assessments to be paid by Golf Members and Club Members for the Golf Property;

B. Right to charge fees. The Club may charge any admission, use or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for Owners;

C. Right to Suspend Member's Use of Club Property and Golf Property. The Club may suspend a Golf Member's or a Club Member's right to use the Club Property and Golf Property, as applicable, for the period during which any assessment or charge against the Member's Lot remains unpaid and past due, and for a reasonable period during or after any infraction of the Club's rules and regulations;

D. Right to Protect Club Property and Golf Property. The Club may take such steps as are necessary to protect the Club Property and Golf Property;

E. Right to Open Club Property and Golf Property to the Public. The Club may open the Club Property and Golf Property, including the golf course, for use by non-Members of the Club, or non-owners;

F. Limited Right to Restrict Access. The Club may close or restrict access to the golf course or other Golf Property or Club Property for limited periods of time to conduct special events, including those intended primarily to benefit Declarant or its sales efforts;

G. Right to Regulate Vehicle Use. The Club may regulate parking and traffic on the private roads within Esplanade, including, without limitation, the use of access gates or speed bumps.

Section 6. DELEGATION OF USE RIGHTS IN CLUB PROPERTY AND GOLF PROPERTY. Guests accompanied by a Golf Member or a Club Member shall have the right to use the Club Property and Golf Property, as applicable, but only to the extent provided for in the Club's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. A fee may be imposed for such usage delegation, not necessarily limited by or related to the cost of processing the delegation. Each Member shall be financially and legally responsible to the Club for the actions and debts to the Club of any person to whom the Member has delegated his or her right to use the Club Property and/or Golf Property. The Member may not delegate the obligation to pay Club assessments. Upon the lease of a Lot to which a Membership is appurtenant, the lessor may retain the right to use the Membership; in which case the tenant shall have no such rights. If a Member delegates his or her privileges to a tenant residing in his or her Home, the Member shall not be entitled to use of the facilities, except as a guest of another Member, during the period of the delegation.

Section 7. SEPARATION OF OWNERSHIP. The ownership of a Lot, and the ownership of a Home constructed thereon, may not be separated or separately conveyed.

Section 8. CREDIT. The Club may implement a policy of not accepting cash payments, and may require that each Member and resident guest open an account with a nationally recognized credit card, to which all purchases of goods and services from the clubhouse, pro shop, dining room and other facilities may be charged.

Section 9. MINIMUM PURCHASES. The Club may implement a policy that requires each Golf Member and/or Club Member to purchase at least a minimum amount of food or beverages from the Club or be billed for the minimum amount. Certain Original Resident Members are exempt from this policy ("Exempted Original Resident Members") until such Exempted Original



Resident Member sells their Home, at which time, the subsequent Owner of the Home shall be required to purchase at least a minimum amount of food or beverages from the Club or be billed for the minimum amount. The list of Exempted Original Resident Members shall be maintained by the Club until there are no longer any Exempted Original Resident Members.

Section 10. EVENTS. The Club may, from time to time, in the Club's sole and absolute discretion, conduct or allow to be conducted sporting or non-sporting events, parties, or functions (i.e., weddings, banquets, etc.) whereby certain portions of the Club Property and/or Golf Property will be made available to nonresidents of Esplanade and non-Members of the Club. During any such sporting or non-sporting events, parties, or functions, nonresidents of Esplanade may enter Esplanade for the purpose of attending such event, part or function.

Section 11. VIEW IMPAIRMENT. Declarant, or the Club, does not guarantee or represent that any view over and across the Golf Property or Club Property from Lots adjacent to the Golf Property or Club Property will be preserved without impairment. The Club shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Property or Club Property from time to time. In addition, the Club in its sole and absolute discretion, may change the location, configuration, size and elevation of the trees, bunkers, fairways, tees and greens from time to time. Further, the Golf Club facilities may be expanded in the future in such a manner as to encompass and contain through a conveyance or other transfer any vacant platted Lots. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 12. RIGHTS OF ACCESS AND PARKING. There is hereby established for the benefit of the Club and its Members (regardless of whether such Members are Owners hereunder), guests, invitees, employees, agents, contractors and designees, a right and non-exclusive easement of access and use over all Roads located within Esplanade reasonably necessary to travel between the entrance of Esplanade and the Golf Property and over those portions of Esplanade (whether Club Property or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of the Golf Property. Without limiting the generality of the foregoing, Golf Members and guests and invitees of the Club shall have the limited right to park their vehicles on the Roads located within Esplanade at such locations and at such reasonable times and in such manner as determined by the Club from time to time before, during and after tournaments and other similar functions held by or at the Golf Property to the extent that the Club has insufficient parking to accommodate such vehicles.

Section 13. ASSUMPTION OF RISK AND INDEMNIFICATION. Each Owner, by his/her purchase of a Lot in the vicinity of the Golf Property, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Golf Property, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset); (b) noise caused by golfers and other users of the Golf Property; (c) use of pesticides, herbicides and fertilizers; (d) use of effluent in the irrigation or fertilization of any golf course or the grounds of the Golf Property; (e) reduction in privacy caused by constant user traffic on the golf course or at any other Golf Property or the removal or pruning of shrubbery or trees on the golf course or at

any Golf Property; (f) errant golf balls, golf clubs and other equipment used at any Golf Property; and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Club nor any of Declarant's affiliates or agents shall be liable to any Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise, related to the proximity of such Owner's Lot to the golf course or any other Golf Property, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Club. Each Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Club against any and all claims by such Owner's visitors, tenants and others upon such Owner's Lot.

Section 14. POWERS OF THE CLUB WITH RESPECT TO NEIGHBORHOODS. The Club shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Club or its Members or inconsistent with the Community-Wide Standard. The Club shall also have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities hereunder or under any other covenants affecting the Property. Without limiting the generality of the foregoing, the Club may require specific maintenance or repairs or aesthetic changes to be effectuated by the Neighborhood Association, may require that a proposed budget include certain items and that expenditures be made therefor, and may require its prior approval of any contract providing for maintenance, repair, or replacement of the property governed by such Neighborhood Association.

Any action required by the Club in a written notice pursuant to the foregoing paragraph to be taken by a Neighborhood Association shall be taken within the time frame set by the Club in such written notice. If the Neighborhood Association fails to comply with the requirements set forth in such written notice, the Club shall have the right to effect such action on behalf of the Neighborhood Association and shall assess the Homes in such Neighborhood for their pro rata share of any expenses incurred by the Club under the circumstances (to cover the Club's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Club) in the manner provided in Article VII, Section 1. Such Assessments may be collected as a Benefited Assessment hereunder and shall be subject to all lien rights provided for herein.

#### **ARTICLE VI**

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

Section 1. AFFIRMATIVE COVENANT TO PAY ASSESSMENTS. In order to: (a) fulfill the terms, provisions, covenants, conditions, restrictions, reservations, regulations, burdens, liens and easements contained in the Esplanade Documents; and (b) maintain, operate and preserve the Club Property for the use, safety, welfare and benefit of the Members and their family members, guests, invitees and tenants, there is hereby imposed upon each Completed Lot, Incomplete Lot

and Contributing Condominium Unit, and each Completed Lot Owner and Incomplete Lot Owner, the affirmative covenant and obligation to pay to the Club commencing from and after the first conveyance of a Completed Lot from Declarant as evidenced by the recordation of a deed in the Public Records of the County (in the manner herein set forth) all Assessments, including, but not limited to, the Individual Lot Assessments, Individual Golf Property Assessment (as hereafter defined), Benefited Assessment and Special Assessments. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Property, whether or not it shall be so expressed in such deed or instrument, shall be obligated and agrees to pay to the Club all Assessments in accordance with the provisions of the Esplanade Documents.

The following expenses of the Club are hereby declared to be Operating Expenses which the Club is obligated to assess and collect, and which the Owners are obligated to pay as provided herein or as may be otherwise provided in the Esplanade Documents: (1) any and all taxes and tax liens which may be assessed or levied at any and all times against the Club Property, the Community Systems or against any and all personal property or Improvements thereon; (2) all charges levied for Community Systems or other utilities providing services for the Club Property or to Owners on a bulk basis, such as water, gas, electricity, telephone, cable television, sanitation, sewer and any type of utility or any other type of service charge which is not separately billed to an Owner; (3) the premiums on policies of insurance including, but not limited to, liability and casualty insurance for the Club Property and directors and officers liability insurance for the officers and directors of the Club; (4) any sums necessary for the maintenance and repair of the Club Property and all Improvements located thereon; (5) administrative and operational expenses; (6) fees and other costs of water usage relating to the use, maintenance and repair of the Irrigation System(s) including, without limitation, all consumption and usage fees charged by Braden River Utilities, LLC; (7) all sums necessary for the maintenance and repair of the Drainage System, including, without limitation, work within retention areas, drainage structures and drainage easements; and (8) any and all expenses deemed to be Operating Expenses by the Club and/or under this Declaration. In addition, any expense which is required by the Declaration to be the matter of Special Assessment shall not be deemed to be an Operating Expense. Expenses which are required to be the matter of Special Assessment include, by way of example but not by way of limitation, the following: the cost of reconstructing, replacing or improving the Club Property or any portion thereof or Improvements thereon; any casualty loss affecting the Club or the Club Property to the extent such loss exceeds the insurance proceeds, if any, receivable by the Club as a result of such loss; any judgment against the Club (or against a Director or Directors if and to the extent such Director is, or such Directors are, entitled to be indemnified by the Club therefor pursuant to the Articles) to the extent such judgment exceeds the insurance proceeds, if any, received by the Club as a result of such judgment, or an agreement by the Club (or such Director or Directors to whom indemnification is owed) to pay an amount in settlement of a lawsuit against it (or such Director or Directors) to the extent such settlement exceeds the insurance proceeds, if any, received by the Club as a result of such settlement agreement; and Legal Fees incurred by the Club in connection with litigation (whether incurred for the preparation, filing, prosecution or settlement thereof or otherwise), except Legal Fees incurred by the Club in connection with the collection of Assessments or other charges which Owners are obligated to pay pursuant to the Esplanade Documents or the enforcement of the use and occupancy restrictions contained in the Esplanade

Documents, and except Legal Fees incurred for lawsuits not approved pursuant to Section 12 of Article XIV below.

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

Section 2. ESTABLISHMENT OF LIENS. Each Assessment against a Lot, together with Interest thereon and costs of collection, including, but not limited to, Legal Fees, shall be the personal obligation of the Owner of such Lot. Any and all Assessments made by the Club in accordance with the provisions of the Esplanade Documents with Interest thereon and costs of collection, including, but not limited to, Legal Fees, are hereby declared to be a charge and continuing lien upon each Lot against which each such Assessment is made. Said lien shall be effective only from and after the time of the recordation amongst the Public Records of the County of a written, acknowledged statement by the Club setting forth the amount due to the Club as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a satisfaction of the statement of lien in recordable form. Notwithstanding anything to the contrary herein contained, in the event an Institutional Mortgagee of record obtains a deed or title to a Lot as a result of foreclosure of its first mortgage or deed in lieu of foreclosure, such acquirer of a deed or title, its successors or assigns, shall be liable for Assessments pertaining to such Lot or chargeable to the former Owner except and to the extent limited by applicable Florida Statutes.

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

A. To accelerate the entire amount of any Assessment for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

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

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

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

E. To charge Interest on such Assessment from the date it becomes due, as well as a late charge of Twenty-Five and No/100 (\$25.00) Dollars or five percent (5%) of the past due amount, whichever is greater, to defray additional collection costs. This amount is subject to change in the Board's sole discretion.

F. To suspend the use rights of the Owner(s) in default to the Club Property, subject to the Notice and Hearing provisions in Article X, Section 1 herein.

G. To suspend the right of the Owner(s) in default to vote on any matter on which Owners have the right to vote if such Owner is delinquent in payment of assessments for more than ninety (90) days.

H. To collect any monetary obligation, including delinquent Assessments due for the Home from the rents paid by any tenant occupying the Home if the Owner has leased the Home. In such case, the tenant shall remit such delinquent Assessments and other amounts due the Club directly to the Club upon written notice from the Club that the Owner is delinquent in the payment of its monetary obligations and the tenant may deduct such amounts paid to the Club from the rent due to the Owner. The Club has the right to require Owners to use a lease addendum which provides, among other things, that the tenant will pay the rent due under the lease directly to the Club upon receipt of notice from the Club that the Owner is delinquent in amounts due to the Club.

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

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

Section 6. COMMUNITY SYSTEMS SERVICES. The Club shall have the right to enter into one or more agreement(s) ("Bundled Service Agreements") for receipt of television (via cable, satellite or otherwise), entertainment, telecommunication, internet, gas, monitored alarm and/or other services (collectively, "Bundled Services") for Homes in Esplanade. Any and all

costs and expenses incurred by the Club under or pursuant to any Bundled Service Agreements entered into by the Club for Bundled Services will be assessed against all Completed Lot Owners as a Benefited Assessment. It is contemplated that there may be features and services that are or will be available in addition to and not part of the Bundled Services (each, an "Optional Service"). Owners will be responsible for hook-up costs, any converter boxes, remote control units, any Optional Services elected by Owner and the charge therefor shall be billed directly to Owner. Notwithstanding anything to the contrary contained in this Declaration, the costs and expenses charged to the Club under the Bundled Services Agreements shall be apportioned equally, but only amongst those Homes with respect to which the Club is being charged under or pursuant to the Bundled Services Agreement except to the extent, if any, that any Owner elects to receive an Optional Service (being a service not automatically received by all Owners entitled to receive Bundled Services pursuant to the Bundled Services Agreements). Each Owner who receives an Optional Service, if any, shall be responsible for paying for the costs of such Optional Service. The foregoing shall in no way obligate Declarant or the Club to enter into any Bundled Services Agreement.

Section 7. IRRIGATION SYSTEM(S). Declarant shall have the right, but not the obligation, to install one or more irrigation systems (referred to in this Declaration as the "Irrigation System(s)") for the Club Property, the Golf Property and/or any or all of the Lots within Esplanade. In the event Declarant installs one or more Irrigation System(s) for the Club Property, the Golf Property and/or any or all of the Lots within Esplanade, the responsibility for operating, maintaining, repairing and replacing such system(s) shall be governed by the provisions of Section 1.B and Section 2.A of Article IX below. The foregoing shall in no way obligate Declarant to install the Irrigation System(s) for the Club Property, the Golf Property or within any or all of the Lots within Esplanade. All of costs of the Irrigation System(s) and all usage and consumption fees charged by Braden River Utilities, LLC, for use of water shall be part of the Operating Expenses of the Club.

Section 8. GOLF PROPERTY EXPENSES. All expenses related to the operation and maintenance of the Golf Property, including the types of expenses described in Section 1 of this Article VI but which relate solely to the Golf Property ("Golf Property Expenses"), shall be allocated equally among the Golf Members ("Individual Golf Property Assessment"), except that those Golf Property Expenses related to the clubhouse, restaurant(s), dining room, bar, pro shop, etc., that are available for use by the Club Members as well as the Golf Members, and the reserves and replacement costs and expenses of the Golf Property, shall be allocated equally among the Golf Members and the Club Members.

The total anticipated Golf Property Expenses for each calendar year shall be set forth in a schedule to the budget ("Golf Property Schedule") prepared by the Board as required by the Esplanade Documents, which Golf Property Schedule shall be prepared in two parts, the first of which shall be those expenses payable only by Golf Members and the second of which shall be those payable only by Club Members, which second part includes all expenses related to the clubhouse, pro shop and restaurant(s) which are available to both Golf Members and Club Members and the reserves for repairing and replacing the Golf Property and the facilities located thereon, or connected therewith. Each Golf Member and each Club Members shall be assessed its *pro rata* portion of the total anticipated Golf Property Expenses, as applicable, which shall be the "Individual Golf Property Assessment," either as a Golf Member or a Club Member as applicable to the Lot.

**ARTICLE VII**  
**METHOD OF DETERMINING ASSESSMENTS**  
**AND ALLOCATION OF ASSESSMENTS**

Section 1. DETERMINING AMOUNT OF ASSESSMENTS. It shall be the duty of the Board of Directors to annually prepare a budget ("Budget") covering the estimated Operating Expenses of the Club. Separate Budgets shall be established for the operation and maintenance of the Golf Property and the operating and maintenance of all other Club Property. The Board of Directors shall be the sole judge of allocation of costs and expenses between the Budgets. The determination of the Board of Directors for allocation of costs shall be conclusive and binding on all Owners. In addition to the Operating Expense Budgets which shall be the basis for operation and management of the Club Property, the Board of Directors shall annually attempt to determine the Operating Expenses which would be incurred upon completion of Esplanade (said Operating Expenses shall be allocated between the Golf Property and all other Club Property), including without limitation any future expansions or additions of Club Property and number of Lots. Prior to the Turnover, these build-out Budgets shall be utilized in determining Assessments allocated to Lots by allocating the Operating Expenses among the number of Lots anticipated to be constructed within Esplanade upon build-out. This allocation of Assessments and Golf Property Expenses is undertaken in an effort to fairly allocate the Operating Expenses anticipated upon completion of Esplanade.

Revenues from the operation of the Golf Property shall be part of the Budget for the Club Property and shall be used to offset the Operating Expenses of the Club. In the event of a shortfall and the Golf Property Assessments collected from Golf Members do not cover the Golf Property Expenses for the Golf Property the Board of Directors shall levy additional Golf Property Assessments to the Golf Members to cover such deficiency.

Each Completed Lot and Incomplete Lot shall be assessed its *pro rata* portion of the total anticipated Operating Expenses, which shall be the "Individual Lot Assessment" as to each Lot. The Individual Lot Assessment shall be based upon the level of service to each Lot and upon the state of the Lot's development, with the Owners of Completed Lots paying the Operating Expenses on a twenty to one ratio (20:1) compared to the Owners of Incomplete Lots as set forth below. Therefore, the Completed Lot Owners and Incomplete Lot Owners shall share the payment of the Operating Expenses on a ratio of twenty to one (20:1). Therefore, the total anticipated Operating Expenses (other than those expenses which are properly the subject of Special Assessment) shall be divided by the total number of Completed Lots multiplied by twenty (20) plus the number of Incomplete Lots, with the quotient thus arrived at being the "Individual Lot Assessment" for an Incomplete Lot. Said quotient multiplied by twenty (20) shall be the Individual Lot Assessment for a Completed Lot. The number of Completed Lots and Incomplete Lots shall be adjusted quarterly, as needed, as hereinafter set forth. At such time as Declarant has conveyed all of the Homes on all of the Lots, each Lot shall be a Completed Lot and the Individual Lot Assessment shall be equal for each Lot. Notwithstanding anything in the Esplanade Documents to the contrary, any Assessment for Legal Fees incurred by the Club for lawsuits shall be deemed an Operating Expense which is properly the subject of Special Assessment and not the subject of an Individual Lot Assessment so long as approved pursuant to Section 12 of Article XIV, except the Legal Fees incurred by the Club in connection with the

collection of assessments or other charges which Owners are obligated to pay pursuant to the Esplanade Documents or the enforcement of the use and occupancy restrictions contained in the Esplanade Documents. Notwithstanding anything herein to the contrary, Incomplete Condominium Units shall not be subject to any Assessments of the Club until such time as Incomplete Condominium Units become Contributing Condominium Units.

Section 2. ASSESSMENT PAYMENTS. Individual Lot Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Club's option, Individual Lot Assessments may be payable monthly. Individual Lot Assessments, and the quarterly installments thereof, may be adjusted from time to time by the Board to reflect changes in the number and status of Completed Lots and Incomplete Lots (thus apportioning all such Assessments and installments thereof among all Lots at the time such installment is due) or changes in the Budget or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required. When an Incomplete Lot becomes a Completed Lot during a period with respect to which an Assessment or installment thereof has already been assessed, such Completed Lot shall be deemed assessed the amount of such Assessment or installment thereof which was assessed against Completed Lots in existence at the time of such Assessment, prorated from the date the Lot became a Completed Lot through the end of the period in question. If the payment of such Assessment or installment thereof was due at the time the Lot became a Completed Lot or prior thereto, said prorated amount thereof shall be immediately due and payable. Likewise, the amount paid with respect to such Completed Lot based upon the Lot's status as an Incomplete Lot, prorated from the date the Incomplete Lot became a Completed Lot to the end of the period in question, shall be credited against the amount owed as a Completed Lot.

Individual Golf Property Assessments shall be payable quarterly, in advance, on the first day of January, April, July and October of each year, provided, however, at the Club's option, Individual Golf Property Assessments may be payable monthly. Individual Golf Property Assessments, and the quarterly installments thereof, may be adjusted from time to time by the Board to reflect changes in the number and status of Memberships, or changes in the Budget, or in the event the Board determines that an Assessment or any installment thereof is either less than or more than the amount actually required.

Section 3. SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other Assessments designated as Special Assessments in the Esplanade Documents and whether or not for a cost or expense which is included within the definition of "Operating Expenses," those Assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring Improvements for, or on, the Club Property or the cost (whether in whole or in part) of reconstructing or replacing such Improvements. In addition, Special Assessments may be levied against particular Lots and/or Owners to the exclusion of others. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, any Individual Lot Assessment. Any Special Assessments assessed against Lots and the Owners thereof shall be paid by such Owners in addition to any other Assessments and shall be assessed in the same manner and using the same 20:1 ratio as the Individual Lot Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board shall, from time to time, determine. Notwithstanding the foregoing, the levying of any Special Assessment after the



Turnover Date shall require the affirmative assent of at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws for all Special Assessments, except only any Special Assessment for: (a) repair, reconstruction or replacement of damaged or destroyed Improvements previously existing on Club Property (including, without limitation, landscaping), (b) capital improvements necessary or desirable for the sole purpose of preservation of, or prevention of damage to Club Property, or (c) up-righting or removing any fallen or dislodged trees as set forth in Article IX, Section 1.G. below; which shall not require such affirmative assent of at least two-thirds (2/3) of all Members. Prior to the Turnover Date, a Declarant-controlled Board may make a Special Assessment without such vote of the Members. Special Assessments are not included in any deficit funding or subsidizing of the Budget as set forth in Article VII below.

Section 4. BENEFITED ASSESSMENTS. The Club may levy Benefited Assessments against one or more particular Lots as follows:

A. to cover the costs, including, without limitation, overhead and administrative costs, of providing services to a Lot upon request of the Owner pursuant to any menu of special services which the Club may offer or pursuant to a Supplemental Declaration. Benefited Assessments for special services may be levied in advance of the provision of the requested service;

B. to cover costs incurred in bringing a Lot into compliance with the Esplanade Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests, including, without limitation, Legal Costs;

C. to cover the costs and expenses charged to the Club under the Community Systems agreements shall be apportioned equally, but only amongst those Homes with respect to which the Club is being charged under or pursuant to the Bundled Services Agreement;

D. to cover the costs and expenses charged to the Club pursuant to any contract for Lot landscape maintenance;

E. to cover the costs and expenses charged to the Club for irrigation to the Lot; and

F. to cover fees assessed by Community Activities Corporation, a non-profit organization that sponsors events and clubs that are open to all Lakewood Ranch residents.

Section 5. LIABILITY OF OWNERS FOR ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Lot in the Property, each Owner thereof acknowledges and agrees that each Lot and the Owners thereof are jointly and severally liable for their own Individual Lot Assessments, any Individual Golf Property Assessments, any Benefited Assessment against their Lot, and their applicable portion of any Special Assessments, as well as for any and all other Assessments for which they are liable, as provided for herein. Such Owners further recognize and covenant that they are jointly and severally liable with the Owners of all

Lots for the Operating Expenses (subject to any specific limitations provided for herein such as, but not limited to, the limitation with respect to matters of Special Assessment and the limitations on the liability of Institutional Mortgagees and their successors and assigns). Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner, for such Owner and such Owner's heirs, executors, successors and assigns, that in the event any Owner fails or refuses to pay such Owner's Individual Lot Assessment or any portion thereof, or such Owner's Benefited Assessment, or such Owner's respective portion of any Special Assessment or any other Assessment, then the other Owners may be responsible for increased Individual Lot Assessments, Benefited Assessments or Special Assessments or other Assessments due to the nonpayment by such other Owner, and such increased Individual Lot Assessment, Benefited Assessment or Special Assessment or other Assessment can and may be enforced by the Club and Declarant in the same manner as all other Assessments hereunder as provided in the Esplanade Documents.

Section 6. ASSESSMENTS PAYABLE BY DECLARANT; DECLARANT SUBSIDIES.

Each Owner acknowledges and agrees that because Individual Lot Assessments, Benefited Assessments and Special Assessments are allocated based on the formula set forth in Article VII, Section 1 above, it is possible that the Club may collect more or less than the amount budgeted for Operating Expenses in the Budget of the Club. Except as may be limited by applicable law, Declarant has the right (at its sole election) to: (i) pay Individual Lot Assessments, Individual Golf Property Assessments and Benefited Assessments for the Lots owned by Declarant in the same manner as other Owners and at the 20:1 ratio described above, (ii) subsidize the Budget of the Club as provided below by making voluntary contributions or loans in amounts determined by Declarant in Declarant's sole discretion, and/or (iii) to be excused from payment of its share of Assessments related to its Lots if Declarant elects to deficit fund the amount of Individual Lot Assessments, Individual Golf Property Assessments and Benefited Assessments as provided in Section 7 of this Article VII below.

During the period of time that Declarant is offering Homes for sale in Esplanade and/or based on the number of Homes owned by Owners other than Declarant, Declarant may seek to keep Assessments lower than they otherwise may be by either (i) subsidizing the Budget of the Club by making voluntary contributions in amounts determined by Declarant, or (ii) lending money to the Club in amounts determined by Declarant. The amount of any such voluntary contributions or loans may vary from time to time or may be discontinued and recommenced by Declarant from time to time. The determination to subsidize the Budget of the Club, to lend money to the Club, the amount of any such voluntary contributions or loans, the discontinuance and/or recommencement of any such voluntary contributions or loan shall all be made by Declarant in Declarant's sole discretion and in no event shall Declarant have any obligation whatsoever to make any such voluntary contributions or loan. Each Owner shall be solely responsible to review the Budget of the Club then in effect to determine if and to what extent Declarant is making any voluntary contributions to subsidize the Budget or loans and thus lower the Assessments payable by the Owners that would otherwise be higher based on the Operating Expenses of the Club.

Section 7. DECLARANT'S OPTION TO FUND BUDGET DEFICITS. To the extent permitted by Florida law, until the Turnover Date, Declarant may satisfy the obligation for Assessments on Lots which it owns either by paying Assessments in the same manner as any

other Owner or by funding the Budget deficit. The Budget deficit is the difference between (i) the amount of Assessments levied on Owners' Lots plus any other income received during the fiscal year, and (ii) the amount of the Club's actual expenditures during the fiscal year, and excluding Special Assessments arising as a result of any unusual loss or liability.

Regardless of Declarant's election, Declarant's Assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these, the value of which shall be reasonably determined by Declarant. After the Turnover Date, Declarant shall pay Assessments on Lots which it or its affiliates own in the same manner as any other Owner.

The Declarant's obligation to deficit fund is not a guarantee of the Assessments as contemplated by Florida Statutes Section 720.308.

Section 8. WORKING FUND CONTRIBUTION. Each subsequent Owner of a Lot (meaning any Owner who purchases a Lot from a previous Owner other than Declarant) shall pay to the Club a Working Fund Contribution at the time legal title is conveyed to such Owner by the previous Owner. The Working Fund Contribution shall be One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each Lot and each subsequent conveyance of the Lot. In the event an Institutional Mortgagee acquires title through foreclosure or a deed in lieu, the Institutional Mortgagee shall be exempt from paying such Working Fund Contribution. The purpose of the Working Fund Contribution is to ensure that the Club will have cash available for initial start-up expenses, to meet unforeseen expenditures and to acquire additional equipment and services deemed necessary or desirable by the Board. Working Fund Contributions are not advance payments of Individual Lot Assessments and shall have no effect on future Individual Lot Assessments, nor will they be held in reserve. To further ensure that the Club will have sufficient cash available to pay for start-up expenses, Operating Expenses and other expenses, Declarant may from time to time advance to the Club the Working Fund Contribution applicable to any Lot(s) prior to the time legal title to such Lot(s) is conveyed to the Owner(s) thereof. In the event Declarant advances the Working Fund Contribution applicable to any Lot, then, at the time legal title to such Lot is conveyed to the Owner thereof, the Working Fund Contribution to be paid by such Owner to the Club pursuant to this Section 8 shall be paid directly to Declarant in reimbursement of the advance, instead of to the Club. Working Fund Contributions (whether paid by Owner or advanced by Declarant) may also be used to offset Operating Expenses and fund any deficit between yearly Operating Expenses and income collected from Assessments. Developer may, in its sole discretion, move the Working Fund Contributions into a reserve account at the time of the Turnover Date.

Section 9. WAIVER OF USE. No Owner, other than Declarant, may exempt himself from personal liability for Assessments duly levied by the Club. No Owner may release the Lot owned by such Owner from the liens and charges hereof either by waiver of the use and enjoyment of the Club Property and/or the Golf Property and the facilities thereon or by abandonment of such Owner's Home.

**ARTICLE VIII**  
**ARCHITECTURAL CONTROL COMMITTEE**

Section 1. MEMBERS OF THE COMMITTEE. The Architectural Control Committee, sometimes referred to in this Declaration as the "Committee," shall be comprised of three (3) members. The initial members of the Committee shall consist of persons designated by Declarant. Each of said persons shall hold office until all Lots and Homes have been conveyed or such earlier time as Declarant may, at its sole option, elect. Thereafter, each new member of the Committee shall be appointed by the Board and shall hold office until such time as such new member has resigned, has been removed, or such new member's successor has been appointed, as provided herein. Members of the Committee, other than those designated by Declarant, may be removed at any time without cause. The Board shall have the sole right to appoint and remove all members of the Committee other than those designated by Declarant.

Section 2. REVIEW OF PROPOSED CONSTRUCTION.

A. No Improvements, including, by way of example and not of limitation, accessory structures, exterior lighting fixtures, brick pavers, stamped concrete, concrete flatwork, basketball goals, gym sets and play structures, buildings, fences, walls, pools, roofs, gutters or rain spouts, antennae, aerials, microwave reception devices, mailboxes, external enclosures or attachments (including entry screen and patio screen enclosures), or landscaping (including hedges, massed plantings and trees) shall be commenced, erected, installed, altered, modified, painted, planted, or maintained on the Property, including the Lots, nor shall any canopies, shutters, or window coverings be attached to or placed upon outside walls or roofs of any Home or building by any Owner other than Declarant, unless such Improvements have been reviewed by and received the written approval of the Committee in accordance with Paragraph B below. Any Owner desiring to make Improvements shall submit two (2) complete sets of plans and specifications prepared by an architect, landscape architect, engineer or other person determined by the Committee to be qualified, showing the nature, dimensions, materials and location of the same, together with the security deposit if required by the Committee, to be held and disbursed by the Club in accordance with Section 3 below.

B. The Committee shall approve proposed plans and specifications submitted for its approval only if it deems that the construction, alterations or additions contemplated will not be detrimental to the appearance of the surrounding area of the Property as a whole, and that the appearance of any structure affected thereby will be in harmony with the surrounding structures and is otherwise desirable. The Committee may also issue and amend from time to time rules or guidelines setting forth procedures for the submission of plans and specifications. If the proposed construction, alterations or additions are to a portion of the Improvements which the Club is obligated to maintain, said approval shall also be subject to approval by the Board. The Committee may condition its approval of proposed plans and specifications in such a manner as it deems appropriate and may require the submission of additional information prior to approving or disapproving such plans. Pursuant to the approvals for the Property granted by the County, and notwithstanding anything to the contrary in the Esplanade Documents, diversity of architectural elevation and exterior color scheme for Homes in Esplanade shall be required by compliance with the following: (i) no identical Homes shall be placed next to one another (i.e., same elevation with same exterior color scheme), (ii) no more than three (3) Homes with the

same elevation shall be placed next to each other, and (iii) no more than three (3) Homes with the same exterior color scheme may be placed next to each other. The Committee shall have no obligation to and shall not approve (nor grant any variances for) any plans and specifications submitted if approval of same would result in failure to comply with the foregoing requirements.

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

D. No landscaping or other Improvements beyond the buildable areas on the Lake Lots which materially interfere with the view of the Lakes by immediate neighbors who are also Lake Lot Owners shall be permitted. In its review of proposed plans and specifications of landscape design and materials for Lake Lots, including, but not limited to, any massed plantings, the Committee will take into consideration the effect on Lake views of such landscaping, both at the proposed time of installation and at the time when maximum growth shall have occurred. No Owner shall be permitted to install any fence (or landscaping) within any Lake Maintenance Easement or Lake Maintenance Access Easement whatsoever (Refer to Article X, Section 18 for additional restrictions regarding fences).

E. Notwithstanding any provision in this Article to the contrary, the approval of the Committee shall not be required for any additions, changes or alterations within any Home if such additions, changes or alterations are not visible from the outside of such Home. All changes and alterations shall be subject, independently, to all applicable governmental laws, statutes, ordinances, codes, rules and regulations.

F. There shall be a minimum two foot (2') setback requirement from the side yard lot line on the side of a Home near a Servient Lot for that portion of any open patio, screen enclosed patio and/or pool deck that extends beyond any masonry wall extending from such side of the Home (the "Privacy Wall"). In addition, if an Owner installs or constructs such open patio, screen enclosed patio and/or pool deck between two feet (2') and five feet (5') from the side yard lot line on the side of a Home near a Servient Lot, then a Hedge must also be installed by said Owner within the two foot (2') setback area along that portion of the open patio, screen enclosed patio and/or pool deck that extends beyond the Privacy Wall in order to provide a vegetative privacy barrier.

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

Section 3. SECURITY DEPOSIT FOR IMPROVEMENTS; INDEMNIFICATION. Any Owner desiring to make Improvements may be required by the Committee, depending upon the Improvements being requested and the manner of installation of such Improvements, to provide to the Committee, at the time of the Owner's submission of plans and specifications for review and approval by the Committee, a security deposit in the amount of ten percent (10%) of the

estimated costs for such Improvements to cover costs of incidental damage caused to Club Property, Golf Property, an adjacent Home or Lot, or any other property (whether real or personal) by virtue of such Owner's construction of Improvements. The Committee shall have the sole and absolute discretion to determine whether a security deposit is required for the Improvements being requested. The Club shall not be obligated to place the security deposit in an interest bearing account. The Owner shall be entitled to the return of the security deposit upon: (i) such Owner's written notice to the Committee that the Improvements covered by the security deposit have been completed in accordance with the plans and specifications approved by the Committee, and (ii) the Committee's (or its duly authorized representative's) inspection of such Improvements confirming completion; provided, however, should any incidental damage be caused to Club Property or Golf Property by virtue of such Owner's construction of Improvements, the security deposit shall not be returned to Owner until such damages have been repaired. In the event that Owner has not repaired such damages to the Club Property or Golf Property to the satisfaction of the Committee, Club shall have the right (but not the obligation), after five (5) days' notice to the offending Owner, to repair such incidental damage and to use so much of the security deposit held by the Club to reimburse itself for the costs of such work. Further, the offending Owner hereby agrees to indemnify and reimburse the Club for all reasonable costs expended by the Club that exceed the security deposit, including Legal Fees, if any, incurred in connection therewith. Should any incidental damage be caused to an adjacent Lot or Home by virtue of such Owner's construction of Improvements, the Owner of the adjacent Lot (the "Adjacent Lot Owner") may, at such Adjacent Lot Owner's sole option: (a) remedy such damage and submit to the Club a receipt, invoice or statement therefor for reimbursement from the offending Owner's security deposit; or (b) allow the offending Owner to repair such incidental damage to the Adjacent Lot Owner's Lot or Home, at the offending Owner's sole cost and expense, and upon receipt by the Club of written notice from the Adjacent Lot Owner that such incidental damage has been repaired, the offending Owner shall be entitled to a return of the balance of the security deposit being held by the Club, if any.

Notwithstanding anything contained in this Section to the contrary, the Club's return of the security deposit being held by it for any such Improvements shall be based solely on considerations set forth above. The Club's return of the security deposit does not and shall not be construed to constitute a determination by members and representatives of the Committee, Declarant, and/or the Club of the structural safety, approval or integrity of any Improvement, conformance with building or other codes or standards, or the proper issuance of governmental permits and approvals for any Improvement. By submitting a request for review and approval of proposed plans and specifications, along with the security deposit required hereunder, an Owner shall be deemed to have automatically agreed to hold harmless and indemnify the members and representatives of the Committee, the Declarant, and the Club generally, from any loss, claim, damage or liability connected with or arising out of the Improvements or alterations, and/or the security deposit (including, without limitation, the disbursement thereof).

Club shall not be liable or responsible to anyone for any damages, losses or expenses resulting from Club's holding of the security deposit or disbursement thereof unless same shall be caused by the gross negligence or willful malfeasance of the Club. In the event of any disagreement relating to the security deposit held by the Club or the disbursement thereof, Club shall be entitled (but not obligated) to refuse to disburse the security deposit (or any portion thereof) as long as such disagreement may continue, and Club shall not become liable in any way

for such refusal. Club shall have the right, at any time, after a dispute has arisen, to pay the security deposit (or any portion thereof) held by it into any court of competent jurisdiction for payment to the appropriate party, whereupon Club's obligations hereunder shall terminate and Club shall be automatically released of any and all obligations.

Section 4. MEETINGS OF THE COMMITTEE. The Committee shall meet from time to time as necessary to perform its duties hereunder. The Committee may from time to time, by resolution unanimously adopted in writing, designate a Committee representative (who may, but need not, be one of its members) to take any action or perform any duties for and on behalf of the Committee, except the granting of variances pursuant to Article VIII, Section 9 below. In the absence of such designation, the vote of any two (2) members of the Committee shall constitute an act of the Committee.

Section 5. NO WAIVER OF FUTURE APPROVALS. The approval of the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to withhold approval or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant. Similarly, the denial of approval by the Committee of any plans and specifications or drawings for any work performed or proposed shall not be deemed to constitute a waiver of any right to approve or consent to any identical or similar proposal subsequently or additionally submitted for approval or consent, whether such submission is by that applicant or another applicant.

Section 6. COMPENSATION OF MEMBERS. The members of the Committee shall receive no compensation for services rendered, other than reimbursement for expenses incurred by them in the performance of their duties hereunder.

Section 7. INSPECTION OF WORK. Inspection of work and correction of defects therein shall proceed as follows:

A. Upon the completion of any work for which approved plans are required under this Article, the submitting party shall give written notice of completion to the Committee.

B. Within thirty (30) days after written notice of completion, the Committee or its duly authorized representatives may inspect such Improvement. If the Committee finds such work was not done in substantial compliance with the approved plans, it shall notify the submitting party in writing of such noncompliance within such thirty (30) day period, specifying the particulars of noncompliance, and shall require the submitting party to remedy such noncompliance.

C. If upon the expiration of fifteen (15) days from the date of such notification the submitting party shall have failed to remedy such noncompliance, notification shall be given to the Board in writing of such failure. Upon such notice, the Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If noncompliance exists, the submitting party shall remedy or remove the same within a period of not more than thirty (30) days from the date of announcement of the Board's ruling. If the submitting party does not comply with the Board's

ruling within such period, the Board, at its option, may remove the Improvement, remedy the noncompliance, or proceed in court to compel compliance and the submitting party shall reimburse the Club, upon demand, for all expenses incurred in connection therewith, including Interest and Legal Fees. If such expenses are not promptly repaid by the submitting party to the Club, the Board shall levy an Assessment against such submitting party for reimbursement, and said Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as liens for Operating Expenses.

D. If, for any reason, notification is not given to the submitting party of acceptance within thirty (30) days after receipt of said written notice of completion from the submitting party, the Improvement and/or alteration shall be deemed to be in compliance with said approved plans.

Section 8. NON-LIABILITY OF COMMITTEE MEMBERS. Neither the Committee nor any member thereof, nor its duly authorized Committee representative, nor Declarant, shall be liable to the Club or to any Owner or any other person or entity for any loss, damage or injury arising out of or in any way connected with the performance of the Committee's duties hereunder, unless due to the willful misconduct or bad faith of a member and only that member shall have any liability. The Committee's review and approval or disapproval of plans submitted to it for any proposed Improvement shall be based solely on considerations of the overall benefit or detriment to the community as a whole. The Committee shall not be responsible for reviewing, nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes or standards, and no member or representative of the Committee or the Club, nor Declarant, shall be liable for the safety, soundness, workmanship, materials or usefulness for any purpose of any such Improvement or alteration proposed by the plans. By submitting a request for review and approval by the Committee, an Owner shall be deemed to have and does automatically agree to indemnify, defend and hold harmless the Committee, the Club and Declarant (and each of their respective officers, directors, partners, affiliates, representatives and members) from and against any and all claims, causes of action, losses, damages, liabilities, costs and expenses (including, without limitation, Legal Fees) arising from, relating to or in any way connected with the Improvement or alterations for which such request was submitted and/or the security deposit (including, without limitation, the disbursement thereof). Furthermore, approval by the Committee of any request does not excuse any Owner from also obtaining approvals from all applicable governmental authorities.

Section 9. VARIANCE. The Committee may authorize variances from compliance with any of the architectural provisions of this Declaration or any Supplemental Declaration, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require; provided, however, the Committee shall not give or authorize (and the Committee is hereby prohibited from giving or authorizing) any variance with respect to: (i) the diversity of architectural elevation and exterior color scheme requirements of Section 2.B of this Article VIII above; (ii) the type of fencing permitted by Section 2.D of this Article VIII above; and/or (iii) the displaying of any signs for the sale or renting of the Home as prohibited in Article X, Section 12 below. If such variances are granted, no violation of the covenants, conditions and restrictions contained in this Declaration or any Supplemental Declaration shall



be deemed to have occurred with respect to the Improvements for which the variance was granted.

Section 10. DECLARANT EXEMPTION. Declarant is hereby exempt from having to comply with the requirements of this Article VIII in their entirety.

Section 11. COMMUNITY STANDARD. To ensure the preservation of the existing harmonious design and to prevent the introduction of design that is not in keeping with Esplanade, Declarant hereby declares that the style and form of Esplanade, as originally constructed or approved by Declarant, with respect to architectural style, colors and materials as the standard. This standard shall continue in effect until the adoption and publication of new guidelines and standards.

**ARTICLE IX**  
**MAINTENANCE AND REPAIR OBLIGATIONS**

Section 1. BY THE CLUB, STEWARDSHIP DISTRICT AND/OR NEIGHBORHOOD ASSOCIATION.

A. The Club, at its expense, shall be responsible for the operation, maintenance, repair and replacement of all of the Improvements and facilities located over, through and upon the Club Property and the Golf Property as otherwise provided herein (except public utilities and Community Systems, to the extent same have not been made Club Property and Golf Property). Should any incidental damage be caused to any Home by virtue of the Club's failure to maintain the Club Property and Golf Property as herein required or by virtue of any work which may be performed or caused to be performed by the Club in the maintenance, repair or replacement of any Club Property and Golf Property, the Club shall, at its expense, repair such incidental damage. The Club shall not, however, be responsible for any loss of use, any hardship, an Owner's time or any other consequential or punitive damages.

B. The Club shall operate, maintain, repair and replace the Irrigation System(s) serving the Club Property, the Golf Property and the Lots. The Club shall be responsible for the costs of operation, maintenance, repair and replacement of such Irrigation System(s), including any monthly fees and other costs of water and/or electric usage, if any. There is hereby reserved in favor of the Club, the right to enter upon the Club Property and Golf Property and any and all Lots for the purpose of operating, maintaining, repairing and replacing the Irrigation System(s) over, through and upon the Club Property, the Golf Property and all of the Lots within the Property. Each Owner shall be responsible for any damage caused to said Irrigation System(s) caused by such Owner and/or such Owner's family members, tenants, guests and invitees and Owner shall indemnify, defend and hold Club harmless from and against any and all losses, claims damages and/or liabilities resulting from any such damage.

C. The Stewardship District shall operate, maintain and repair the Drainage System constructed over, through and upon the Property. There is hereby reserved in favor of the Stewardship District the right to enter upon the Club Property, the Golf Property and the Lots for the purpose of operating, maintaining, repairing, and replacing the Drainage System over, through and upon the Property. The Stewardship District shall be responsible for all costs

associated with its obligations relating to the cleaning, maintenance, repairs and replacement of any portion of the Drainage System as may be necessary to maintain the system in its original condition and use. In the event the Stewardship District fails to maintain the Drainage System in accordance with this Declaration and/or the Water Management District Permit, then the Water Management District shall have the right to commence an enforcement action against the Stewardship District, including, without limitation, monetary penalties and injunctive relief, to compel the Stewardship District to maintain the Drainage System in accordance with this Declaration and/or the Water Management District Permit. A copy of the Water Management District Permit is attached hereto as Exhibit "H." The Water Management District Permit, together with any action(s) taken by the Water Management District with respect to the Water Management District Permit, shall be maintained by the Stewardship District.

D. The Club shall be responsible for the maintenance, repair and replacement of all private Roads located upon the Club Property and there is hereby reserved in favor of the Club the right to enter upon any and all parts of the Club Property and Lots for such purpose. The Club shall also be responsible for the sod, landscaping and irrigation system located within any street, Drive, Road and/or Roadway cul-de-sac, as applicable.

E. The Club shall be responsible for the maintenance, repair and replacement of all common sidewalks located upon the Property and there is hereby reserved in favor of the Club the right to enter upon any and all parts of the Property and Lots for such purpose.

F. The Club shall be responsible for the maintenance, repair and replacement of any Decorative Street Lights located in Esplanade. The Decorative Street Lights described herein do not include the post lights that may be installed by Declarant in the front yards of Lots.

G. The Club shall be responsible for the maintenance, care and replacement of the lawn encompassed within the Lot, except as otherwise provided in Article X, Section 18 hereof. "Maintenance, care and replacement" within the meaning of this subsection shall include, mowing, edging, fertilizing and spraying of lawns, and replacement of landscaping and sod.

Notwithstanding the foregoing, the Club shall have the right, but not the obligation, following a tropical storm, hurricane or other Act of God, to upright and/or remove any fallen or dislodged trees, at the respective Owner's cost and expense on (i) any Lot, and/or (ii) any grassed areas located between the front and/or side(s) of such Owner's Lot and the street; on behalf of the Owner of such Lot. The Owner of said Lot shall be required to reimburse the Club for the costs and expenses incurred by the Club in connection with the uprighting and/or removal of any fallen or dislodged trees. In that regard, the Club may levy a Special Assessment against such Lot in connection with such costs and expenses, to the exclusion of all other Owners, without the need for obtaining the affirmative assent of at least two-thirds (2/3) of all Members as set forth in Section 3 of Article VII.

H. The Club shall be responsible for the maintenance, repair and replacement of any site or landscape lighting and any associated facilities placed within the Property by Declarant or the Club.

I. Neither the Club nor any Owner shall alter the slopes, contours, or cross-sections of the Lakes, Lake banks, and littoral zones or chemically, mechanically, or manually remove, damage or destroy any plants in any of the littoral zones, Lake Maintenance Easements or Lake Maintenance Access Easements except upon the written approval from the applicable governmental authority. The Club shall be responsible for maintaining the required survivorship and coverage of any planted littoral areas, to ensure the ongoing removal of prohibited and invasive non-native plant species from these areas, and to comply with all governmental regulations, including, without limitation, all permits issued by governmental and/or quasi-governmental authorities, applicable to the Lakes, Lake banks and littoral zones.

J. After the Turnover Date, the Club, by action of its Board, may make any minor and insubstantial alteration or Improvement to the Club Property having a cost not in excess of Twenty Five Thousand Dollars (\$25,000). All other alterations and Improvements must first be approved by at least two-thirds (2/3) of all Members represented in person or by proxy at a meeting called and held in accordance with the Bylaws. No alteration or Improvement may be made to the Club Property or the Golf Property which materially and adversely affects the rights of the Owner of any Lot to the enjoyment of such Owner's Lot or the Club Property or the Golf Property unless the Owner and all mortgagees holding recorded mortgages on such Lot consent thereto in writing. Prior to the Turnover Date, all alterations and Improvements to the Club Property shall be in Declarant's sole and absolute discretion.

K. All expenses incurred by the Club in connection with the services, operation, maintenance, repair and replacement described in Paragraphs A through J, inclusive, are Operating Expenses, payable by each Owner under the provisions of this Declaration concerning Assessments. Should the maintenance, repair or replacement provided for in Paragraphs A through I of this Section 1 be caused by the negligence of or misuse by an Owner, such Owner's family, guests, servants, invitees, or tenants, such Owner shall be responsible therefor, and the Club shall have the right to levy an Assessment against such Owner's Lot and said Assessment shall constitute a lien upon the appropriate Lot and Home with the same force and effect as liens for Operating Expenses.

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

M. Any Neighborhood Association having responsibility for maintenance of all or a portion of the Property within a particular Neighborhood pursuant to a Condominium Declaration affecting the Neighborhood shall perform such maintenance responsibility in a manner consistent with the Community-Wide Standard. If any such Neighborhood Association fails to perform its maintenance responsibility as required herein and in any such additional declaration, the Club may perform such maintenance and assess the costs against all Homes within such Neighborhood Association as a Special Assessment.

N. The Club shall be responsible for the maintenance, repair and replacement of the walls constructed by Declarant upon the rear Lot lines where the rear Lot line of one Lot abuts the rear Lot line of another Lot.

Section 2. BY THE OWNERS.

A. The Owner of each Lot must keep and maintain the Lot and the Improvements thereon, including equipment and appurtenances, in good order, condition and repair, and must perform promptly all maintenance and repair work within, upon and outside of such Owner's Home which, if omitted, could adversely affect Esplanade, the other Owners or the Club and its Members. The Owner of each Lot shall be responsible for any damages caused by a failure to so maintain such Lot, Improvements and Home. The Owners' responsibility for maintenance, repair and replacement shall include, but not be limited to, all of the physical structures constructed in, upon, above or below the Lot, and physical items attached or connected to such structures that run beyond the boundary line of the Lot which exclusively service or benefit the Lot and Home. Without limiting the generality of the foregoing, the Owner of each Lot shall keep all drainage structures (such as catch basins) located on the Owner's Lot clear of grass, leaves and other debris. Additionally, the painting, caulking and maintenance of the exterior surface of all walls, doors, windows and roof of the physical structure of the Home shall be performed by the Owner, and the exterior surface of such walls, doors, windows and roof shall at all times be maintained in a good and serviceable condition with no damage or other defect therein by the Owner. The Owner of a Lot further agrees to pay for all utilities (including, without limitation, those provided by the Community Systems), such as telephone, cable or satellite television, water (but excluding water associated with irrigation which shall be an Operating Expense of the Club), sewer, sanitation, electric, etc., that may be separately billed or charged to each Home. The Owner of each Lot shall be responsible for insect and pest control within the Home and the Lot. Whenever the maintenance, repair and replacement of any items which an Owner is obligated to maintain, repair or replace at such Owner's own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Club, the proceeds of the insurance received by the Club shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner shall be, in said instance, required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance or otherwise, reduce the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

In addition to the foregoing, the Owner of each Home shall be required to maintain appropriate climate control, keep his or her Home clean, promptly repair any leaks and take necessary measures to retard and prevent mold, fungi, mildew and mycotoxins from accumulating in the Home. Each Owner shall be required to clean and dust such Owner's Home on a regular basis and to remove visible moisture accumulation on windows, window sills, walls, floors, ceilings and other surfaces as soon as reasonably possible and must not block or cover any heating, ventilation or air-conditioning ducts, and to properly maintain and have serviced on a regular basis, the Home's HVAC system. Each Owner of a Home shall be responsible for damage to such Owner's Home and personal property as well as any injury to the Owner of a Home and/or occupants of the Home resulting from the Owner's failure to comply with these terms. Each Owner of a Home shall be responsible for the repair and remediation of all damages to the Home caused by mold, fungi, mildew and mycotoxins. While the foregoing are intended to minimize the potential developments of molds, fungi, mildew and other mycotoxins, each Owner understands and agrees that there is no method for completely eliminating the development of same. Declarant does not make any representations or warranties regarding the existence or development of molds, fungi, mildew or mycotoxins, and each Owner on behalf of themselves

and their family members, guests, invitees, tenants, successors and assigns shall be deemed to and by acceptance of a deed or title to the Home or by use of the Home, waives and expressly releases any such warranty and claims for loss or damages (including, without limitation, property damage and/or personal injury) resulting from the existence and/or development of same.

In addition to the above, Owners of all Homes shall be responsible to: fix leaks in and otherwise maintain and repair the roofs of their Homes; replace any dead or obviously dying trees on their Lots; and maintain, repair and replace any fences on their Lots except as otherwise provided in Article IX, Section 1.G above. Owners of Homes shall also clean, maintain, repair and replace the driveways located on their Lots and keep the sidewalks, if any, located on or contiguous to their Lots clean and free from any stains, trash, debris and/or impediments to pedestrian traffic.

B. If a Home is damaged by fire or other casualty, its Owner shall properly and promptly restore it to at least as good a condition as it was before the casualty occurred. Any such work shall be in accordance with the original plans and specifications of the Home unless otherwise authorized by the Board and shall be otherwise subject to all provisions of Article VIII hereof.

C. Each Owner shall keep such Owner's Home insured in an amount not less than its full insurable value against loss or damage by fire or other hazards. Evidence of such coverage shall be furnished to the Club promptly upon the Board's request.

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

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

F. The Club shall control the timers for the post lights installed by Declarant in the front yards of Homes, however, Owners are responsible for the replacement of the light bulbs, and the maintenance, repair and replacement of the post lights installed in their front

yards. Owners are required to immediately replace any burned out bulbs in such post lights. If the Owner fails to perform its maintenance responsibility as required herein the Club may perform such maintenance and assess the costs against the Owner as a Benefited Assessment.

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

The owner or owners of any damaged building (including, without limitation, the Owner of a Lot and/or Home), the Club, and the Architectural Control Committee shall be obligated to proceed with all due diligence hereunder and the responsible parties shall commence reconstruction within three (3) months after the damage occurs and complete reconstruction within one (1) year after the damage occurs, unless prevented by causes beyond his or its reasonable control.

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

## **ARTICLE X**

### **USE RESTRICTIONS**

All of the Property shall be held, used, and enjoyed subject to the following limitations and restrictions, and any and all additional rules and regulations which may, from time to time, be adopted by the Club, except as provided in Article X, Section 26 below:

Section 1. ENFORCEMENT. Failure of an Owner to comply with any limitations or restrictions in this Declaration or any of the Esplanade Documents or with any rules and regulations promulgated by the Club shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Without limiting the generality of the foregoing, an Owner shall also be responsible for the payment of any and all Legal Fees incurred by the Club in connection with the enforcement of this Declaration or any of the Esplanade Documents or with any rules or regulations promulgated by the Club, whether or not an action is actually begun. Any such Legal Fees shall be paid not later than thirty (30) days after written notice thereof and if not paid within such thirty (30) day period, shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

In addition to all other remedies, the Club may suspend, for a reasonable period of time, any or all of the rights of an Owner or an Owner's tenants, guests or invitees to use Club Property and/or the Golf Property and facilities (including, without limitation, cable television and other services provided by Community Systems); may suspend the voting rights of an Owner

if such Owner is delinquent in payment of assessments for more than ninety (90) days; and may levy reasonable fines against any Owner or any Owner's tenant, guest or invitee for failure of such Owner, and/or such Owner's family, guests, invitees, tenants or employees to comply with any of the Esplanade Documents, provided the following procedures are adhered to:

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

B. Hearing. Should the Owner still be in noncompliance, the noncompliance shall be presented to the Board after which the Board shall hear reasons why a fine should or should not be imposed. A written decision of the Board shall be submitted to the Owner, as applicable, not later than twenty-one (21) days after said meeting.

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

D. Fines. A fine shall be treated as an Assessment subject to the provisions of the collection of Assessments as otherwise set forth herein. All monies received from fines shall be allocated as directed by the Board, subject always to the provisions of this Declaration.

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

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

Section 2. SINGLE-FAMILY USE. The Homes shall be for single-family use only. No commercial occupation or activity may be carried on in Esplanade except as such occupation or activity is permitted to be carried on by Declarant under this Declaration. A single-family is defined to mean any number of persons related by blood, marriage or adoption or not more than two (2) unrelated persons living as a single housekeeping unit.

Section 3. HOMES OWNED BY ENTITIES OR UNRELATED PERSONS. It is the intention that Homes be occupied for single-family use. In the event an entity owns a Home, the entity shall notify the Club in writing with the names of the family members who shall occupy the Home. In the event the Owners of the Home are unrelated either through blood or marriage,

they shall be permitted to occupy the Home provided they live as a family unit similar to a husband and wife. No Home may be used as a rooming house, hostel, or hotel. Timesharing or other arrangements involving more than three ownership interests in a Lot (including ownership by more than three persons as joint tenants or tenants-in-common), or assigning separate use periods of less than ninety (90) consecutive days' duration, are prohibited.

Section 4.     NUISANCES. No obnoxious or offensive activity shall be carried on or about the Lots or in or about any Improvements, Homes, or on any portion of Esplanade nor shall anything be done therein which may be or become an unreasonable annoyance or a nuisance to any Owner. No use or practice shall be allowed in or around the Homes which is a source of annoyance to Owners or occupants of Homes or which interferes with the peaceful possession or proper use of the Homes or the surrounding areas. No loud noises or noxious odors shall be permitted in any Improvements, Homes or Lots. Without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices (other than security devices used exclusively for security purposes), noisy or smoky vehicles, unlicensed off-road motor vehicles or any items which may unreasonably interfere with television or radio reception of any Owner shall be located, used or placed on any Lot, or exposed to the view of other Owners without the prior written approval of the Board.

Section 5.     PARKING AND VEHICULAR RESTRICTIONS. Parking upon the Property shall be restricted to the driveway and garage located upon each Lot and designated parking areas within the Club Property and Golf Property. No parking on the streets or swales is permitted, however, if the Owner is having a private party or event, the guests may park on the street for a period not to exceed eight (8) hours. Overnight parking on the streets is prohibited. No Owner shall keep any vehicle on any Lot which is deemed to be a nuisance by the Board. No Owner shall conduct repairs taking more than twenty-four (24) hours (except in an emergency or except within the garage of the Home with the garage door closed) or restorations of any motor vehicle, boat, trailer, or other vehicle upon any Lot. No commercial vehicle (excluding all police, fire and other public safety vehicles), trailer, recreational vehicle, boat or boat trailer may be parked or stored on the Property except in the garage of a Home located upon a Lot. No bus or tractor-trailer or any other truck larger than a full-size pickup truck may be parked on the Property, except temporarily as in the case of a moving van or other such vehicle necessary to provide service to an Owner and with the exception of any vehicles necessary for any construction activity being performed by or on behalf of Declarant. Motor homes are permitted to be parked in an Owner's driveway for a period not to exceed two (2) days.

Section 6.     NO IMPROPER USE. No improper, offensive, hazardous or unlawful use shall be made of any Home nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to any person using any portion of the Property. All valid laws, zoning ordinances, orders, rules, regulations, codes and other requirements of all governmental bodies having jurisdiction thereover shall be observed. Violations of laws, ordinances, orders, rules, regulations, codes or other requirements of any governmental agency having jurisdiction thereover relating to any Home or Lot shall be corrected by, and at the sole expense of the Owner of said Home and/or Lot.

Section 7.     LEASES. No portion of a Home (other than an entire Home) may be rented. All leases must be in writing and shall have a term of no less than one (1) month. No Owner may



lease his or her Home more than four (4) times in any 12-month period, even if a tenant defaults on a lease or abandons the Home before expiration of the lease term. No lease shall provide for an early lease termination which would reduce a lease term to a period of less than said three (3) months, except in the event of a default by the tenant. Any lease terminated as a result of a default or otherwise, shall nevertheless still count towards the foregoing rental limitations. The restrictions on lease terms set forth in this paragraph shall not apply to Homes owned or leased by Declarant, its Affiliates, or Persons Declarant approves, in connection with their development, construction, or sale of property in Esplanade. All leases shall provide, and if they do not so provide then the leases shall be deemed to provide, that the Club shall have the right to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Articles, the Bylaws, applicable rules and regulations, or of any other agreement, document or instrument governing the Lots or Homes. The Owner of a leased Home shall be jointly and severally liable with such Owner's tenant for compliance with the Esplanade Documents and to the Club to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinate to any lien filed by the Club whether before or after such lease was entered into.

Within five (5) days following execution of a lease for a Home, but in no event later than occupancy of the Home by a tenant, Owner shall: (a) notify the Club in writing with the name of the tenant and all of tenant's family members or others that will be occupying the Home, and (b) provide the Club with a true, correct and complete copy of the lease agreement. In the event Owner fails to timely comply with the foregoing, such lease shall be null and void and of no further force or effect, and Owner shall be in violation of this Declaration.

Section 8. ANIMALS AND PETS. Only common domesticated household pets may be kept on any Lot or in a Home, but in no event for the purpose of breeding or for any commercial purposes whatsoever. No other animals, livestock, horses, reptiles or poultry of any kind shall be kept, raised, bred or maintained on any portion of the Property. Permitted pets shall only be kept subject to and in accordance with such rules and regulations as shall be promulgated from time to time by the Board. Any pet must be carried or kept on a leash when outside of a Home or fenced-in area. No pet shall be kept tied up outside of a Home or in any screened porch or patio, unless someone is present in the Home. An Owner shall immediately pick up and remove any solid animal waste deposited by such Owner's pet on the Property. An Owner is responsible for the cost of repair or replacement of any Club Property and/or Golf Property damaged by such Owner's pet.

Notwithstanding the foregoing, under no circumstances shall a Pit Bull (as hereinafter defined), Rottweiler, Doberman Pinscher, Presa Canario (canary dog) or "Dangerous Dog" (as hereinafter defined) be permitted on the Property. As used in this Declaration: (i) a "Pit Bull" is defined as any dog that is an American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Bull Terrier, or any dog displaying a majority of the physical traits of any one (1) or more of the above breeds, or any dog exhibiting those distinguishing characteristics which substantially conform to the standards established by the American Kennel Club or United Kennel Club for any of the above breeds; and (ii) a "Dangerous Dog" is defined as a dog which meets any one (1) of the following criteria: (a) has aggressively bitten, attacked, endangered or inflicted severe injury on a human being at any time whether on or off the Property, (b) has severely injured or killed a domestic animal at any time whether on or off the Property, or (c)

has, when unprovoked, chased or approached any person upon the Roads and/or sidewalks, or any other portion of the Property in a menacing fashion or apparent attitude of attack; provided, however, a dog shall not be a "Dangerous Dog" if the threat, injury, death or damage was sustained by a person who, at the time, was unlawfully on the Property (or any portion thereof), or, while lawfully on the Property (or any portion thereof), was tormenting, abusing or assaulting the dog or its owner or a family member; provided further, that no dog may be a "Dangerous Dog" if the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault.

Each Owner who determines to keep a pet hereby agrees to indemnify the Club and Declarant and hold each of the Club and Declarant harmless against any loss or liability of any kind or character whatsoever arising from or growing out of such Owner having any animal on the Property.

Section 9. ADDITIONS AND ALTERATIONS. No Home shall be enlarged by any addition thereto or to any part thereof, and no Owner shall make any Improvement, addition, or alteration to the exterior of such Owner's Home, including, without limitation, the painting, staining, or varnishing of the exterior of the Home, including doors, garage doors, driveways and walkways, unless being painted, stained or varnished using the same color as originally installed, or if replacing the roof, garage door or entry doors using the same color and type as originally installed, without the prior written approval of: (i) the Committee as set forth in Article VIII of this Declaration, which approval may be withheld for purely aesthetic reasons, and (ii) all applicable governmental entities. Without limiting the generality of the foregoing, no planting, landscaping and/or Improvements whatsoever shall be installed or constructed in: (a) the Lake Maintenance Easements adjacent to Lake Lots, and/or (b) in any Drainage Easements.

Section 10. INCREASE IN INSURANCE RATES. No Owner may engage in any action which may reasonably be expected to result in an increase in the rate of any insurance policy or policies covering or with respect to any portion of the Property not owned by such Owner.

Section 11. SLOPES AND TREES. No Owner may engage in any activity which will change the slope or drainage of a Lot including, without limitation, Lake bank slopes. No additional trees are permitted to be planted on the Property and no trees are permitted to be removed from the Property (other than dead or dying trees which are being replaced with trees of the same species) without the prior written consent of Declarant for as long as Declarant owns a Lot, and thereafter, without the prior written consent of the Board. No Owner may alter the slopes, contours or cross-sections of the Lakes, Lake banks or littoral zones, or chemically, mechanically or manually remove, damage or destroy any plants in any littoral zones.

Section 12. SIGNS. No sign, display, poster, advertisement, notice, lettering or other advertising device of any kind whatsoever (including, without limitation, "For Sale", "For Rent" or "By Owner" or any other signs for the sale or renting of homes) may be exhibited, displayed, inscribed, painted or affixed in public view of any portion of any building or other Improvement in the Property (including, without limitation, a Home) without the prior written consent of the Board, which consent may be given, withheld or conditioned in the sole and absolute discretion of the Board. Neither the Board nor the Committee shall consent to any type of "For Sale", "For Rent", "By Owner" or similar sign for the renting or sale of a Home so long as Declarant owns a

Lot in Esplanade or so long as Declarant or any of Declarant's affiliates (or any of their respective successors or assigns) are conducting sales and marketing of Homes in Esplanade or other communities developed or marketed by Declarant or its affiliates, whichever is later, unless Declarant consents in writing. Signs, regardless of size, used by Declarant or any of Declarant's affiliates, or any of their successors or assigns, for advertising or marketing during the construction and sale period of Esplanade or other communities developed and/or marketed by Declarant or its affiliates and other signs authorized by Declarant shall be exempt from this Section 12. Such sign or signs as Declarant may be required to erect under the terms of an Institutional Mortgage shall also be exempt from this Section 12. This provision may not be amended without the prior written consent of Declarant.

Section 13. TRASH AND OTHER MATERIALS. No rubbish, trash, garbage, refuse, or other waste material shall be kept or permitted on the Lots and/or Club Property, Golf Property, or other portions of the Property, except in sanitary, self-locking containers located in appropriate areas (i.e., areas not visible from the street or any other Lot other than at times of scheduled trash pick-up), and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, offensive, detrimental or a nuisance to Owners or to any other property in the vicinity thereof or to its occupants. No clothing or other household items shall be hung, dried, or aired in such a way as to be visible from the Club Property, Golf Property or another Lot. No stripped vehicles, lumber or other building materials, grass, tree clippings, metals, scrap, automobile pieces or parts, refuse, or trash shall be stored or allowed to accumulate on any portion of the Property (except when accumulated during construction by Declarant, during construction approved by the Committee, or when accumulated by the Club for imminent pick-up and discard).

Section 14. TEMPORARY STRUCTURES. No tent, shack, shed or other temporary building or Improvement, other than separate construction, service and sales trailers to be used by Declarant, Declarant's affiliates, and/or their respective agents and contractors, for the construction, service and sale of Esplanade or other communities, shall be placed upon any portion of the Property, either temporarily or permanently. Except as provided above, no trailer, motor home or recreational vehicle shall be: (a) used as a residence, either temporarily or permanently, or (b) parked upon the Property.

Section 15. OIL AND MINING OPERATIONS. No oil drilling, oil development operations, oil refining, boring or mining operations of any kind shall be permitted upon or on any Lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 16. SEWAGE DISPOSAL. No individual sewage disposal system shall be permitted on any of the Property when a central sewage disposal system is being operated in accordance with the requirements of the governmental regulatory body having jurisdiction thereof.

Section 17. WATER SUPPLY. No individual water supply system shall be permitted on any of the Property, provided that one or more central water supply systems are being operated in accordance with requirements of the governmental body having jurisdiction over said central system.

Section 18. FENCES. Any fence placed upon any Lot must be approved by the Committee, as provided in Article VIII hereof, prior to installation. In no event may the Committee approve any request for a fence to be placed in any of the following areas: (i) the area between the front of a Home and the Road at the front of the Lot on which the Home is situated, unless specifically required by the Manatee County Land Development Code; (ii) any Drainage Easement within the Property; or (iii) any Lake Maintenance Easement. The Owner assumes complete responsibility to maintain the fence, including, but not limited to, trimming any grass, ivy or other plants from the fence. In the event the Committee approves the installation of a fence, it shall also have the right to require installation of landscaping, also subject to the Committee's approval, at the time the fence is installed. No Owner shall be permitted to fence-in or enclose any portion of a Buffer or other Club Property or Golf Property.

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

In addition, the installation of any fence placed upon any Lot is subject to easements which run with the land. In the event that any fence is approved by the Committee and is permitted to cross any such easements, such Committee's approval is still subject to Owner first receiving written approval from the grantee of such easements and all other applicable governmental authorities. In the event the grantee of any such easement which runs with the land (i.e., utility provider or the County), its successors and/or assigns, requires the removal of any fence upon the Lot, then the Owner of said Lot shall, at the Owner's sole cost and expense, immediately remove the fence. Notwithstanding the foregoing or any permit or governmental approval to the contrary, no fence may be installed within any Drainage Easement(s) or Lake Maintenance Easement on the Property. The Owner of a Lot, when installing any fence upon the Lot, shall comply with all valid laws, zoning ordinances, codes, rules and regulations of all applicable governmental bodies, as applicable, in addition to the Committee approval required by Article VIII hereof.

Notwithstanding anything contained to the contrary in this Declaration, an Owner of a Lot who elects to install a fence on any portion of his or her Lot must install a gate for the Club to access the portion of the Lot which becomes enclosed by the fence construction, for the maintenance and care of the lawn and landscaping, otherwise, such Owner shall be responsible for the maintenance and care of the lawn and landscaping in the portion of the Lot which

becomes enclosed by the fence construction. Such Owner of a Lot shall not be entitled to a reduction in Assessments in turn for being responsible for such maintenance and care. "Maintenance and care" within the meaning of this subsection shall include, by way of example and not of limitation, mowing, edging, fertilizing and spraying of lawns, maintenance of the Irrigation System(s) or portion thereof, replacement of sod and the trimming, fertilizing and spraying of any hedge. In the event the Owner fails to properly maintain his Lot and/or Home pursuant to this subparagraph, then the Club or Declarant shall have the right but not the obligation, upon fifteen (15) days written notice, to enter the property of the Owner for the purpose of performing the maintenance referred to, set forth and described in the notice. The determination of whether an Owner is failing to properly maintain and care for the property for which he has the maintenance responsibility shall be determined in the sole discretion of the Club or Declarant. Further, if failure to comply relates to the Owner's obligations to maintain and care for such Owner's Lot, Home or other Improvement, the Club shall be entitled, but not obligated, to perform such maintenance and care itself and to levy on the offending Owner an Assessment equal to the cost of performing such maintenance and any such Assessment shall constitute a lien upon the applicable Lot and Home with the same force and effect as a lien for Operating Expenses.

Invisible fencing may be allowed if approved by the Committee. Any Owner permitted to install any invisible fencing acknowledges that the Club and the landscape maintenance company hired by the Club shall not be responsible for any damage caused to such invisible fencing by the Club's landscape maintenance company. Each Owner who is permitted to install invisible fencing on such Owner's Lot will be required to sign an acknowledgment that such Owner shall be responsible for any repairs and/or replacement of the invisible fencing, even if such repair and/or replacement was caused by the Club's landscape maintenance company in performing their responsibilities of landscape maintenance. Invisible fencing is not allowed in any Condominium.

Section 19. ANTENNAE. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any portion of the Property or upon any improvements thereon, unless expressly approved in writing by the Club, except that this prohibition shall not apply to those satellite dishes that are one (1) meter (39.37 inches) in diameter or less, and specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time. The Club is empowered to adopt, and amend from time to time, rules governing the types of antennae which may be permitted and restrictions relating to safety, location and maintenance of antennae. The Club may also adopt (and amend from time to time) and enforce reasonable rules limiting installation of permissible satellite dishes or antennae to certain specified locations, not visible from the street or neighboring properties, and integrated with the Property and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules and provided the cost of complying with such rules would not unreasonably increase the cost of installation of permissible satellite dishes or antennae. Any permissible satellite dishes or antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. Further, any Owner desiring to install permissible satellite dishes or antennae may, but is not obligated to, submit plans and specifications for same to the Committee to ensure compliance with the Club's rules governing

the types of permissible satellite dishes and antennae and restrictions relating to safety, location and maintenance of satellite dishes and antennae. This Section 19 shall not apply to Declarant.

Section 20. IMPROVEMENTS. No Improvements of any kind including, without limitation, any building, walkways, recreation areas and facilities, parking areas, berms, fountains, sprinkler systems, gatehouses, streets, drives, roads, Roads, driveways, fences, retaining walls, underground footers and other foundation supports, stairs, landscaping, trees, hedges, plantings, poles, shed, play structure, tennis court, basketball courts, backboards and hoops, soccer goals, jogging, bicycling and walking paths, swing sets, gym sets, athletic/play equipment, site and perimeter walls, gazebos, benches, mailboxes, topographical feature, landscaping, lawn sculpture, fence, swimming pool, covered patios, screened enclosure, Street Lights, Decorative Street Lights and signs, shall be erected, placed or maintained, and no addition, alteration, modification or change to any such Improvement shall be made without the prior written approval of the Committee, including, but not limited to, painting the Home in a color other than the color originally placed by Declarant on the painted surface, replacing the roof using a different type or color than the roof originally installed, or replacing a garage door or entry doors using a different color and type than originally installed.

Section 21. FLAGS. An Owner may display one portable, removable United States flag in a respectful manner, and one portable, removable official flag in a respectful manner, not larger than 4½ feet by 6 feet, that represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. Any Owner may erect a freestanding flagpole no more than 20 feet high on any portion of the Owner's Lot if the flagpole does not obstruct sightlines at intersections and is not erected within or upon an easement. The Owner may further display in a respectful manner from that flagpole, one official United States flag, not larger than 4½ feet by 6 feet, and may additionally display one official flag of the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag. Such additional flag must be equal in size to or smaller than the United States flag. The flagpole and display are subject to all building codes, zoning setbacks, and other applicable governmental regulations, including, but not limited to, noise and lighting ordinances in the County and all setback and locational criteria contained in this Declaration.

Section 22. FLORIDA GREEN BUILDING COALITION ("FGBC"). All Owners must adhere to the program standards of the Florida Green Building Coalition (FGBC) for new single family homes. Additionally, all Owners must apply these standards to any new landscaping or Home improvement project conducted on their Lot, and shall maintain and manage their Lot and Home in a manner that conserves and preserves natural resources.

Section 23. GARAGES. No garage shall be erected which is separate from the Home. No garage shall be permanently enclosed so as to make such garage unusable by an automobile, and no portion of a garage originally intended for the parking of an automobile shall be converted into a living space or storage space and no garage opening shall have a screen covering without the consent of the Club. All garage doors shall remain closed when vehicles are not entering or leaving the garage.

Section 24. HURRICANE SHUTTERS. No hurricane shutters may be installed without the prior written consent of the Club and the Committee, which consent may not be unreasonably withheld. If the installation of hurricane shutters is made which does not conform with the specifications approved by the Club and the Committee, then the hurricane shutters will be made to conform by the Club at the Owner's expense or they shall be removed.

Approved hurricane shutters shall not be installed or closed, as applicable, before the issuance of a hurricane watch by the National Hurricane Center encompassing the Braemar location, and shall be removed no later than ten (10) days after the cessation of a hurricane watch or warning for same ("Hurricane Shutter Time Period").

Each Owner who plans to be absent from his or her Home during the hurricane season must prepare his or her Lot prior to such Owner's departure by (a) removing all furniture, potted plants and other movable objects from his or her porch, balcony or patio, if any; (b) designating a responsible firm or individual satisfactory to the Club to install and remove approved hurricane shutters in accordance with the Hurricane Shutter Time Period requirements; and (c) designating a responsible firm or individual satisfactory to the Club to care for the Home should the Home suffer hurricane damage. Such firm or individual shall contact the Club for clearance to install or remove hurricane shutters.

Section 25. GOLF PROPERTY. No Owner of any of Lot shall have any right, by virtue of Ownership of any Lot within Esplanade, whether or not contiguous to the Club's golf course, of access, entry, or other use of the Golf Property. While the Owners shall have the right to quiet enjoyment to their property, there shall be no activity on any Lots that are contiguous to the Golf Property, or any other portion of Esplanade located within a distance of one hundred feet (100') from the boundary of the Golf Property that unreasonably disturbs play or the enjoyment of the Golf Property by Golf Members and guests thereof, including, without limitation, undue noise, unsightly trash and debris, or any other noxious or offensive activity. There shall be no fencing or other obstructions on the remainder within a distance of ten feet (10') from the boundary of the Golf Property without the prior written permission of the Club and the Architectural Control Committee. There shall be no fencing around or abutting the boundary of the Golf Property, except for temporary fencing erected during tournaments or for a limited time during any construction activity on the Golf Property.

Section 26. DECLARANT EXEMPTION. Declarant plans to undertake the work of constructing Homes and Improvements upon the Property and may undertake the work of constructing other buildings upon adjacent land or other property being developed or marketed by Declarant or its affiliates. The completion of the aforementioned work and the sale, rental and other transfer of Homes by Declarant and Declarant's affiliates are essential to the establishment and welfare of the Property as a residential community. In order that such work may be completed and a fully occupied community established as rapidly as possible, neither the Owners, the Club, nor the Architectural Control Committee shall do anything whatsoever to interfere with any of Declarant's or Declarant's affiliates' activities relating to the selling or constructing of Homes and Improvements upon the Property, the selling or constructing of other buildings upon adjacent land or any other property being developed or marketed by Declarant or any of Declarant's affiliates, or the sale, rental and/or other transfer of Homes by Declarant or any of Declarant's affiliates. In this respect, Declarant hereby reserves the right for itself and its

employees, agents, licensees, and invitees to come upon any and all portions of the Property (including, without limitation, the Club Property as well as a Lot even after the same has been conveyed to an Owner) as may be necessary or convenient to enable Declarant to carry on its work and other activities including, without limitation, Declarant's development and construction of Esplanade and the Homes therein.

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

**ARTICLE XI**  
**DAMAGE OR DESTRUCTION TO CLUB PROPERTY AND GOLF PROPERTY**

Damage to or destruction of all or any portion of the Club Property and/or Golf Property shall, notwithstanding any provision in this Declaration to the contrary, be handled as follows:

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

B. If insurance proceeds are insufficient to effect total restoration, and the cost of restoration exceeds such proceeds by Twenty-Five Thousand Dollars (\$25,000.00) or less, then the Club shall cause the Club Property and/or Golf Property to be repaired and reconstructed substantially as it previously existed and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment proportionately against each of the Lots in accordance with the provisions of Articles VI and VII herein.

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



D. Each Owner shall be liable to the Club for any damage to the Club Property and/or Golf Property not fully covered or collected by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of such Owner's family, tenants, invitees and guests, both minors and adults.

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

## **ARTICLE XII**

### **INSURANCE AND CONDEMNATION**

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

Section 1. CASUALTY INSURANCE. Property and casualty insurance in an amount equal to the then full replacement cost, exclusive of land, foundation, excavation and other items normally excluded from such coverage, of all Improvements and personal property which are owned by the Club and now or hereafter located upon the Club Property and/or Golf Property, which insurance shall afford protection against such risks, if any, as shall customarily be covered with respect to areas similar to the Club Property and/or Golf Property in developments similar to Esplanade in construction, location and use.

Section 2. PUBLIC LIABILITY INSURANCE. A comprehensive policy of public liability insurance naming the Club and, until Declarant no longer owns any Lot with the Property, Declarant as named insureds thereof insuring against any and all claims or demands made by any person or persons whomsoever for personal injuries or property damage received in connection with, or arising from, the operation, maintenance and use of the Club Property and/or Golf Property and any Improvements located thereon, and for any other risks insured against by such policies with limits of not less than One Million Dollars (\$1,000,000.00) for damages incurred or claimed by any one person for any one occurrence; not less than Three Million Dollars (\$3,000,000.00) for damages incurred or claimed by more than one person for any one occurrence; and for not less than Fifty Thousand Dollars (\$50,000.00) property damage per occurrence with no separate limits stated for the number of claims. The Club may also obtain worker's compensation insurance and other liability insurance including, but not limited to, insurance for lawsuits related to employment contracts in which the Club is a party, as it may deem desirable.

Section 3. FIDELITY COVERAGE. Adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Club and the Board and all others who handle and are

responsible for handling funds of the Club shall be maintained in the form of fidelity bonds, which requirements shall be reasonably determined by the Board.

Section 4. DIRECTORS' COVERAGE. Adequate directors' and officers' liability coverage, which coverage shall be effective from and after the date the Club is created.

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

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

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

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

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

### ARTICLE XIII MANATEE COUNTY REQUIREMENTS

Section 1. COMPLIANCE WITH COUNTY REQUIREMENTS AND MANATEE COUNTY LAND DEVELOPMENT CODE. The provisions contained in this Article are mandated by the Manatee County Land Development Code or the County, are applicable to

Esplanade and are subject to amendment from time to time by the County. The language used in this Article was required by the County.

Section 2. SETBACKS. Lot setbacks shall be as follows: front minimum setback of 25' to the garage portion of the structure, the remaining habitable portion of the structure may be setback 20' feet; the front yard setback for structures with side-loaded garages shall be 20', side minimum setbacks of 6', rear yard minimum setback of 15', and a maximum height of 35', and the side entry alternative allows a side setback of 11'1" minimum with a building separation of no less than 12'. Setbacks requirements may be amended from time to time by the County, in which event Declarant shall have the right to amend this Declaration without joinder of any Owner or other party to reflect such County revised setbacks. Lots shall be deemed to have more than one (1) front for purposes of determining the required front setback lines if the Lot is bounded by a road, street or other easement on more than one (1) side, as permitted by Section 720.3035(3), Florida Statutes, as amended, and as required by the Manatee County Land Development Code.

Section 3. CLUB PROPERTY MAINTENANCE BY COUNTY IF CLUB FAILS TO PROPERLY MAINTAIN. In the event the Club fails to maintain the Club Property in reasonable order and condition in accordance with applicable Governmental Approvals, the County may, upon specified notice and hearing, to enter the Club Property for the purpose of maintaining same. The cost of such maintenance by the County shall be assessed pro-rata against the Lots and such charges are payable by the Owner within sixty (60) days after receipt of a statement therefore from the County, and, if unpaid at the end of such period, shall become a lien on the Lots.

Section 4. FURTHER DISPOSITION OF OPEN SPACE. With respect to such portions of the Club Property or any interest therein that may be deemed required common open space under applicable governmental regulations, subsequent to the conveyance to the Club, there shall be no further disposition of such Club Property that is real property by sale, dissolution of the Club or otherwise, except to the Stewardship District or an organization conceived and organized to own and maintain such property, without first offering to dedicate the same to the County or other appropriate governmental agency.

Section 5. PLANNING DEPARTMENT. No portion of the Club Property shall be denuded, defaced or otherwise disturbed in any manner at any time, except for maintenance, repair and improvement, without the prior written approval of both the Club and the director of the County's Planning Department, or such successor agency as may assume the duties of that department.

Section 6. RIGHT OF ENTRY BY COUNTY. A right of entry upon the Club Property is hereby granted to County and other governmental law enforcement officers, health and pollution control personnel, emergency medical service personnel and firefighting personnel, and to governmental suppliers of utilities, while in the pursuit of their duties. All such governmental personnel are further granted authority to enforce cleared emergency vehicle access in the performance of their duties to the extent the same may be reasonably necessary.

Section 7. COMPLIANCE WITH LAW. Notwithstanding any other provision of this Declaration to the contrary, there shall be no violation of federal, state or local law permitted within the Property.

Section 8. REQUIRED MATERIAL. The Land Development Code or the County may mandate certain documents be submitted to the Planning Director of the County, which documents may be reviewed and approved by the planning director and, once approved, said documents shall be recorded as part of the documentation for the Property. The following described documents have been submitted, reviewed and approved by the planning director, and are attached hereto as exhibits.

Section 9. FISCAL PROGRAM. Attached as Exhibit "D" is a Fiscal Program for the Club for a period of ten (10) years. The Fiscal Program may reflect reserve funds estimated to be adequate for the maintenance and care of the Club Property, including all lands, facilities and uses under the purview of the Club and to be maintained by the Club. The Fiscal Program is in part based upon the assumption that the Club will follow the Maintenance Program described below.

Section 10. MAINTENANCE PROGRAM. There is attached as Exhibit "E" a Maintenance Program providing a recommended program for the maintenance of all major facilities to be maintained by the Club. The Stewardship District shall submit inspection reports to the Water Management District as required by the Water Management District Permit.

Section 11. NOTICE TO BUYER. There is attached hereto as Exhibit "F" a proposed Notice to Buyer that will be given to prospective buyers regarding the organization of the Club, Assessments and the Fiscal Program, as well as street trees required by the County Land Development Code.

Section 12. LIST OF HOLDINGS. There is attached hereto as Exhibit "G" a List of Holdings of the Club, reflecting a listing of all lands, buildings, equipment, facilities and other holdings of the Club, as proposed.

Section 13. LIMITATION. The Maintenance Program and Fiscal Program are estimates only prepared by Declarant based upon its experience, and reviewed and approved by the planning director of the County. The actual Maintenance Program will be as determined by the Club in accordance with this Declaration and the actual budgeted amount of Assessments will be as determined by the Club in accordance with this Declaration. All amounts reflected on the Fiscal Program are estimates only, based on currently anticipated costs without taking into consideration the fluctuating purchasing power of the United States dollar. Such amounts can reasonably be expected to fluctuate with time, the economy, market conditions and in response to actual (as opposed to estimated or assumed) experience, unexpected circumstances, and specific services and level of service determined by the Club. There is no guarantee, representation or warranty, either express or implied, by either Declarant or the County of the figures contained in the Fiscal Program, nor is the Maintenance Program represented or warranted as representative of the actual maintenance that will be required. No one to whom the precision of these figures or programs is of any consequence should enter a purchase agreement to acquire a Lot in Esplanade except with a full understanding of the purpose, nature and limitations of such materials.

**ARTICLE XIV**  
**GENERAL PROVISIONS**

Section 1. CONFLICT WITH OTHER ESPLANADE DOCUMENTS. In the event of any conflict between the provisions of this Declaration and the provisions of the Articles and/or Bylaws and/or rules and regulations promulgated by the Club, the provisions of this Declaration, the Articles, the Bylaws and the rules and regulations shall control, in that order.

Section 2. NOTICES. Any notice or other communication required or permitted to be given or delivered hereunder shall be deemed properly given and delivered upon the mailing thereof by United States mail, postage prepaid, to: (i) each Owner, at the address of the person whose name appears as the Owner on the records of the Club at the time of such mailing and, in the absence of any specific address, at the address of the Home owned by such Owner; (ii) the Club, certified mail, return receipt requested, at 551 North Cattlemen Road, Suite 200, Sarasota, Florida 34232, or such other address as the Club shall hereinafter notify Declarant and the Owners of in writing; and (iii) Declarant, certified mail, return receipt requested, at 551 North Cattlemen Road, Suite 200, Sarasota, Florida 34232, or such other address or addresses as Declarant shall hereafter notify the Club of in writing, any such notice to the Club of a change in Declarant's address being deemed notice to the Owners.

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

Section 4. INTERPRETATION. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of a residential community and for the maintenance of recreational facilities and Club Property and Golf Property. Article, Section and Paragraph captions, headings and titles inserted throughout this Declaration are intended as a matter of convenience only and in no way shall such captions, headings or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this Declaration.

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

Section 5. SEVERABILITY. In the event any of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way

affect any of the other provisions hereof, which shall remain in full force and effect, and any provisions of this Declaration deemed invalid by a court of competent jurisdiction by virtue of the term or scope thereof shall be deemed limited to the maximum term and scope permitted by law. In the event that any court should hereafter determine that any provision of this Declaration is in violation of the rule of property known as the "rule against perpetuities" or any other rule of law because of the duration of a time period, such provision shall not thereby become invalid, but instead the duration of such time period shall be reduced to the maximum period allowed under such rule of law, and in the event the determination of the duration of such time period requires measuring lives, such measuring life shall be that of the incorporator of the Club.

Section 6. CERTAIN RIGHTS OF DECLARANT. Notwithstanding anything to the contrary herein contained, no Improvements constructed or installed by Declarant shall be subject to the approval of the Club or the Owners or the provisions and requirements of this Declaration, although it is the intent of Declarant to create a community with a common scheme of development. Notwithstanding the other provisions of this Declaration, Declarant reserves for itself and its affiliates, and Declarant, its affiliates and its nominees shall have, the right to enter into and transact on the Property any business necessary to consummate the sale, lease or encumbrance of Homes or real property within or outside Esplanade, including, but not limited to, the right to maintain models and a sales and/or leasing office, a construction office and/or a service office, place signs, employ sales, leasing, construction and service personnel, use the Club Property and Golf Property and show Homes, and Declarant further reserves the right to make repairs to the Club Property and Golf Property and to carry on construction activity for the benefit of the Property. Declarant, its successors and/or assigns, shall have access to the Amenity Center and other facilities at all times during the development and sale period and the Club shall not impede any such access, and no Owner or the Club shall do any act which may interfere with Declarant having access to the Amenity Center and other facilities. Until such time as Declarant no longer owns any portion of the Property, Declarant shall be allowed to use the Amenity Center and other facilities for sales meetings and sales related functions and for other business purposes or functions Declarant determines in its sole discretion. Declarant, its affiliates and their respective nominees, may exercise the foregoing rights without notifying the Club and/or the Owners. Any such models, sales and/or leasing office, construction office, service office, signs and any other items pertaining to such sales, leasing, construction or service efforts shall not be considered a part of the Club Property or Golf Property and shall remain the property of Declarant. In addition, Declarant hereby has, shall have and hereby reserves the right to enter upon the Club Property and Golf Property (including, without limitation, all drainage, Lake maintenance, and utility easements, whether located on a Lot or Club Property or Golf Property) in order for Declarant to final-out and/or close-out any and all approvals, permits, orders, conditions and/or requirements that have been issued or imposed by any governmental entity in connection with the development and construction of Esplanade and all Improvements therein, and for Declarant to comply and adhere to the same, and such rights shall survive the date of Turnover and continue for such period of time as is necessary for Declarant to fully comply with all such governmentally issued approvals, permits, orders, conditions and/or requirements. Without limiting the generality of the foregoing, in exercising any such rights, Declarant shall have the right to remove and/or relocate any and all items (including, without limitation, landscape materials, fences and/or other Improvements) that may be required to be removed and/or relocated to final-out and/or close-out any and all such approvals, permits, orders, conditions and/or requirements without compensation to the Club or the Owners. This

Section 6 may not be suspended, superseded or modified in any manner by any amendment to this Declaration unless such amendment is consented to in writing by Declarant. This right of use and transaction of business as set forth herein and the other rights reserved by Declarant in the Esplanade Documents may be assigned in writing by Declarant in whole or in part. For the purposes of this Section 6, the term "Declarant" shall include any "Lender" which has loaned money to Declarant to acquire or construct Improvements upon the Property, or its successors and assigns if such Lender, its successors or assigns, acquires title to any portion of the Property as a result of the foreclosure of any mortgage encumbering any portion of the Property securing any such loan to Declarant, or acquires title thereto by deed in lieu of foreclosure. The rights and privileges of Declarant as set forth in this Section 6 are in addition to, and are no way a limit on, any other rights or privileges of Declarant under any of the Esplanade Documents.

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

ALL OWNERS, OCCUPANTS AND USERS OF ESPLANADE ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR ITS AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES MAY BE, FROM TIME TO TIME, CONDUCTING EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO ESPLANADE. BY THE ACCEPTANCE OF THEIR DEED, TITLE OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF ESPLANADE, EACH SUCH OWNER, OCCUPANT AND USER, FOR THEMSELVES AND EACH OF THEIR RESPECTIVE HEIRS, LEGAL REPRESENTATIVES AND ASSIGNS AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES AS FOLLOWS: (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO ESPLANADE WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) THAT THE OWNER, OCCUPANT OR USER IS AT RISK OF SUFFERING INJURY TO BOTH THEIR PERSON AND/OR PROPERTY AS A RESULT OF ENTRY UPON ANY PROPERTY WITHIN OR IN PROXIMITY TO ESPLANADE WHERE THE AFORESAID ACTIVITIES ARE BEING CONDUCTED. EACH OWNER, OCCUPANT AND USER EXPRESSLY ASSUMES FULL

RESPONSIBILITY FOR THE RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE SUFFERED AS A RESULT OF THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (iv) THAT EACH OWNER, OCCUPANT AND USER HEREBY RELEASES, WAIVES, DISCHARGES AND HOLDS HARMLESS DECLARANT, ITS PARTNERS AND AFFILIATES, AND EACH OF THEIR RESPECTIVE PARTNERS, AFFILIATES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS, AND ANY SUBSEQUENT DECLARANT (THE "RELEASED PARTIES") FROM ALL LOSSES, CLAIMS, COSTS, LIABILITIES, DAMAGES (INCLUDING COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE AND INCLUDING, BUT NOT LIMITED TO, PROPERTY DAMAGE, BODILY INJURY OR DEATH, WHETHER CAUSED BY NEGLIGENCE ON THE PART OF ANY OR ALL OF THE RELEASED PARTIES OR ANYONE ELSE), AS A RESULT OF, ARISING OUT OF, OR IN CONNECTION WITH THE AFORESAID CONSTRUCTION AND OTHER ACTIVITIES; (v) ANY PURCHASE OR USE OF ANY PORTION OF ESPLANADE HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (vi) THAT THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT TO SELL, CONVEY, LEASE AND/OR ALLOW THE USE OF THE APPLICABLE PORTION OF ESPLANADE.

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

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

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

B. After the Turnover Date, this Declaration may be amended by: (i) the consent of the Owners owning two-thirds (2/3) of all Lots; together with (ii) the approval or ratification of a majority of the Board. The aforementioned consent of the Owners owning two-thirds (2/3) of the Lots may be evidenced by a writing signed by the required number of Owners or by the affirmative vote of the required number of Owners at any regular or special meeting of the Club called and held in accordance with the Bylaws and evidenced by a certificate of the Secretary or an Assistant Secretary of the Club.



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

D. Notwithstanding anything to the contrary herein contained, no amendment to this Declaration shall be effective which shall impair or prejudice the rights or priorities of Declarant, the Club or of any Institutional Mortgagee under the Esplanade Documents without the specific written approval of such party affected thereby. In addition, and notwithstanding anything to the contrary contained herein, no amendment to this Declaration shall be effective which shall eliminate or modify the provisions of Section 6 of this Article XIV and any such amendment shall be deemed to impair and prejudice the rights of Declarant.

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

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

G. Any proposed amendment to the Declaration which would affect the surface water management system (including environmental conservation areas and the water management portions of the Club Property or Golf Property), shall be submitted to the Water Management District if necessary and any other governmental or quasi-governmental agency having jurisdiction over the surface water management system for a determination of whether the proposed amendment necessitates a modification of the surface water management permit for the Property.

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

Section 10. TERM. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein shall run with and bind the Property, and inure to the benefit of Declarant, the Club and the Owners and their respective legal representatives, heirs, successors and assigns for a term of fifty (50) years from the date of recording this Declaration amongst the Public Records of the County, after which time this

Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such fifty (50)-year term or any such ten (10)-year extension there is recorded amongst the Public Records of the County an instrument agreeing to terminate this Declaration signed by Owners owning two-thirds (2/3) of the Lots and Institutional Mortgagees holding first mortgages encumbering two-thirds (2/3) of all Lots encumbered by first mortgages held by Institutional Mortgagees, upon which event this Declaration shall be terminated upon the expiration of the fifty (50)-year term or the ten (10)-year extension during which such instrument was recorded.

In the event this Declaration is terminated or the Club ceases to exist for any reason, the Owners shall be jointly and severally responsible for the costs to maintain and shall maintain the Club Property and Golf Property in the manner described herein. This provision may not be amended or deleted without the prior written consent of the County and this provision shall survive the termination of this Declaration and shall run with the Property in perpetuity. Any Owner may, however, petition the Circuit Court for the appointment of a Receiver to manage the affairs of the Club in the event of dissolution of the Club.

Section 11. RIGHTS OF MORTGAGEES.

A. Right to Notice. The Club shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Esplanade Documents and the books, records and financial statements of the Club to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Property. In addition, evidence of insurance shall be issued to each Owner and mortgagee holding a mortgage encumbering a Home upon written request to the Club.

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

(1) Any condemnation, loss or casualty loss which affects any material portion of the Club Property and/or Golf Property;

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

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

(4) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform such Owner's obligations under the Esplanade Documents, including, but not limited to, any delinquency in the payment of Assessments, or any other charge owed to the Club by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

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

Section 12. APPROVAL OF CLUB LAWSUITS BY OWNERS. Notwithstanding anything contained herein to the contrary, in order to prevent the Board from incurring expenses not contemplated by the Esplanade Documents, the Club shall be required to obtain the approval of three-fourths (3/4) of the total voting interests (at a duly called meeting of the Owners at which a quorum is present) prior to engaging persons or entities for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- (a) the collection of Assessments;
- (b) the collection of other charges which Owners are obligated to pay pursuant to the Esplanade Documents;
- (c) the enforcement of the use and occupancy restrictions contained in the Esplanade Documents;
- (d) the enforcement of Club rules;
- (e) the enforcement of the architectural guidelines;
- (f) the enforcement of a contract entered into by the Club with vendors providing services to the Club;
- (g) dealing with an emergency when waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Club Property, the Golf Property or to Owner(s) (the imminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths [3/4] of the Owners); and
- (h) filing a compulsory counterclaim.

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

Section 14. SECURITY. The Club may, but shall not be obligated to, maintain or support certain activities within the Property designed to make the Property safer than it otherwise might be. Notwithstanding the foregoing, NEITHER DECLARANT NOR THE CLUB MAKES ANY REPRESENTATIONS WHATSOEVER AS TO THE SECURITY OF THE PREMISES OR

THE EFFECTIVENESS OF ANY MONITORING SYSTEM OR SECURITY SERVICE WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE. ALL OWNERS, BY ACCEPTANCE OF A DEED OR TITLE TO A LOT, AGREE TO HOLD DECLARANT AND THE CLUB HARMLESS FROM ANY LOSS OR CLAIM ARISING FROM THE OCCURRENCE OF ANY CRIME OR OTHER ACT. NEITHER THE CLUB, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTY, AND NEITHER THE CLUB, DECLARANT NOR ANY SUCCESSOR DECLARANT GUARANTEE OR WARRANT, EXPRESSLY OR IMPLIEDLY, THE MERCHANTABILITY OR FITNESS FOR USE OF ANY SUCH MONITORING SYSTEM OR SECURITY SERVICE, OR THAT ANY SYSTEM OR SERVICES WILL PREVENT INTRUSIONS, FIRES, DAMAGE, INJURY, DEATH OR OTHER OCCURRENCES, OR THE CONSEQUENCES OF SUCH OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE SYSTEM OR SERVICES ARE DESIGNED TO MONITOR SAME. NEITHER THE CLUB, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN, IF ANY, EVEN IF CAUSED BY THE NEGLIGENCE OF THE CLUB, DECLARANT AND/OR ANY SUCCESSOR DECLARANT. ALL MEMBERS, OWNERS AND OCCUPANTS OF ANY LOT OR HOME, AND TENANTS, GUESTS, AND INVITEES OF ANY OWNER ACKNOWLEDGE THAT THE CLUB AND ITS BOARD, DECLARANT, AND ANY SUCCESSOR DECLARANT DO NOT REPRESENT OR WARRANT THAT: (a) ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE), IF ANY, RECOMMENDED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY DECLARANT OR THE ARCHITECTURAL CONTROL COMMITTEE MAY NOT BE COMPROMISED OR CIRCUMVENTED, OR (b) THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEM (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE) WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF AN OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE CLUB, ITS BOARD AND THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT ARE NOT INSURERS OR GUARANTORS AND THAT EACH MEMBER, OWNER AND OCCUPANT OF ANY LOT OR HOME, AND EACH TENANT, GUEST AND INVITEE OF ANY MEMBER OR OWNER ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS OR HOMES, AND TO THE CONTENTS OF LOTS OR HOMES AND FURTHER ACKNOWLEDGES THAT THE CLUB, ITS BOARD AND THE ARCHITECTURAL CONTROL COMMITTEE, DECLARANT, AND ANY SUCCESSOR DECLARANT HAVE MADE NO REPRESENTATIONS, WARRANTIES AND/OR GUARANTIES, NOR HAS ANY OWNER, MEMBER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS OR OTHER SECURITY SYSTEMS (WHETHER SAME ARE PROVIDED THROUGH THE COMMUNITY SYSTEMS OR OTHERWISE)

RECOMMENDED OR INSTALLED, IF ANY, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTY.

Section 15. COVENANT RUNNING WITH THE LAND. All provisions of this Declaration shall, to the extent applicable and unless otherwise expressly provided herein to the contrary, be construed to be covenants running with the Lots and Homes and the Property and with every part thereof and interest therein, and all of the provisions hereof shall be binding upon and inure to the benefit of Declarant and subsequent Owner(s) of the Homes, Lots and Property or any part thereof, or interest therein, and their respective heirs, successors, and assigns. However, the same are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public, unless specifically provided herein to the contrary. All present and future Owners, tenants, and occupants of the Lots and Homes, as applicable, shall be subject to and shall comply with the provisions of this Declaration and the Articles, Bylaws and applicable rules and regulations as they exist and may from time to time be amended. The acceptance of a deed of conveyance of a Lot, or the entering into a lease of or occupancy of a Home, shall constitute an adoption and ratification by such Owner, tenant, or occupant of the provisions of this Declaration, and the Articles, Bylaws, and applicable rules and regulations of the Club, as they may be amended from time to time. In the event that any easements granted herein shall fail for want of a grantee in being or for any other purpose, the same shall constitute and be covenants running with the land.

Section 16. NO PUBLIC RIGHT OR DEDICATION. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Club Property or Golf Property to the public, or for any public use.

Section 17. NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DECLARANT OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE CLUB PROPERTY AND/OR THE GOLF PROPERTY, THEIR PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, FITNESS FOR INTENDED USE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION.

Section 18. SURROUNDING AGRICULTURAL USES AND DEVELOPMENT. By acceptance of a deed or title to a Lot, each Owner acknowledges and agrees that Esplanade lies in an area where (a) several of the adjacent and nearby properties are presently zoned for and/or may be used for agricultural uses, a permissive zoning designation allowing, among other things, groves/row crops, livestock raising, private kennels, stables, farm worker quarters, and others, (b) several of the adjacent and nearby properties are presently zoned for and/or may be used for commercial development, which may include a variety of retail, office, hotel and entertainment uses, and (c) properties currently zoned for agriculture may be rezoned for residential or commercial uses. Declarant cannot and does not represent, warrant or guaranty the manner in which such properties are now or in the future will be used, or how same will affect Esplanade, and Declarant shall have absolutely no liability whatsoever therefor.

Section 19. CERTAIN RESERVED RIGHTS OF DECLARANT WITH RESPECT TO COMMUNITY SYSTEMS. Without limiting the generality of any other applicable provisions of this Declaration, and without such provisions limiting the generality hereof, Declarant hereby reserves and retains to itself:

(a) the title to any Community Systems and a perpetual exclusive easement over, under and across the Property for the placement and location thereof;

(b) the right to connect, from time to time, the Community Systems to such receiving or intermediary transmission source(s) as Declarant may in its sole discretion deem appropriate, in location(s) on the Property as Declarant may determine in its sole discretion, including, without limitation, companies licensed to provide CATV or satellite service(s) in the County, for which service(s) Declarant shall have the right to charge any users a fee (which shall not exceed any maximum allowable charge provided for in the applicable ordinances of the County);

(c) the continuing right to air conditioned space within and/or on the Club Property and Golf Property, if any, as Declarant may determine in its sole discretion to install, operate, maintain, repair and replace the equipment serving, providing or running the Community Systems, which location may include, without limitation, room(s) within any clubhouse or other Improvements constructed on the Club Property and Golf Property, if any; and

(d) the exclusive right to offer and provide from time to time to the Club, the Lots and the Lot Owners, any and all Bundled Services through the Community Systems.

Neither the Club nor any officer, director, employee, committee member or agent thereof (including any management company) shall be liable for any damage to property, personal injury or death arising from or connected with any act or omission of any of the foregoing during the course of performing any duty or exercising any right or privilege (including, without limitation, performing maintenance work which is the duty of the Club or exercising any remedial maintenance or alteration rights under this Declaration) required or authorized to be done by the Club, or any of the other aforesaid parties, under this Declaration or otherwise as required or permitted by law.

Section 20. CLUB AND DECLARANT AS ATTORNEY-IN-FACT. Each Owner, by reason of having acquired ownership of a Lot, whether by purchase, gift, operation of law or otherwise, and each occupant of a Home, by reason of his or her occupancy, is hereby declared to have acknowledged and agreed to his or her automatic consent to any rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion made in, on or to Esplanade by Declarant (hereinafter, collectively, the "Modifications") and, in respect thereto, each Owner of a Lot and occupant of a Home hereby designates the Club to act as agent and attorney in fact on behalf of such Owner or occupant to consent to any such Modification. If requested by Declarant, each Owner shall evidence his or her consent to a Modification in writing (provided, however, that any refusal to give such written consent shall not obviate the automatic effect of this provision). Further, each Owner, by reason of having acquired ownership of a Lot, hereby agrees to execute, at the request of Declarant, any document and/or consent which may be required by any

government agency to allow Declarant and/or its affiliates to complete the plan of development of Esplanade, as such plan may be hereafter amended, and each such Owner hereby further appoints Declarant as such Owner's agent and attorney-in-fact to execute, on behalf and in the name of each such Owner, any and all of such documents and/or consents. This power of attorney is irrevocable and is coupled with an interest. The provisions of this Section 20 may not be amended without Declarant's prior written consent.

Section 21. DECLARANT'S RESERVATION OF RIGHTS. Notwithstanding anything contained herein or in any of the other Esplanade Documents to the contrary, Declarant reserves the right to change the zoning of any portion of the Property now existing or hereafter changed to be other than single-family residential (e.g., multi-family residential or commercial) and/or to make such uses of all or any part of the Property as shall be permitted by applicable zoning regulations as they may exist from time to time. Declarant, however, is not obligated by this Declaration to cause any portion of the Property to be rezoned or developed for any such uses. In the event Declarant changes the zoning of the Property, Declarant hereby reserves the right to amend this Declaration or to create one or more sub-declarations subjecting such property(ies) to additional or different specified or prohibited uses.

Section 22. DISPUTE RESOLUTION.

This Section 22 contains procedures concerning disputes between an Owner and the Club, as well as between (i) an Owner and/or Declarant and (ii) the Club and Declarant, related to Esplanade or each other. Regarding disputes between an Owner and Declarant, the procedures in this Section 22 do not replace Declarant's customer or warranty service procedures, and Owners are encouraged to resolve disputes through those procedures prior to initiating any procedures hereunder.

A. Disputes Between the Club and Owners. All disputes, controversies, claims and demands between the Club and any Owner pertaining to the subject areas described in Section 22.C below shall be governed by the procedures set forth in Section 22.C.

B. Disputes Between The Club/Owner and Declarant. Any and all claims, disputes and/or other controversy between the Club or any Owner and Declarant (or any Affiliated general contractor or Affiliated contractor, or any officer, director, member, shareholder, partner, employee or agent thereof, individually and collectively referred to as "Declarant" for purposes of this Article) or any non-Affiliated general contractor, non-Affiliated contractor, subcontractor, material supplier, individual product manufacturer, design professional or any other person or entity that provided materials, labor or other services to the Property or a Home on behalf of Declarant, relating to this Declaration, the use, condition, design, specifications, surveying, grading, construction, installation, budgeting and/or performance of any Improvements in the Common Area or the Home, whether based in contract, tort or statute violation, shall be subject to the provisions set forth in Section 22.C below, and/or, with respect to any such disputes between an Owner and Declarant, the provisions of the purchase agreement between such Owner and Declarant and/or the provisions of any warranty provided by Declarant to such Owner.

C. Dispute Resolution. ANY AND ALL CLAIMS, CONTROVERSIES, BREACHES OR DISPUTES BY OR BETWEEN ANY OWNER AND THE CLUB AND/OR DECLARANT (COLLECTIVELY REFERRED TO AS THE "BOUND PARTIES" AND INDIVIDUALLY AS A "BOUND PARTY"), ARISING OUT OF OR RELATED TO THE PROPERTY, THE SUBDIVISION OR COMMUNITY OF WHICH THE PROPERTY IS A PART, THE SALE OF THE PROPERTY BY DECLARANT, OR ANY TRANSACTION RELATED THERETO, WHETHER SUCH DISPUTE IS BASED ON CONTRACT, TORT, STATUTE, OR EQUITY, INCLUDING WITHOUT LIMITATION, ANY DISPUTE OVER (a) BREACH OF CONTRACT, (b) NEGLIGENT OR INTENTIONAL MISREPRESENTATION OR FRAUD, (c) NONDISCLOSURE, (d) BREACH OF ANY ALLEGED DUTY OF GOOD FAITH AND FAIR DEALING, (e) ALLEGATIONS OF LATENT OR PATENT DESIGN OR CONSTRUCTION DEFECTS, INCLUDING WITHOUT LIMITATION, PURSUANT TO THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, (f) THE PROPERTY, INCLUDING WITHOUT LIMITATION, THE PLANNING, SURVEYING, DESIGN, ENGINEERING, GRADING, SPECIFICATIONS, CONSTRUCTION OR OTHER DEVELOPMENT OF THE PROPERTY, THE PARCEL/TRACT OR ESPLANADE OF WHICH THE PROPERTY IS A PART, (g) DECEPTIVE TRADE PRACTICES OR (h) ANY OTHER MATTER ARISING OUT OF OR RELATED TO THE INTERPRETATION OF ANY TERM OR PROVISION OF THIS DECLARATION, OR ANY DEFENSE GOING TO THE FORMATION OR VALIDITY OF THIS DECLARATION, OR ANY PROVISION OF THIS DECLARATION OR ANY EXHIBITS HERETO (EACH A "DISPUTE"), SHALL BE ARBITRATED PURSUANT TO THE FEDERAL ARBITRATION ACT AND SUBJECT TO THE PROCEDURES SET FORTH AS FOLLOWS:

i. THIS AGREEMENT TO ARBITRATION SHALL BE DEEMED TO BE A SELF-EXECUTING ARBITRATION AGREEMENT. ANY DISPUTE CONCERNING THE INTERPRETATION OR THE ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, ITS REVOCABILITY OR VOIDABILITY FOR ANY CAUSE, ANY CHALLENGES TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, OR THE SCOPE OF ARBITRABLE ISSUES UNDER THIS ARBITRATION AGREEMENT, AND ANY DEFENSE RELATING TO THE ENFORCEMENT OF THIS ARBITRATION AGREEMENT, INCLUDING WITHOUT LIMITATION, WAIVER, ESTOPPEL, OR LACHES, SHALL BE DECIDED BY AN ARBITRATOR IN ACCORDANCE WITH THIS ARBITRATION AGREEMENT AND NOT BY A COURT OF LAW.

ii. IN THE EVENT THAT A DISPUTE ARISES BETWEEN THE BOUND PARTIES, SUCH DISPUTE SHALL BE RESOLVED BY AND PURSUANT TO THE ARBITRATION RULES AND PROCEDURES OF JUDICIAL ARBITRATION AND MEDIATION SERVICES ("JAMS") IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED. IN THE EVENT JAMS IS FOR ANY REASON UNWILLING OR UNABLE TO SERVE AS THE ARBITRATION SERVICE, THE BOUND PARTIES SHALL SELECT ANOTHER REPUTABLE ARBITRATION SERVICE. IF THE BOUND PARTIES ARE UNABLE TO AGREE ON AN ALTERNATIVE SERVICE, THEN EITHER BOUND PARTY MAY PETITION ANY COURT OF COMPETENT JURISDICTION IN THE COUNTY IN WHICH THE PROPERTY IS LOCATED TO APPOINT SUCH AN



ALTERNATIVE SERVICE, WHICH SHALL BE BINDING ON THE BOUND PARTIES. THE RULES AND PROCEDURES OF SUCH ALTERNATIVE SERVICE IN EFFECT AT THE TIME THE REQUEST FOR ARBITRATION IS SUBMITTED SHALL BE FOLLOWED.

iii. The Bound Parties expressly agree and acknowledge that this Declaration involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 U.S.C. §1 et seq.) now in effect and as the same may from time to time be amended, to the exclusion of any different or inconsistent state or local law, ordinance, regulation, or judicial rule. Accordingly, any and all Disputes shall be arbitrated – which arbitration shall be mandatory and binding – pursuant to the Federal Arbitration Act.

iv. This arbitration agreement shall inure to the benefit of, and be enforceable by, each Owner, Declarant and Declarant's Affiliates and related entities, the Club, and each of their respective employees, officers, directors, agents, representatives, contractors, subcontractors, agents, vendors, suppliers, design professionals, insurers and any other person whom any Owner or the Club contends is responsible for any alleged defect in or to the Property or any improvement or appurtenance thereto. The Bound Parties contemplate the inclusion of such Bound Parties in any arbitration of a Dispute and agree that the inclusion of such Bound Parties will not affect the enforceability of this arbitration agreement.

v. In the event any Dispute arises under the terms of this Declaration or in the event of the bringing of any arbitration action by a Bound Party hereto against another Bound Party hereunder by reason of any breach of any of the covenants, agreements or provisions on the Bound Party of the other Bound Party arising out of this Declaration, then in that event the prevailing party shall be awarded from the other party all costs and expenses in any way related to the Dispute, including actual attorney and paralegal's fees, accounting and engineering fees, and any other professional fees resulting there from as awarded by court or arbitrator.

vi. The arbitrator shall be authorized to provide all recognized remedies available in law or in equity for any cause of action that is the basis of the arbitration.

vii. The decision of the arbitrator shall be final and binding. The Bound Parties expressly agree that an application to confirm, vacate, modify, or correct an award rendered by the arbitrator shall be filed in any court of competent jurisdiction in the County in which the Property is located.

viii. To the extent that any state or local law, ordinance, regulation, or judicial rule is inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rules shall govern the conduct of the proceeding.

ix. The participation by any party, or any party whom the Club or any Owner contends is responsible for a Dispute, in any judicial proceeding concerning this arbitration agreement or any matter arbitrable hereunder shall not be asserted or accepted as a reason to delay, to refuse to participate in arbitration, or to refuse to compel arbitration, including instances in which the judicial proceeding involves parties not subject to this arbitration agreement and/or who cannot otherwise be compelled to arbitrate.

x. Fees and costs of the arbitration and/or the arbitrator shall be borne equally by the Bound Parties to the arbitration; provided, however, that the fees and costs of the arbitration and/or the arbitrator ultimately shall be allocated and borne as determined by the arbitrator. Notwithstanding the foregoing, the Bound Parties shall each be solely responsible for their own attorney fees and expert witness costs.

xi. The arbitrator appointed to serve shall be a neutral and impartial individual.

xii. The venue of the arbitration shall be in the County where the Property is located unless the parties agree in writing to another location.

xiii. If any provision of this arbitration agreement shall be determined to be unenforceable or to have been waived, the remaining provisions shall be deemed to be severable therefrom and enforceable according to their terms.

xiv. The parties to the arbitration shall have the right to conduct a reasonable amount of discovery, including written discovery, depositions and inspections and testing, all as approved and coordinated by the arbitrator.

xv. Any and all Disputes between Declarant and the Club arising from or related to Esplanade, this Declaration or any other agreements between Declarant and the Club shall be resolved in accordance with this Declaration.

xvi. Pre-Arbitration Dispute Resolution Provision: For all Disputes, the Bound Parties agree to follow the pre-arbitration procedures set forth below. The Dispute resolution provisions of this Declaration are intended to grant certain rights to Declarant and/or the Club which are in addition to those rights provided in Chapter 558, Florida Statutes ("Chapter 558 Notice of Claim"), as it exists at the time this Declaration is recorded. If a court of law should determine that any of the terms of this Declaration conflict with any of the terms of Chapter 558 Notice of Claim, the terms of Chapter 558 Notice of Claim shall supersede and control to the extent of such conflict.

1. Notification. The Club and all Owners agree to provide Declarant, with written notice of any matters relating to a Dispute as soon as is reasonably possible after the Club or any Owner becomes aware, or should have become aware, of such matters and Dispute. Additionally, in accordance with the requirements of Chapter 558 Notice of Claim, the Club and all Owners must comply with and is hereby advised of the following:

**ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.**

2. Cooperation; Access; Repair. The Club and each Owner agree to provide Declarant and its representatives, contractors, and others as Declarant may request, with prompt, reasonable cooperation, which may, for example, include access to all portions of the Property, in order to facilitate Declarant's investigation regarding a Dispute including, without limitation, for purposes of inspecting, testing, repairing, replacing, correcting, or otherwise addressing matters related to the Dispute. If the Dispute arises out of or relates to the planning, surveying, design, engineering, grading, specifications, construction, or other development of the Property, Declarant is hereby granted the irrevocable right, but is under no obligation, to inspect, repair and/or replace any and all affected parts of the Property.

NOTICE: THE BOUND PARTIES AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARBITRATION AGREEMENT (ARTICLE XIII, SECTION 22 OF THIS DECLARATION) ENTITLED, "DISPUTE RESOLUTION - ARBITRATION" DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT, AND THE BOUND PARTIES ARE GIVING UP ANY RIGHTS THE BOUND PARTIES MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. THE BOUND PARTIES ARE GIVING UP THEIR RESPECTIVE JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THIS ARBITRATION AGREEMENT. IF ANY OWNER OR DECLARANT AND/OR THE CLUB REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE OWNER OR DECLARANT AND/OR THE CLUB MAY BE COMPELLED TO ARBITRATE UNDER THE FEDERAL ARBITRATION ACT. THE BOUND PARTIES' AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

THIS DECLARATION PROVIDES THAT ALL DISPUTES BETWEEN THE BOUND PARTIES WILL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE PROVISIONS SET FORTH ABOVE. THIS MEANS THAT THE BOUND PARTIES EACH GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY TO ASSERT OR DEFEND RIGHTS UNDER THIS DECLARATION. THE BOUND PARTIES RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT BY A JUDGE OR JURY. THE BOUND PARTIES ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN THE RULES FOLLOWED IN A COURT. ARBITRATOR DECISIONS ARE AS ENFORCEABLE AS ANY COURT ORDER AND ARE SUBJECT TO VERY LIMITED REVIEW BY A COURT.

THE BOUND PARTIES UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT ALL DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE ENTITLED "DISPUTE RESOLUTION - ARBITRATION" TO NEUTRAL, BINDING ARBITRATION.

**ARTICLE XV**  
**LAKWOOD RANCH STEWARDSHIP DISTRICT**

The Property lies within the Lakewood Ranch Stewardship District (the "Stewardship District"), an independent special district created pursuant to Chapter 2005-338, Laws of Florida. Owners acknowledge that Chapter 2005-338, Laws of Florida, as amended by Chapter 2009-263, Laws of Florida, constitutes the organizational document of the Stewardship District, and that such documents are publicly available. The Property is subject to the assessment lien of certain Stewardship District debt, such debt currently being documented by Special Assessment Revenue Bonds, Series 2011, Lakewood Centre and Northwest Sector Projects. Owners acknowledge that the Stewardship District may, at a time chosen by the Stewardship District, sell replacement bonds or separate bonds for other purposes, on such terms and conditions as deemed appropriate by the Stewardship District, and levy an assessment on the Property for bonded debt. The Property is also subject to the assessment lien of the Stewardship District for annual maintenance and operation costs of the Stewardship District, which are allocated by the Stewardship District lands according to procedures and formulas adopted by the District.

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

**DECLARANT:**

TAYLOR MORRISON OF FLORIDA, INC.,  
a Florida corporation

By: *TJS*  
Printed Name: Tony J. Squitieri  
Title: Vice President

STATE OF FLORIDA        )  
  ) SS:  
COUNTY OF SARASOTA )

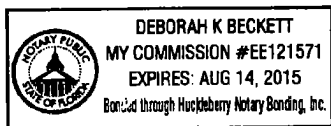
I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by Anthony J. Squitieri, as Vice President of TAYLOR MORRISON OF FLORIDA, INC., a Florida corporation, freely and voluntarily under authority duly vested in him/her by said corporation and that the seal affixed thereto is the true corporate seal of said corporation, who is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 7<sup>th</sup> day of August, 2013.

*Deborah K. Beckett*  
Notary Public  
**DEBORAH K. BECKETT**

Typed, printed or stamped name of Notary Public

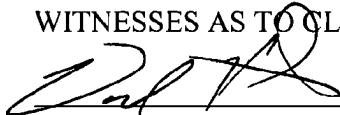
My Commission Expires:



**CLUB:**

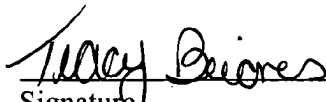
ESPLANADE GOLF & COUNTRY CLUB  
 AT LAKEWOOD RANCH, INC., a Florida  
 corporation not for profit

WITNESSES AS TO CLUB:

  
 Signature \_\_\_\_\_  
 Print Name David Truxton

By:   
 \_\_\_\_\_  
 ANDREW ("DREW") E. MILLER

Its: \_\_\_\_\_ President

  
 Signature \_\_\_\_\_  
 Print Name Tracy Bionnes

[CORPORATE SEAL]

STATE OF FLORIDA       )  
                                       ) SS  
 COUNTY OF SARASOTA )

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by ANDREW ("DREW") E. MILLER, as President of ESPLANADE GOLF & COUNTRY CLUB AT LAKEWOOD RANCH, INC., a Florida corporation not for profit, freely and voluntarily under authority duly vested in him by said corporation, and that the seal affixed thereto is the true corporate seal of said corporation. He is personally known to me.

WITNESS my hand and official seal in the County and State last aforesaid this 7th  
 day of August, 2013.

  
 \_\_\_\_\_

Notary Public, State of Florida at Large

**DEBORAH K. BECKETT**

My Commission Expires:

\_\_\_\_\_  
 Typed, Printed or Stamped Name of Notary Public

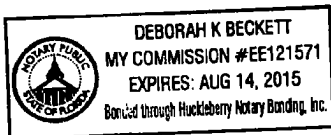


EXHIBIT A

Legal Description of Property

ALL THOSE TRACTS OR PARCELS OF LAND SHOWN ON THAT CERTAIN PLAT OF ESPLANADE, PHASE I, RECORDED IN PLAT BOOK 55, PAGES 11 THROUGH 21 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA; LESS AND EXCEPT TRACTS 800 THROUGH 803 AND RANGELAND PARKWAY;

AND

ALL THOSE TRACTS OR PARCELS OF LAND SHOWN ON THAT CERTAIN PLAT OF ESPLANADE, PHASE I SUBPHASE H & I, RECORDED IN PLAT BOOK 55, PAGES 130 THROUGH 135, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA;

AND

ALL THOSE TRACTS OR PARCELS OF LAND SHOWN ON THAT CERTAIN PLAT OF ESPLANADE, PHASE II, RECORDED IN PLAT BOOK 55, PAGES 146 THROUGH 150, OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA.