

**DECLARATION OF RESTRICTIONS AND COVENANTS
FOR
THE BAYWINDS COMMUNITY**

THIS DECLARATION OF RESTRICTIONS AND COVENANTS FOR BAYWINDS COMMUNITY (this "Declaration") is made this 22nd day of February, 2000 by Lennar Land Partners, a Florida general partnership ("Lennar") and joined in by Lennar Homes, Inc. ("LHI") and by Baywinds Community Association, Inc., a Florida not-for-profit corporation.

RECITALS

- A. Lennar and LHI are the owners of the real property in Palm Beach County, Florida, more particularly described in Exhibit 1 attached hereto and made a part hereof ("Baywinds").
- B. Lennar and LHI desire to subject Baywinds to the covenants, conditions and restrictions contained in this Declaration.
- C. This Declaration is a covenant running with all of the land comprising Baywinds, and each present and future owner of interests therein and their heirs, successors and assigns are hereby subject to this Declaration.

NOW THEREFORE, in consideration of the premises and mutual covenants contained in this Declaration, Lennar and LHI hereby declare that every portion of Baywinds is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, charges and liens hereinafter set forth.

- 1. **Recitals.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Declaration.
- 2. **Definitions.**

In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

"ACC" shall mean the Architectural Control Committee established pursuant to Section 19 hereof.

"Age of Residents" shall have the meaning set forth in Section 24 hereof.

"Apartment Building" shall mean any multifamily structure with individual residential apartments which are leased (and not sold) on an individual basis. An Apartment Building does not include a building submitted to condominium ownership.

"Articles" shall mean the Articles of Incorporation of Association filed with the Florida Secretary of State in the form attached hereto as Exhibit 2 and made a part hereof.

"Assessments" shall mean any assessments made in accordance with this Declaration and as further defined in Section 17.1 hereof.

"Association" shall mean Baywinds Community Association, Inc., its successors and assigns.

"Association Documents" shall mean this Declaration, the Articles, the By-Laws, the Rules and Regulations, and the Community Standards.

"Basic Service" shall mean "basic service tier" as described in Section 623(b)(7)(A) of the Cable Television Consumer Protection Act of 1992.

"Baywinds" shall have the meaning set forth in the Recitals hereof subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Developer may, when amending or modifying the description of real property which is subject to the operation of this Declaration, also amend or modify the definition of Baywinds.

"Board" shall mean the Board of Directors of Association.

"Builder" shall mean any person or entity that purchases a Parcel from Developer for the purpose of constructing one or more Homes.

"By-Laws" shall mean the By-Laws of Association in the form attached hereto as Exhibit 3 and made a part hereof.

"Club" shall mean the Baywinds Club, including the land and club facilities provided for the Owners pursuant to the provisions of Club Covenants.

"Club Charges" shall mean the charges related to the Club to be paid by the Owners pursuant to the provisions of the Club Covenants including, without limitation, the Club Fee.

"Club Covenants" shall mean the Baywinds Club Covenants together with all amendments and modifications thereof. A copy of the Club Covenants is attached hereto as Exhibit 4 and made a part hereof. This Declaration is subordinate in all respects to the Club Covenants.

"Club Fee" shall mean the fee to be paid to the Club Owner by each Owner pursuant to the provisions of this Declaration and the Club Covenants.

"Club Manager" shall mean the entity operating and managing the Club at any given time. As provided in the Club Covenants, Association may, at the direction of Club Owner, be required to act as Club Manager from time to time.

"Club Operating Costs" shall have the meaning set forth in the Club Covenants.

"Club Owner" shall mean the owner of the Club, its successors and assigns. Presently the Club Owner is Lennar.

"Common Areas" shall mean all real property interests and personalty within Baywinds designated as Common Areas from time to time by Plat or recorded amendment to this Declaration and provided for, owned, leased by, or dedicated to, the common use and enjoyment of the Owners within Baywinds. The Common Areas may include, without limitation, open space areas, internal buffers, neighborhood entrance features, perimeter buffers, improvements, easement areas owned by others, additions, lakes, fountains, irrigation pumps, irrigation lines, parks, sidewalks, streets, (excluding those streets owned or to be owned by a Neighborhood Association), street lights, service roads, walls, commonly used utility facilities, project signage, parking areas, other lighting, entranceways, features, entrance gates, gatehouses and a community Monitoring System. The Common Areas do not include any portion of a Home or the Club. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND OR OBLIGATE DEVELOPER TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN DEVELOPER'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM.

"Community Completion Date" shall mean the date upon which all Homes in Baywinds, as ultimately planned and as fully developed, have been conveyed by Developer and/or Builder(s) to Owners.

301 123

"Community Standards" shall mean such standards of conduct, maintenance or other activity, if any, established by the ACC pursuant to Section 19.5 hereof.

"Condominium" shall mean any condominium created pursuant to the Florida Condominium Act within Baywinds.

"Condominium Association" shall mean any condominium association responsible for maintaining the common elements to Homes forming a condominium.

"Condominium Unit" shall mean each Home which is part of a Condominium.

"Contractors" shall have the meaning set forth in Section 19.12.2 hereof.

"Data Transmission Services" shall mean enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

"Declaration" shall mean this Declaration, together with all amendments and modifications thereof.

"Developer" shall mean Lennar and any of its designees (including its affiliated or related entities which conduct land development, homebuilding and sales activities), successors and assigns who receive a written assignment of all or some of the rights of Developer hereunder. Such assignment need not be recorded in the Public Records in order to be effective. In the event of such a partial assignment, the assignee shall not be deemed Developer, but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a non-exclusive basis.

"Environmental Resource Permit" shall mean Permit No.50-03926-P issued by SFWMD, a copy of which is attached hereto as Exhibit 5.

"Expanded Basic Service" shall mean video programming services offered in addition to Basic Service, excluding Premium Channels.

"Home" shall mean a residential home and appurtenances thereto constructed on a Parcel within Baywinds. A Home shall include, without limitation, a condominium unit, coach home, villa, townhouse unit, single family home, zero lot line home, and each residential apartment within an Apartment Building. The term Home may not reflect the same division of property as reflected on a Plat. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Completion for such residence; provided, however, the subsequent loss of such Certificate of Completion (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of Owner to pay Assessments with respect to such Home. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home.

"Individual Assessments" shall have the meaning set forth in Section 17.2.5 hereof.

"Installment Assessments" shall have the meaning set forth in Section 17.2.1 hereof.

"Lake Slope Maintenance Standards" shall have the meaning set forth in Section 15.11 hereof.

"Lender" shall mean the holder of a first mortgage encumbering a Parcel or Home.

"Lennar" shall mean Lennar Land Partners, a Florida general partnership, its successors and assigns.

"Master Plan" shall mean collectively the any full or partial concept plan for the development of Baywinds, as it exists as of the date of recording this Declaration, regardless of whether such plan is currently on file with one or more governmental agencies. The Master Plan is subject to change as set forth herein. The Master Plan is not a representation

by Developer as to the development of Baywinds or its amenities, as Developer reserves the right to amend all or part of the Master Plan from time to time. The Master Plan is presently an exhibit to the Title Documents.

"**Mitigation Monitoring System**" shall mean the periodic evaluation of mitigation areas after restoration/creation efforts are completed. Mitigation monitoring is required by the terms and conditions of the Environmental Resource Permit. Please refer to the terms and conditions of the approved Environmental Resource Permit for monitoring methodology and schedule, which shall be performed as set forth in Section 11.3 herein.

"**Monitoring System**" shall mean any electronic surveillance and/or monitoring system intended to control access, provide alarm service, and/or enhance the welfare of Baywinds. By way of example, and not of limitation, the term Monitoring System may include a central alarm system, electronic entrance gates, gatehouses, roving attendants, wireless communication to Homes, or any combination thereof. **THE PROVISION OF A MONITORING SYSTEM SHALL IN NO MANNER CONSTITUTE A WARRANTY OR REPRESENTATION AS TO THE PROVISION OF OR LEVEL OF SECURITY WITHIN BAYWINDS. DEVELOPER, BUILDERS, ANY CONDOMINIUM ASSOCIATION, CLUB OWNER, CLUB MANAGER, NEIGHBORHOOD ASSOCIATIONS, AND THE ASSOCIATION DO NOT GUARANTEE OR WARRANT, EXPRESSLY OR BY IMPLICATION, THE MERCHANTABILITY OF FITNESS FOR USE OF ANY MONITORING SYSTEM, OR THAT ANY SUCH SYSTEM (OR ANY OF ITS COMPONENTS OR RELATED SERVICES) WILL PREVENT INTRUSIONS, FIRES, OR OTHER OCCURRENCES, REGARDLESS OF WHETHER OR NOT THE MONITORING SERVICE IS DESIGNED TO MONITOR THE SAME. EACH AND EVERY OWNER AND THE OCCUPANT OF EACH HOME ACKNOWLEDGES THAT DEVELOPER, BUILDERS, ANY CONDOMINIUM ASSOCIATION, CLUB OWNER, CLUB MANAGER, NEIGHBORHOOD ASSOCIATIONS AND THE ASSOCIATION, THEIR EMPLOYEES, AGENTS, MANAGERS, DIRECTORS, AND OFFICERS, ARE NOT INSURERS OF OWNERS OR HOMES, OR THE PERSONAL PROPERTY LOCATED WITHIN HOMES. DEVELOPER, BUILDERS, ANY CONDOMINIUM ASSOCIATION, CLUB OWNER, CLUB MANAGER, NEIGHBORHOOD ASSOCIATIONS, AND THE ASSOCIATION WILL NOT BE RESPONSIBLE OR LIABLE FOR LOSSES, INJURIES, OR DEATHS RESULTING FROM ANY SUCH EVENTS.**

"**Multichannel Video Programming Service**" shall mean any method of delivering video programming to Homes including, without limitation, interactive video programming. By way of example, and not of limitation, the term Multichannel Video Programming Service may include cable television, satellite master antenna television, multipoint distribution systems, video dialtone, open video system or any combination thereof.

"**Neighborhood**" shall mean any subdivision of Baywinds which is subject to the jurisdiction of a Neighborhood Association. Each Home shall be part of a Neighborhood.

"**Neighborhood Association**" shall mean any homeowners or condominium association which governs a portion of Baywinds.

"**Neighborhood Common Areas**" shall mean all property owned and/or maintained by a Neighborhood Association.

"**Neighborhood Declaration**" shall mean any declaration recorded in the Public Records governing a Neighborhood including, without limitation, any condominium declaration. No Neighborhood Declaration shall be effective unless and until approved by Developer, which approval shall be evidenced by Developer's execution of, or joinder in, such Neighborhood Declaration.

"**NPBCID**" shall mean the Northern Palm Beach County Improvement District.

"**Operating Costs**" shall mean all costs and expenses of Association and the Common Areas including, without limitation, all costs of ownership, operation, administration, all amounts payable by Association, all amounts required to maintain the surface water management system, all community lighting including up-lighting and Neighborhood entrance lighting (if not the obligation of a Neighborhood Association), all amounts payable in connection with any

private street lighting agreement between Association and FPL; amounts payable to a Telecommunications Provider for Telecommunications Services furnished to all Owners; utilities; taxes; insurance; bonds; Monitoring System costs; salaries; management fees; professional fees; service costs; supplies; maintenance; repairs; replacements; refurbishments; common area landscape maintenance; and any and all costs relating to the discharge of the obligations hereunder and/or under the Club Covenants, or as determined to be part of the Operating Costs by Association. By way of example, and not of limitation, Operating Costs shall include all of Association's legal expenses and costs relating to or arising from the enforcement and/or interpretation of this Declaration and/or the Club Covenants.

"Outparcel Covenants" shall have the meaning set forth in Section 9.

"Owner" shall mean the record owner (whether one or more persons or entities) of fee simple title to any Home. The term "Owner" shall not include Developer, Club Owner, or a Lender. A purchaser of a Parcel who thereafter builds one or more Homes upon such Parcel shall be deemed an Owner with respect to each such Home. For example, an Owner of an Apartment Building is an Owner with respect to each Home within such Apartment Building.

"Parcel" shall mean a platted or unplatted lot, tract, unit or other subdivision of real property upon which a Home has been, or will be, constructed. Once improved, the term Parcel shall include all improvements thereon and appurtenances thereto. The term Parcel, as used herein, may include more than one Home.

"Plat" shall mean any plat of any portion of Baywinds filed in the Public Records, as the same may be amended by Developer, from time to time.

"Premium Channels" shall mean any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel.

"Public Records" shall mean the Public Records of Palm Beach County, Florida.

"Reserves" shall have the meaning set forth in Section 17.2.4 hereof.

"Rules and Regulations" shall mean the Rules and Regulations governing Baywinds as adopted by the Board from time to time.

"SFWMD" shall mean the South Florida Water Management District.

"Special Assessments" shall mean those Assessments more particularly described as Special Assessments in Section 17.2.2 hereof.

"Surface Water Management System" shall mean the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded or obstructed. This term includes exfiltration trenches, wetland preservation areas, mitigation areas, lakes, dams, impoundments, reservoirs, drainage maintenance easements and those works defined in Section 373.403(1)-(5) of the Florida Statutes. The Baywinds surface water management system includes those works authorized by SFWMD pursuant to the Environmental Resource Permit.

"Telecommunications Provider" shall mean any party contracting with Association to (i) provide Owners with one or more Telecommunications Services or (ii) to own, maintain and repair Telecommunications Systems allowing Telecommunications Services to be provided to Baywinds. Developer may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Multichannel Video Programming Service, one Telecommunications Provider may provide Association such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such Multichannel Video Programming Service.

"Telecommunications Services" shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA, and interLATA voice telephony and Data Transmission Service.

Multichannel Video Programming Service, and Monitoring System. Without limiting the foregoing, such Telecommunications Services may include the provision of the following services: Toll Calls, Data Transmission Services, Basic Service and Premium Channels.

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

"Title Documents" shall have the meaning set forth in Section 25.7 hereof.

"Toll Calls" shall have meaning given to such term by the Florida Public Service Commission and/or the Federal Communications Commission.

"Turnover Date" shall mean, unless turned over sooner by Developer in its sole discretion, three (3) months after the date upon which ninety percent (90%) of the Homes which will ultimately be built or Parcels within Baywinds have been conveyed by Developer to Owners.

"Use Fees" shall have the meaning set forth in Section 17.2.3 hereof.

"Working Capital Fund" shall have the meaning set forth in Section 17.12 hereof.

"Zero Lot Line Wall" shall mean a wall built directly on a lot line which forms part of a Home commonly known as a zero lot line. If there is any question about whether a Home is a zero lot line residence, or which portion of a residence is a Zero Lot Line Wall, the Association's determination shall be final.

3. **Plan of Development.** The planning process for Baywinds is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of Developer's buyers. Subject to the Title Documents, Developer may wish and has the right to develop Baywinds and adjacent property owned by Developer into residences, comprised of homes, villas, coach homes, townhomes, zero lot line homes, patio homes, single-family homes, estate homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings, as well as commercial development, which may include shopping centers, stores, office buildings, showrooms, industrial facilities, technological facilities, and professional offices. The existence at any point in time of walls, landscape screens, or berms is not a guaranty or promise that such items will remain or form part of Baywinds as finally developed.

4. **Amendment.**

4.1. **General Restrictions on Amendments.** Notwithstanding any other provision herein to the contrary, no amendment to this Declaration shall affect the rights of Developer or Club Owner unless such amendment receives the prior written consent of Developer or Club Owner, as applicable, which may be withheld for any reason whatsoever. No amendment shall alter the provisions of this Declaration benefiting Lenders without the prior approval of the Lender(s) enjoying the benefit of such provisions. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with Section 11.3.2 which benefits the SFWMD and Section 11.4.8 which benefits NPBCID. No amendment to this Declaration shall affect the rights of Builder(s) unless such amendment receives the prior written consent of Builder(s), which consent will not be unreasonably withheld. No amendment shall be effective until it is recorded in the Public Records.

4.2. Amendments Prior to the Turnover Date. Prior to the Turnover Date, Developer shall have the right to amend this Declaration as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Baywinds; additions or deletions from the properties comprising the Common Areas; changes in the Rules and Regulations, and modifications of restrictions on the Homes, and maintenance standards for landscaping. Developer's right to amend under this provision is to be construed as broadly as possible. By way of example, and not as a limitation, Developer may create easements over Homes conveyed to Owners provided that such easements do not prohibit the use of such Homes as a residential homes. In the event that Association shall desire to amend this Declaration prior to the Turnover Date, Association must first obtain Developer's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Developer may be adopted by Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Developer shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

4.3. Amendments From and After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, this Declaration may be amended with the approval of (i) sixty six and 2/3 percent (66 $\frac{2}{3}$ %) of the Board; and (ii) seventy-five percent (75%) of all of the votes in Association.

5. Annexation and Withdrawal.

5.1. Annexation by Developer. Prior to the Turnover Date, additional lands may be made part of Baywinds by Developer. Except for applicable governmental approvals (if any), no consent to such annexation shall be required from any other party (including, but not limited to, Association, Owners or any Lenders of any Parcel or Home). Such annexed lands shall be brought within the provisions and applicability of this Declaration by the recording an amendment to this Declaration in the Public Records. The amendment shall subject the annexed lands to the covenants, conditions, and restrictions contained in this Declaration as fully as though the annexed lands were described herein as a portion of Baywinds. Such amendment may contain additions to, or modifications of, the covenants, conditions, and restrictions contained in this Declaration as deemed appropriate by Developer and as may be necessary to reflect the different character, if any, of the annexed lands. Prior to the Turnover Date, only Developer may add additional lands to Baywinds.

5.2. Annexation by Association. After the Turnover Date, and subject to applicable governmental approvals (if any), additional lands may be annexed with the approval of (i) sixty-six and 2/3 percent (66 $\frac{2}{3}$ %) of the Board; and (ii) seventy-five percent (75%) of all of the votes in Association.

5.3. Withdrawal. Prior to the Turnover Date, any portions of Baywinds (or any additions thereto) may be withdrawn by Developer from the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records. The right of Developer to withdraw portions of Baywinds shall not apply to any Home which has been conveyed to an Owner unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner is obtained. The withdrawal of any portion of Baywinds shall not require the consent or joinder of any other party (including, but not limited to, Association, Owners, or any Lenders of any Parcel or Home). Association shall have no right to withdraw land from Baywinds.

6. Dissolution.

6.1. Generally. In the event of the dissolution of Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the Circuit Court of the appropriate Judicial Circuit of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of Association, and to make of such provisions as may be necessary for the continued management of the affairs of the dissolved Association.

6.2. Applicability of Declaration after Dissolution. In the event of dissolution of Association, Baywinds and each Home therein shall continue to be subject to the provisions of this Declaration, including, without limitation, the

provisions respecting Assessments and the Club specified in this Declaration and/or the Club Covenants. Each Owner shall continue to be personally obligated to the successors or assigns of Association and/or Club Owner, as the case may be, for Assessments and Club Charges to the extent that Assessments and Club Charges are required to enable the successors or assigns of the Association and/or Club Owner to properly maintain, operate and preserve the Common Areas and/or Club. Without limiting the foregoing, the obligation of each Owner to pay the Club Fee shall survive the dissolution of the Association. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Baywinds which had been Common Areas and/or comprised part Club and continue to be so used for the common use and enjoyment of the Owners.

7. Binding Effect and Membership.

7.1: Term. The term of this Declaration shall be perpetual. Each Owner, by acceptance of title to a Home or Parcel, and any person claiming by, through or under such Owner, agrees to be subject to this Declaration and the provisions hereof. The provisions of this Declaration are equitable servitudes and run with the land.

7.2: Transfer. The transfer of the fee simple title to a Home, whether voluntary or by operation of law, terminating the Owner's title to that Home shall terminate the Owner's rights to the use of and enjoyment of the Common Areas as it pertains to that Home. An Owner's rights and privileges under this Declaration are not assignable separately from a Home. The Owner of each Home is entitled to the benefits of, and is burdened with the duties and responsibilities set forth in, the provisions of this Declaration. All parties acquiring any right, title and interest in and to any Home shall be fully bound by the provisions of this Declaration. In no event shall any Owner acquire any rights that are greater than the rights granted to, and limitations placed upon its predecessor in title pursuant to the provisions of this Declaration. In the event that any Owner desires to sell or otherwise transfer title of his or her Home, such Owner shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner and the Home pursuant to this Declaration including, without limitation, payment of all Assessments accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessment accruing subsequent to the date of transfer. In the event that upon the conveyance of a Home an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Home, the transferring Owner shall remain liable for Assessments accruing on the Home from and after the date of conveyance.

7.3: Membership. Upon acceptance of title to a Home, and as more fully provided in the Articles and By-Laws, each Owner shall be a member of Association. Membership rights are governed by the provisions of the Articles and By-Laws. Membership shall be an appurtenance to and may not be separated from, the ownership of a Home. Developer rights with respect to Association are set forth in the Articles and By-Laws.

7.4: Ownership by Entry. In the event that an Owner is other than a natural person, that Owner shall, prior to occupancy of the Home, designate one or more persons who are to be the occupants of the Home and register such persons with Association. All provisions of this Declaration and Rules and Regulations promulgated pursuant thereto shall apply to both such Owner and the designated occupants.

7.5: Voting Interests. Voting interests in Association are governed by the provisions of the Articles and By-Laws.

7.6: Document Recordation by Owners Prohibited. Neither Association nor any Owner, nor group of Owners, may record any documents which, in any way, affect or restrict the rights of Developer or Club Owner, or conflict with the provisions of this Declaration.

7.7: Conflicts. In the event of any conflict among this Declaration, a Neighborhood Declaration, the Articles, By-Laws or any of the Association Documents, this Declaration shall control. In the event that a Neighborhood Declaration is more restrictive than this Declaration, the Neighborhood Declaration shall control.

8. Paramount Right of Developer. Notwithstanding anything to the contrary herein, prior to the Community Completion Date Developer shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Baywinds for various public purposes or for the provision of Telecommunications Systems, or to make any portions of Baywinds part of the Common Areas, or to create and implement a special taxing district which may include all or any portion of Baywinds. In addition, the Common Areas of Baywinds may include decorative improvements, berms, waterfalls, and waterbodies. **SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT FACILITIES, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. DEVELOPER SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS AT ANY TIME WITHOUT NOTICE AT ITS DISCRETION.**

9. Obligation of Association to Enforce Covenants. In addition to this Declaration, Association may be given the right to enforce landscape standards and other covenants burdening property not included within Baywinds ("Outparcel Covenants"). Association shall have an affirmative obligation to enforce all Outparcel Covenants by all necessary legal action, including the bringing of necessary lawsuits. Because the Outparcel Covenants affect the appearance of properties adjacent to or in the vicinity of Baywinds, such Outparcel Covenants benefit all Owners and assist in preserving the value of Homes. Therefore, all costs of enforcing the Outparcel Covenants, including, without limitation, attorney's fees, paraprofessional fees, and expenses, at trial and upon appeal, shall be deemed part of Operating Costs.

10. Operation of Common Areas.

10.1. Prior to Conveyance. Prior to the conveyance, identification and/or dedication of the Common Areas to Association, any portion of the Common Areas owned by Developer shall be operated, maintained, and administered at the sole cost of Association for all purposes and uses reasonably intended, as Developer in its sole discretion deems appropriate. During such period, Developer shall own, operate, and administer the Common Areas without interference from any Owner or Lender of a Parcel or Home or any other person or entity whatsoever. Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by Association. The current conceptual representations, if any, regarding the composition of the Common Areas are not a guarantee of the final composition of the Common Areas. No party should rely upon any statement contained herein as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to Association. Developer, so long as it controls Association, further specifically retains the right to add to, delete from, or modify any of the Common Areas referred to herein at its discretion without notice.

10.2. Construction of Common Areas Facilities. Developer has constructed or will construct, at its sole cost and expense, certain facilities and improvements as part of the Common Areas, together with equipment and personalty contained therein, and such other improvements and personalty as Developer determines in its sole discretion. Developer shall be the sole judge of the composition of such facilities and improvements. Prior to the Community Completion Date Developer reserves the absolute right to construct additional Common Areas facilities and improvements within Baywinds, from time to time, in its sole discretion, and to remove, add to modify and change the boundaries, facilities and improvements now or then part of the Common Areas. Developer is not obligated to, nor has it represented that it will, modify or add to the facilities, improvements, or Common Areas as they are contemplated as of the date hereof. Developer is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures, finishes, or Common Areas, or changes or modifications to any of them.

10.3. Use of Common Areas by Developer. Until the Community Completion Date Developer shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed necessary by Developer.

10.4. Conveyance. Within sixty (60) days after the Community Completion Date, or earlier as determined by Developer in its sole discretion, all or portions of the Common Areas may be dedicated by Plats, created in the form of easements, or conveyed by written instrument recorded in the Public Records, or by Quitclaim Deed from

Developer to Association. The dedication, creation by easement, or conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all continuing obligations and service and similar contracts relating to the ownership operation, maintenance, and administration of the conveyed portions of Common Areas and other obligations relating to the Common Areas imposed herein. Association shall, and does hereby, indemnify and hold Developer harmless on account thereof. Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. The Common Areas, personal property and equipment thereon and appurtenances thereto shall be dedicated or conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREAS BEING CONVEYED. Notwithstanding the foregoing, any such conveyance or encumbrance of such Common Areas is subject to each irrevocable Owner's ingress and egress easement to his or her Home as set forth in this Declaration.

10.5. **Operation After Conveyance.** After the conveyance or dedication of any portion of the Common Areas to Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by Association for the use and benefit of the owners of all property interests in Baywinds including, but not limited to, Association, Developer, Club Owner, Owners and any Lenders. Subject to Association's right to grant easements, and other interests as provided herein, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to the Community Completion Date, the approval of (a) a majority of the Board; and (b) the consent of Developer and Club Owner, or (ii) from and after the Community Completion Date approval of (a) sixty-six and two-thirds percent (66 2/3%) of the Board; (b) seventy-five percent (75%) of all of the votes in Association; and (c) the consent of the Club Owner being first had and obtained.

10.6. **Paved Common Areas.** Without limiting any other provision of this Declaration, Association is responsible for the maintenance of all roads, pathways, bicycle paths, and sidewalks forming a part of the Common Areas. Although pavement appears to be a durable material, it requires maintenance. Association shall have the right, but not the obligation, to arrange for an annual inspection of all roads and sidewalks forming a part of the Common Areas by a licensed paving contractor and/or engineer with a Florida Department of Transportation Asphalt Pavement Certification. The cost of such inspection shall be a part of the Operating Costs of Association. Association shall determine annually the parameters of the inspection to be performed, if any. By way of example, and not of limitation, the inspector may be required to inspect the roads and sidewalks forming part of the Common Areas annually for deterioration and to advise Association of the overall pavement conditions including any upcoming maintenance needs. Any patching, grading, or other maintenance work should be performed by a Company licensed to perform the work. From and after the Community Completion Date, Association should monitor the roads and sidewalks forming the Common Areas monthly to ensure that vegetation does not grow into the asphalt and that there are no eroded or damaged areas that need immediate maintenance.

10.7. **Delegation.** Once conveyed or dedicated to Association, the Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision, operation, control, and management of Association. Notwithstanding the foregoing Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. Further, in the event that Common Area is created by easement, Association's obligations and rights with respect to such Common Area may be limited by the terms of the document creating such easement.

10.8. **Use.**

10.8.1. **Nonexclusive Use.** The Common Areas shall be used and enjoyed by the Owners on a non-exclusive basis in common with other persons, entities and corporations (who may, but are not required to be, members of Association) entitled to use those portions of the Common Areas. Prior to the Community Completion Date, Developer, and thereafter, Association, has the right, at any and all times, and from time to time, to further additionally provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it

deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements or obligations to be performed hereunder. Without limiting the foregoing, Club Owner and all persons having a right to use the Club (whether or not they are Owners or members of the general public) shall have the right to use the Common Areas for pedestrian and vehicular ingress and egress to the Club for all purposes, and for maintenance, repair, and replacement of the Club.

10.8.2. Right to Allow Use. Developer and/or Association may enter into easement agreements or other use or possession agreements whereby the Owners, Service Providers, and/or Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair, and replacement of such property, the expenses of which shall be Operating Costs. Any such agreement by Association prior to the Community Completion Date shall require the consent of Developer and Club Owner. Thereafter, any such agreement shall require the approval of the majority of the Board of Directors, and the consent of Club Owner, which consent shall not be unreasonably withheld or delayed.

10.8.3. Waterbodies. Developer and Association shall not be obligated to erect fences, gates, or walls around or adjacent to any waterbody or waterfall within Baywinds. Notwithstanding the foregoing, an Owner may erect a fence adjacent to the boundary of a waterbody but within the boundary of a Home with the prior approval of the ACC. No fence or other structure may be placed within any lake maintenance easement. Petroleum powered, motorized watercraft are expressly prohibited from operation on lakes within Baywinds pursuant to the Title Documents. Swimming will not be permitted in any waterbody. No docks may be erected within any waterbody forming part of the Common Areas.

10.8.4. Obstruction of Common Areas. No portion of the Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by Association.

10.8.5. Assumption of Risk. Without limiting any other provision herein, each person using any portion of the Common Areas accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use of such Common Areas including, without limitation, (a) noise from maintenance equipment, (b) use of pesticides, herbicides and fertilizers; (c) view restrictions caused by maturation of trees and shrubbery, (d) reduction in privacy caused by the removal or pruning of shrubbery or trees within Baywinds, and (e) design of any portion of Baywinds. Each such person also expressly indemnifies and agrees to hold harmless Developer, Association, Neighborhood Associations, Club Owner, Club Manager, and all employees, directors, representatives, officers, agents, and partners of the foregoing; from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs at trial and upon appeal. Without limiting the foregoing, all persons using the Common Areas, including without limitation, all waterbodies, lakes, pools or areas adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, RACCOONS, DEER, SWINE, TURKEYS, SNAKES, DUCKS, AND FOXES. DEVELOPER, BUILDERS, ASSOCIATION, NEIGHBORHOOD ASSOCIATIONS, CLUB OWNER, AND CLUB MANGER SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

10.8.6. Owner's Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless Developer, Association, Club Owner, and Club Manager, their officers, partners, agents, employees, affiliates, directors and attorneys (collectively, "Indemnified Parties") against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas, including, without limitation, use of the lakes and other waterbodies within Baywinds by Owners, and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Developer, Association, Club Owner, or Club Manager or of any of the Indemnified

Parties. Should any Owner bring suit against Developer, Association, Club Owner or Club Manager or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorney's fees and paraprofessional fees at trial and upon appeal.

10.9. Rules and Regulations.

10.9.1. **Generally.** Prior to the Turnover Date, the Developer, and thereafter Association, shall have the right to adopt Rules and Regulations governing the use of the Common Areas. The Rules and Regulations need not be recorded in the Public Records. The Common Areas shall be used in accordance with this Declaration and Rules and Regulations promulgated relating thereto.

10.9.2. **Developer Not Subject to Rules and Regulations.** The Rules and Regulations shall not apply to the Developer and/or Builder or to any property owned by Developer and/or Builder, and shall not be applied in a manner which would prohibit or restrict the development or operation of the Club or adversely affect the interests of the Developer. Without limiting the foregoing, Developer, and/or its designees or assigns, shall have the right to: (i) develop and construct commercial and industrial uses, Homes, Common Areas and the Club, and related improvements within Baywinds, and make any additions, alterations, improvements, or changes thereto; (ii) maintain sales offices (for the sale and re-sale of (a) Homes and (b) residences and properties located outside of Baywinds); general office and construction operations within Baywinds; (iii) place, erect or construct portable, temporary or accessory buildings or structure within Baywinds for sales, construction storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash and rubbish in connection with the development or construction of any portion of Baywinds; (v) post, display, inscribe or affix to the exterior of any portion of the Common Areas or portions of Baywinds owned by Developer, signs and other materials used in developing, constructing, selling or promoting the sale of any portion Baywinds including, without limitation, Parcels and Homes; (vi) excavate fill from any lakes or waterways within and/or contiguous to Baywinds by dredge or dragline, store fill within Baywinds, and remove and/or sell excess fill; and grow or store plants and trees within, or contiguous to, Baywinds and use and/or sell excess plants and trees; and (vii) undertake all activities which, in the sole opinion of Developer, are necessary for the development and sale of any lands and improvements comprising Baywinds.

10.10. **Public Facilities.** Baywinds may include one or more facilities which may be open and available for the use of the general public. By way of example, there may be a public park, fire station, police station, or other facility within the boundaries of Baywinds.

10.11. **Default by Another Owner.** No default by any Owner in the performance of the covenants and promises contained in this Declaration or by any person using the Common Areas or any other act of omission by any of them shall be construed or considered (a) a breach by Developer or Association or a non-defaulting Owner or other person or entity of any of their promises or covenants in this Declaration; or (b) an actual, implied or constructional dispossession of another Owner from the Common Areas; or (c) an excuse, justification, waiver or indulgence of the covenants and promises contained in this Declaration.

10.12. **Special Taxing Districts.** For as long as Developer controls Association, Developer shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas of Association to a public agency or authority under such terms as Developer deems appropriate in order to create or contract with special taxing districts (or others) for lighting, roads, landscaping, irrigation areas, lakes, waterways, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by Developer, including without limitation, the maintenance and/or operation of any of the foregoing. As hereinafter provided, Developer may sign any taxing district petition as attorney-in-fact for each Owner. Each Owner's obligation to pay taxes associated with such district shall be in addition to such Owner's obligation to pay Assessments. Any special taxing district shall be created pursuant to all applicable ordinances of Palm Beach County and all other applicable governing entities having jurisdiction with respect to the same.

10.13. Water Mains. In the event Palm Beach County or any of its subdivisions, agencies, and/or divisions must remove any portion of a Home driveway which is constructed of pavers within any portion of the Common Areas, then Association will be responsible to replace or repair the driveway at Association's expense.

10.14. Association's Obligation to Indemnify. Association and Owners each covenant and agree jointly and severally to indemnify, defend and hold harmless Developer, its officers, directors, shareholders, and any related persons or corporations and its employees from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas, or other property serving Association, and improvements thereon, or resulting from or arising out of activities or operations of Association or Owners, and from and against all costs, expenses, court costs, attorneys' fees and paraprofessional fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders judgments or decrees which may be entered relating thereto. The costs and expense of fulfilling this covenant of indemnification shall be Operating Costs to the extent such matters are not covered by insurance maintained by Association.

10.15. Site Plans and Plats. Baywinds may be subject to one or more plats (each individually, a "Plat"). The Plat may identify some of the Common Areas within Baywinds. The description of the Common Areas on a Plat is subject to change and the notes on a Plat are not a guarantee of what facilities will be constructed on such Common Areas. Site plans used by Developer in its marketing efforts illustrate the types of facilities which may be constructed on the Common Areas, but such site plans are not a guarantee of what facilities will actually be constructed. Each Owner should not rely on a Plat or any site plans used for illustration purposes as the Declaration governs the rights and obligations of Developer and Owners with respect to the Common Areas.

11. Maintenance by Association.

11.1. Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, Association shall at all times maintain, repair, replace and insure the Common Areas, including all improvements placed thereon.

11.2. Lawn Maintenance. Each Neighborhood Declaration shall set forth the lawn maintenance of the applicable Neighborhood Association for each Neighborhood.

11.3. Surface Water Management System.

11.3.1. Duty to Maintain. Association acknowledges that the Surface Water Management System within the Common Areas is owned by Association. The duty of maintenance of the Common Areas expressly includes the duty to operate, maintain, and repair the Surface Water Management System including, without limitation any signage required by the Environmental Resource Permit, in a manner which complies with the Environmental Resource Permit and the conservation easement. The costs of the operation and maintenance of the Surface Water Management System is part of the Operating Costs of Association and each Owner shall pay Assessments which shall include a pro rata share of such costs. The Association will take any action against Owners as necessary to enforce the conditions of the conservation easement and the Environmental Resource Permit, including, without limitation, any monitoring required by the Environmental Resource Permit. If any element of the Surface Water Management System lies outside the boundaries of Baywinds, but Association is required to operate or maintain such element under the terms of the Environmental Resource Permit, Association will have the power and obligation to operate and maintain such element in accordance with the terms of this Section and the Environmental Resource Permit so long as the owner of the land which includes such element pays to Association all of its costs for such operation and maintenance.

11.3.2. Amendments to Association Documents. Association shall submit to SFWMD any proposed amendment to the Association Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas. SFWMD shall then inform Association as to whether the amendment requires a modification of the Environmental Resource Permit. If a

modification of the Environmental Resource Permit is necessary, SFWMD shall so advise Association. Once Association receives the modification to the Environmental Resource Permit and any conditions to the Environmental Resource Permit, both shall be attached as an exhibit to an amendment to this Declaration, which amendment shall not require the approval of the Owners. Association shall maintain copies of all water management permits and correspondence respecting such permits for the benefit of the Association.

11.3.3. Wetland Mitigation Areas. Parcels may contain or be adjacent to mitigation or wetland preservation areas and upland buffers, which are protected by a conservation easement. These areas may not be altered from their natural, permitted condition with the exception of: exotic or nuisance vegetation removal, or restoration in accordance with the restoration plan included in the conservation easement. Exotic vegetation may include, but is not limited to, melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern. Nuisance vegetation may include cattails, primrose willow and grape vine.

11.3.4. Use Restrictions for Conservation Areas. Association acknowledges and shall enforce the use restrictions placed on the conservation easement. The conservation areas are hereby dedicated as Common Areas; they shall be the perpetual responsibility of Association and may in no way be altered from their natural or permitted state. These use restrictions are defined on the Environmental Resource Permit, the recorded conservation easement and the plats associated with Baywinds. Activities prohibited within the conservation areas include, but are not limited to, the following:

- a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- b. Dumping or placing of soil or other substances or material as landfill, or dumping or placing of trash, waste, or unsightly or offenses materials;
- c. Removal or destruction of trees, shrubs or other vegetation; with exception of nuisance and exotic plant species as may be required by Developer.
- d. Excavation, dredging, or removal of loam, peat, gravel, soil, rock or other material substance in such manner as to affect the surface;
- e. Surface use except for purposes that permit the land or water area to remain predominately in its natural condition;
- f. Activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat preservation or conservation;
- g. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and
- h. Acts or uses detrimental to the preservation of any features or aspects of the property having historical, archeological or cultural significance.

11.3.5. Wetland Mitigation Monitoring. The Association understands that the mitigation monitoring will be required as a condition of the Environmental Resource Permit and that upon transfer of the Environmental Resource Permit from construction phase to operation phase that the operational entity will be responsible to carry out this obligation. In the event that Association is the operational entity, Association fully understands that it is the Association's responsibility to complete all the conditions associated with mitigation monitoring and maintenance successfully. Maintenance of the mitigation area (nuisance removal) shall be performed in perpetuity.

11.4. Northern Palm Beach County Improvement District.

11.4.1. Derivation of NPBCID. NPBCID is a political subdivision of the State of Florida and is responsible for implementing and maintaining certain public benefits and improvements to those parcels of real properties located within Baywinds which lie within NPBCID's units of development and any additional units of development legally established of which Baywinds is a part.

11.4.2. Non-ad Valorem Assessments. All Owners owning or purchasing Parcels or Homes within those areas of Baywinds lying within NPBCID's Units of Development 5 and 5 B and any additional units of development legally established of which Baywinds is a part will be obligated and responsible for paying such non-ad valorem assessments that have or may be assessed and levied annually by NPBCID upon the Parcels or Homes. These non-ad valorem assessments will appear on each Owner's annual Unified Real Property Tax Bill that is issued and collected by the Tax Collector of Palm Beach County, Florida.

11.4.3. Maintenance of NPBCID Improvements. NPBCID will construct improvements within Baywinds. The NPBCID constructed improvements for which NPBCID retains ownership shall be maintained by NPBCID unless the Association contracts with NPBCID for the Association to maintain all or part of such improvements. In the event NPBCID maintains such improvements all individuals or entities owning or purchasing Parcels or Homes, within Baywinds will pay for such maintenance expenses through their non-ad valorem assessments. In the event the Association contracts to maintain such NPBCID improvements, then such maintenance expenses will be paid by the Owner's through their assessments due to the Association or through their non-ad valorem assessments.

11.4.4. Surface Water Management Systems and Other NPBCID Facilities. Baywinds is subject to the conceptual surface water management plan for Baywinds which has been or will be approved by the SFWMD. The Surface Water Management System for Baywinds is authorized pursuant to SFWMD Permit No. 50-03926-P, a copy of the initial conceptual permit (which may be modified from time to time) is attached hereto as Exhibit 5. Land has been or will be dedicated to NPBCID for storm water drainage and buffers as required under said conceptual surface water management plan and for other NPBCID facilities. The Surface Water Management System facilities constructed by NPBCID and other NPBCID facilities shall be maintained by NPBCID unless the Association contracts with NPBCID for the Association to maintain such NPBCID facilities. The Surface Water Management System shall be maintained in compliance with the rules and regulations promulgated by the SFWMD and NPBCID. The Surface Water Management System plans shall cover surface water drainage throughout Baywinds, including but not limited to regular and storm drainage on dedicated streets and other rights of way, lake drainage, and such other requirements as may be imposed by the SFWMD and NPBCID. In the event that the Association contracts with NPBCID for the maintenance of the Surface Water Management System facilities constructed by NPBCID, then the Association: (a) shall apply for and obtain such permits and licenses as may be required by the SFWMD for Baywinds, (b) at the Association's expense, provide the Developer and SFWMD and/or NPBCID with any and all plans and specifications, surveys, descriptive maps, and other documentation required for the maintenance of surface water as contemplated by this Section and shall give and grant to the Developer, owners of land adjacent to Baywinds, Palm Beach County, SFWMD, and NPBCID, any and all easements and rights of way required to effect real property surface water management, and (c) after the original development by NPBCID and Developer, Association shall cause all physical earth moving, landscaping, sloping, grading and other work required to be done on Baywinds, in connection with the maintenance of the Surface Water Management System to be done at the cost and expense of the Association unless such obligation is assumed by any Neighborhood Association. If the apportionment of such work between the Association and the Neighborhood Association, as applicable, cannot be agreed to by the parties involved, such apportionment shall be determined by arbitration as defined in the Florida Arbitration Code (Florida Statutes 1997, Chapter 682), but may be collected through the non-ad valorem assessments. This portion of this Section shall be deemed an arbitration agreement as defined in Section 682.02 of the Florida Statutes. The Association shall have no authority to reconfigure or modify any Surface Water Management System titled or dedicated to NPBCID except with the prior written permit and consent issued by NPBCID.

11.4.5. No Easements Over NPBCID Land. No easements upon, over, under or across any water body, drainage system or tract of land dedicated to, owned by, or subject to an easement in favor of NPBCID shall be permitted, rather the party desiring such easement rights shall apply for and obtain permits from NPBCID for any such rights.

11.4.6. NPBCID Land Not Subject to Assessments. Notwithstanding anything to the contrary, herein, NPBCID and all of NPBCID's interest in land within Baywinds shall be exempt from all annual assessments, special assessments, extraordinary special assessments and fines that may be levied by the Association, or any Neighborhood Association. The Association and the Neighborhood Associations are prohibited from filing or attempting to execute upon any claim or lien as to a property interest owned by NPBCID within Baywinds and any such recording in the public records shall be deemed null and void ab initio.

11.4.7. Lakes, Ponds, Retention Areas and Water Bodies. No swimming, operation of any boats or other recreational uses shall be permitted in or on any of the lakes, ponds, retention areas or other water bodies which are dedicated or deeded to NPBCID or over with which NPBCID has an easement, unless permitted in writing by NPBCID. No removal of water nor discharge of any materials or water, nor removal or interference with aquatic vegetation or alteration of banks or shoreline of any lake, pond, canal or retention area dedicated or deeded to NPBCID or to which NPBCID has an easement is permitted, unless approved in writing by NPBCID. The lake levels are subject to fluctuation based on, among other things, the amount of rainfall occurring over time.

11.4.8. NPBCID Approval Rights to Amendments. No amendment of this Declaration which would affect NPBCID's property interest or improvements located within Baywinds, shall occur unless agreed to in writing by NPBCID.

11.4.9. NPBCID Phone Number and Address. As of the date of recording of this Declaration, the phone number and address for NPBCID is: (561) 624-7830; 357 Hiatt Drive, Palm Beach Gardens, Florida 33418-7106.

11.5. Adjoining Areas. Association shall also maintain those drainage areas, swales, lakes maintenance easements, and landscape areas that are within the Common Areas, provided that such areas are readily accessible to Association. Under no circumstances shall Association be responsible for maintaining any areas within fences or walls that form a part of a Home.

11.6. Negligence. The expense of any maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner, Neighborhood Associations, or persons utilizing the Common Areas, through or under an Owner or Neighborhood Association, shall be borne solely by such Owner or Neighborhood Associations and the Home and/or Parcel owned by that Owner shall be subject to an Individual Assessment for that expense. By way of example, and not of limitation, an Owner shall be responsible for the removal of all landscaping and structures placed within easements or Common Areas without the prior written approval of Association.

11.7. Right of Entry. Developer, Club Owner, and Association are granted a perpetual and irrevocable easement over, under and across Baywinds for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, Developer specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Developer may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of Baywinds if Developer is required to do so in order to obtain the release of any bond posted with any governmental agency).

11.8. Maintenance of Property Owned by Others. Association shall, if designated by Developer (or by Association after the Community Completion Date) by amendment to this Declaration or any document of record, including without limitation declaration(s) of condominium maintain vegetation, landscaping, sprinkler system, community identification/features and/or other areas or elements designated by Developer (or by Association after the Community Completion Date) upon areas which are within or outside of Baywinds. Such areas may abut, or be proximate to, Baywinds, and may be owned by, or dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity or a Condominium Association. These areas may include (for example and not limitation) swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets.

roads, drainage areas, community identification or entrance features, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways.

12. Use Restrictions.

12.1. Disputes as to Use. If there is any dispute as to whether the use of any portion of Baywinds complies with this Declaration, such dispute shall, prior to the Community Completion Date, be decided by Developer, and thereafter by Association. A determination rendered by such party with respect to such dispute shall be final and binding on all persons concerned.

12.2. Use of Homes. Each Home is restricted to residential use as a residence by the Owner or permitted occupant thereof, its immediate family, guests, tenants and invitees.

12.3. Leases. Homes may be leased, licensed or occupied only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of a Home. Individual rooms of a Home may not be leased on any basis. No transient tenants may be accommodated in a Home. All leases or occupancy agreements shall be in writing and a copy of all leases of Homes not comprising part of an Apartment Building shall be provided to Association if so requested by Association. Leases of Homes forming part of an Apartment Building shall not be submitted to the Association unless Association reasonably requests a copy of the same from the Owner of an Apartment Building in connection with the enforcement of this Declaration or the Rules and Regulations. No Home, other than Homes within Apartment Buildings, may be subject to more than two (2) leases in any twelve (12) month period, regardless of the lease term. No time-share or other similar arrangement is permitted. The Owner must make available to the lessee or occupants copies of the Association Documents. No lease term shall be less than thirty (30) days.

12.4. Lawful Use. No unlawful or obnoxious use shall be made of any portion of Baywinds. All laws, zoning ordinances and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification or repair of a portion of Baywinds shall be the same as the responsibility for maintenance and repair of the property concerned.

12.5. Maintenance by Owners. All lawns, landscaping and sprinkler systems and any property, structures, improvements and appurtenances not maintained by Association shall be well maintained and kept in first class, good, safe, clean, neat and attractive condition consistent with the general appearance of Baywinds by the Owner of each Home. Each Owner is specifically responsible for maintaining all grass, landscaping and improvements within any portion of a Home that is fenced.

12.5.1. Common Area Enclosed by a Private Fence. If an Owner has installed a fence or wall, subject to ACC approval, around a Home, or any portion thereof, then such Owner must maintain any portion of the Common Areas that is no longer readily accessible to Association.

12.5.2. Weeds and Refuse. No weeds, underbrush, or other unsightly growth shall be permitted to be grown or remain upon any Home. No refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Home.

12.6. Driveway Easement. Each Owner shall be responsible to repair, maintain and/or replace the driveway comprising part of a Home, including, but not limited to, any damage caused by Association or by the holder of any easement over which such driveway is constructed. Each Owner, by acceptance of a deed to a Home, shall be deemed to have agreed to indemnify and hold harmless Association and the holder of any such easement, including without limitation, all applicable utility companies and governmental agencies, their agents, servants, employees and elected officials, from and against any and all actions or claims whatsoever arising out of the use of the Common Areas and any easement or the construction and/or maintenance of any driveway in that portion of the Common Areas, easement area, or in a public right-of-way between the boundary of such Owner's Home and the edge of the adjacent paved roadway. Further, each Owner agrees to reimburse the Association any expense incurred in repairing any damage to such driveway in the event that such Owner fails to make the required repairs.

12.7. **Drainage System.** Once a drainage system or drainage facilities are installed by Developer, the maintenance of such system and/or facilities thereafter shall be the responsibility of the Owner of the Home which includes such system and/or facilities. In the event that such system or facilities (whether comprised of swales, pipes, pumps, lake slopes, or other improvements) is adversely affected by landscaping, fences, structures, or additions, the cost to correct, repair, or maintain such drainage system and/or facilities shall be the responsibility of the Owner of each Home containing all or a part of such drainage system and/or facilities. By way of example, and not of limitation, if the Owner of one Home plants a tree (pursuant to ACC approval), and the roots of such tree subsequently affect pipes or other drainage facilities within another Home, the Owner that plants the tree shall be solely responsible for the removal of the roots which adversely affect the adjacent Home. Likewise, if the roots of a tree located within the Common Areas adversely affect an adjacent Home, Association shall be responsible for the removal of the roots and the costs thereof shall be Operating Costs. Association and Developer shall have no responsibility or liability for drainage problems of any type whatsoever.

12.8. **Irrigation.** Due to water quality, irrigation systems may cause staining on Homes, other structures or paved areas. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems). No Owner whose Home adjoins a waterway or lake may utilize the waterway or lake to irrigate unless so provided by Developer as part of original construction, subject to applicable permitting. Association and Club Owner may use waterways and lakes to irrigate Common Areas and/or the Club, as applicable subject to applicable permitting. **BY ACCEPTANCE OF A DEED TO A HOME OR PARCEL, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL LAKES AND WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DEVELOPER OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME.** Developer, Association, and Club Owner, shall have the right to use one or more pumps to remove water from lakes and waterbodies for irrigation purposes at all times, subject to applicable permitting. Developer may utilize a computerized loop system to irrigate the Common Areas and/or Homes. Any computerized loop irrigation system that is not specifically the maintenance obligation of a Neighborhood Association, shall be the maintenance obligation of Association and shall be deemed part of the Common Areas.

12.9. **Boundaries of Maintenance.** All lawn maintenance shall be the responsibility of the Neighborhood Association or the individual Owners as and to the extent provided in the Neighborhood Declaration and as determined by the applicable Neighborhood Association respecting each Neighborhood.

12.10. **Subdivision and Regulation of Land.** No portion of any Home or Parcel shall be divided or subdivided or its boundaries changed without the prior written approval of Association. No Owner shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to Baywinds, without the prior written approval of Developer, which may be granted or deemed in its sole discretion.

12.11. **Alterations and Additions.** No material alteration, addition or modification to a Parcel or Home, or material change in the appearance thereof, shall be made without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration.

12.12. **Signs.** No sign (including brokerage or for sale/lease signs), flag, banner, sculpture, fountain, outdoor play equipment, solar equipment, artificial vegetation, sports equipment, advertisement, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of a Parcel or Home that is visible from the outside without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration.

12.13. **Roofs and Pressure Treatment.** Roofs and/or exterior surfaces and/or pavement, including, but not limited to, walks and drives, shall be pressure treated within thirty (30) days of notice by the ACC.

12.14. **Paint.** Homes shall be repainted within forty-five (45) days of notice by the ACC.

12.15. Hurricane Shutters. Any hurricane or other protective devices visible from outside a Home shall be of a type as approved by the ACC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season. Any such approved hurricane shutters may be installed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise.

12.16. Windows or Wall Units. No window or wall air conditioning unit may be installed in any window or wall of a Home.

12.17. Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other tasteful window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted.

12.18. Satellite Dishes and Antennae. No exterior visible antennae, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Home or Parcel without the prior written approval thereof being first had and obtained from the ACC as required by this Declaration. The ACC may require, among other things, that all such improvements be screened so that they are not visible from adjacent Homes, or from the Common Areas. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others. Notwithstanding the foregoing, Club Owner may install Telecommunications Services equipment, a satellite dish or similar equipment within the property comprising the Club so long as such equipment is not visible from the street giving access to the Club without ACC approval.

12.19. Pools. No above-ground pools shall be permitted. All in-ground pools, hot tubs, spas and appurtenances installed shall require the approval of the ACC as set forth in this Declaration. All pools shall be adequately maintained and chlorinated. Unless installed by Developer, no diving boards, slides, or platforms shall be permitted without ACC approval.

12.20. Visibility on Corners. Notwithstanding anything to the contrary in these restrictions, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the ACC and governmental agencies.

12.21. Holiday Lights and Other Lighting. Except for seasonal holiday lights, all exterior lighting shall require the approval of the ACC as set forth in this Declaration. The ACC may establish standards for holiday lights. The ACC may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to adjacent Home).

12.22. Removal of Soil and Additional Landscaping. Without the prior consent of the ACC, no Owner shall remove soil from any portion of Baywinds, change the level of the land within Baywinds, or plant landscaping which results in any permanent change in the flow and drainage of surface water within Baywinds. Owners may place additional plants, shrubs, or trees within any portion of Baywinds with the prior approval of the ACC.

12.23. Casualty Destruction to Improvements. In the event that a Home or other improvement is damaged or destroyed by casualty loss or other loss, then within a reasonable period of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged Home or improvement and diligently continue such rebuilding or repairing until completion, or properly clear the damaged Home or improvement and restore or repair the Home as approved by the ACC and set forth in Section 14.5.2 herein. As to any such reconstruction of a destroyed Home or improvements, the same shall only be replaced as approved by the ACC.

12.24. Animals. No animals of any kind shall be raised, bred or kept within Baywinds for commercial purposes. Otherwise, Owners may keep domestic pets as permitted by Palm Beach County ordinances up to a limit of two (2) such pets and otherwise in accordance with the Rules and Regulations established by the Board from time to time. Notwithstanding the foregoing, pets may be kept or harbored in a Home only so long as such pets or animals do not constitute a nuisance. A determination by the Board that an animal or pet kept or harbored in a Home is a nuisance

shall be conclusive and binding on all parties. All pets shall be walked on a leash. No pet shall be permitted outside a Home unless such pet is kept on a leash or within a fenced yard of a Home. No pet or animal shall be "tied out" on the exterior of the Home or in the Common Areas, or left unattended in a yard or on a balcony, porch, or patio. No dog runs or enclosures shall be permitted on any Home. When notice of removal of any pet is given by the Board, the pet shall be removed within forty-eight (48) hours of the giving of the notice. All pets shall defecate only in the "pet walking" areas within Baywinds designated for such purpose, if any, or on that Owner's Home. The person walking the pet or the Owner shall clean up all matter created by the pet. Each Owner shall be responsible for the activities of its pet. Notwithstanding anything to the contrary, seeing eye dogs shall not be governed by the restrictions contained in this Section.

12.25. **Nuisances.** No nuisance or any use or practice that is the source of unreasonable annoyance to others or which interferes with the peaceful possession and proper use of Baywinds is permitted. No firearms shall be discharged within Baywinds. Nothing shall be done or kept within the Common Areas, or any other portion of Baywinds, including a Home or Parcel which will increase the rate of insurance to be paid by Association.

12.26. **Minor's Use of Facilities.** Persons who are not sixteen (16) years of age or older shall not be permitted to use the Common Areas unless under the supervision of an adult Owner or lawful occupant over the age of eighteen (18) years; except in such cases and under such conditions as Association may from time to time establish and require. Parents shall be responsible for all actions of their minor children at all times in and about Baywinds. Developer and Club Owner shall not be responsible for any use of the facilities by anyone, including minors.

12.27. **Personal Property.** All personal property of Owners or other occupants of Homes shall be stored within the Homes. No personal property, except usual patio furniture, may be stored on, nor any use made of, the Common Areas, any Parcel or Home, or any other portion of Baywinds, which is unsightly or which interferes with the comfort and convenience of others.

12.28. **Storage.** No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ACC, which approval shall conform to the requirements of this Declaration.

12.29. **Garbage Cans.** Trash collection and disposal procedures established by Association shall be observed. No outside burning of trash or garbage is permitted. No garbage cans, supplies or other similar articles shall be maintained on any Home so as to be visible from outside the Home or Parcel.

12.30. **Laundry.** Subject to the provisions of Section 163.04 of the Florida Statutes, to the extent applicable, no rugs, mops, or laundry of any kind, or any other similar type article, shall be shaken, hung or exposed so as to be visible outside the Home or Parcel.

12.31. **Control of Contractors.** Except for direct services which may be offered to Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association officer shall direct, supervise, or in any manner attempt to assert any control over any contractor of Association.

12.32. **Servants.** Servants and domestic help of any Owner may not gather or lounge in or about the Common Areas.

12.33. **Parking.** Owners' automobiles shall be parked in the garage or driveway. No vehicle which cannot operate on its own power shall remain on Baywinds for more than twelve hours, except in the garage of a Home. No repair, except emergency repair, of vehicles shall be made within Baywinds, except in the garage of a Home. No commercial vehicle, recreational vehicle, boat, trailer, including but not limited to boat trailers, house trailers, and trailers of every other type, kind or description, or camper, may be kept with Baywinds except in the garage of a Home. The term commercial vehicle shall not be deemed to include recreational or utility vehicles (i.e. Broncos, Blazers,

Explorers, etc.) up to 21'5" in length or clean "non-working" vehicles such as pick-up trucks, vans, or cars if they are used by the Owner on a daily basis for normal transportation. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction vehicles in connection with the construction, improvement, installation, or repair by Developer or Builders of Homes, Club facilities, Common Areas, or any other Baywinds facility.

12.34. Cooking. No cooking shall be permitted nor shall any goods or beverages be consumed on the Common Areas except in areas designated for those purposes by Association. The ACC shall have the right to prohibit or restrict the use of grills or barbeque facilities throughout Baywinds.

12.35. Substances. No inflammable, combustible or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of Baywinds or within any Home or Parcel, except those which are required for normal household use.

12.36. Extended Vacation and Absences. In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) notifying Association; (ii) removing all removable furniture, plants and other objects from outside the Home; and (iii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. The name of the designee shall be furnished to Association. Association shall have no responsibility of any nature relating to any unoccupied Home.

12.37. Commercial Activity. Except for normal construction activity, sale, and re-sale of a Home, sale or re-sale of other property owned by Developer, administrative offices of Developer or Builders and operation of the Club, no commercial or business activity shall be conducted in any Home within Baywinds. Notwithstanding the foregoing, and subject to applicable statutes and ordinances, an Owner may maintain a home business office within a Home for such Owner's personal use; provided, however, business invitees, customers, and clients shall not be permitted to meet with Owners in Homes unless the Board provides otherwise in the Rules and Regulations. No Owner may actively engage in any solicitations for commercial purposes within Baywinds. No solicitors of a commercial nature shall be allowed within Baywinds, without the prior written consent of Association. No garage sales are permitted, except as permitted by the Association. No day care center or facility may be operated out of a Home. Prior to the Community Completion Date, Association shall not permit any garage sales without the prior written consent of Developer.

12.38. Completion and Sale of Units. No person or entity shall interfere with the completion and sale of Homes within Baywinds.

12.39. Artificial Vegetation. No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Home or Parcel, unless approved by the ACC.

12.40. Decorations. No decorative objects including, but not limited to, birdbaths, light fixtures, sculptures, statues, weather vanes, or flagpoles shall be installed or placed within or upon any portion of Baywinds without the prior written approval of the ACC.

12.41. Sports Equipment. No recreational, playground or sports equipment shall be installed or placed within or about any portion of Baywinds without prior written consent of the ACC.

12.42. Fencing. No walls or fences shall be erected or installed without prior written consent of the ACC. No chain link fencing of any kind shall be allowed.

12.43. Wetlands and Mitigation Areas. It is anticipated that the Common Areas shall include one or more preserves, wetlands, and/or mitigation areas. No Owner or other person shall take any action or enter onto such areas so as to adversely affect the same. Such areas are to be maintained by Association in their natural state.

13. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement on a Home shall encroach upon another Home by reason of original construction by Developer, then an easement for such encroachment shall exist so long as the encroachment exists. It is contemplated that each Home shall contain an improvement with exterior walls, footings, and other protrusions which may pass over or underneath an adjacent Home. In addition, the footers and other supporting features for party walls will protrude underneath adjacent Homes. A perpetual nonexclusive easement is herein granted to allow the footers for such walls and other protrusions and to permit any natural water run off from roof overhangs, eaves and other protrusions onto an adjacent Home.

14. Insurance. Association shall maintain the following insurance coverages:

14.1. Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program (NFIP), coverage in appropriate amounts, available under NFIP for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

14.2. Liability Insurance. Commercial general liability insurance coverage providing coverage and limits deemed appropriate such policies must provide that they may not be canceled or substantially modified by any party, without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date), Club Owner and Association.

14.3. Directors and Officers Liability Insurance. Each member of the Board shall be covered by directors and officers liability insurance in such amounts and with such provisions as approved by the Board.

14.4. Other Insurance. Such other insurance coverages as appropriate from time to time. All coverages obtained by Association shall cover all activities of Association and all properties maintained by Association, whether or not Association owns title thereto.

14.5. Homes.

14.5.1. Requirement to Maintain Insurance. Each Owner shall be required to obtain and maintain adequate insurance of his or her Home. Such insurance shall be sufficient for necessary repair or reconstruction work, and/or shall cover the costs to demolish a damaged Home as applicable, remove the debris, and to resod and landscape land comprising the Home. Upon the request of Association, each Owner shall be required to supply the Board with evidence of insurance coverage on his Home which complies with the provisions of this Section. Without limiting any other provision of this Declaration or the powers of Association, Association shall specifically have the right to bring an action to require an Owner to comply with his or her obligations hereunder.

14.5.2. Requirement to Reconstruct or Demolish. In the event that any Home is destroyed by fire or other casualty, the Owner of such Home shall do one of the following: the Owner shall commence reconstruction and/or repair of the Home ("Required Repair"), or Owner shall tear the Home down, remove all the debris, and resod and landscape the property comprising the Home as required by the ACC ("Required Demolition"). If an Owner elects to perform the Required Repair, such work must be commenced within thirty (30) days of the Owner's receipt of the insurance proceeds respecting such Home. If an Owner elects to perform the Required Demolition, the Required Demolition must be completed within six (6) months from the date of the casualty or such longer period of time established by the Board in its sole and absolute discretion. If an Owner elects to perform the Required Repair, such reconstruction and/or repair must be continued in a continuous, diligent, and timely manner. Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of Association, Association shall have a right to bring an action against an Owner who fails to comply with the foregoing requirements. By way of example, Association may bring an action against an Owner who fails to either perform the Required Repair or Required Demolition on his or her Home within the time periods and in the manner provided herein. Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any

requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

14.5.3. Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Section 14.5 shall be in accordance with the Community Standards and any other standards established by Association with respect to any casualty that affects all or a portion of Baywinds.

14.5.4. Additional Rights of Association. If an Owner refuses or fails, for any reason, to perform the Required Repair or Required Demolition as herein provided, then Association, in its sole and absolute discretion, by and through its Board is hereby irrevocably authorized by such Owner to perform the Required Repair or Required Demolition. All Required Repair performed by Association pursuant to this Section shall be in conformance with the original plans and specifications for the Home. Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section if any contractor certifies in writing to Association that such Home cannot be rebuilt or repaired. The Board may levy an Individual Assessment against the Owner in whatever amount sufficient to adequately pay for Required Repair or Required Demolition performed by Association.

14.5.5. Association Has No Liability. Notwithstanding anything to the contrary in this Section, Association, its directors and officers, shall not be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on a Home. Moreover, Association, its directors and officers, shall not be liable to any person if Association does not enforce the rights given to Association's this Section.

14.6. Fidelity Bonds. If available, a blanket fidelity bond for all officers, directors, trustees and employees of Association, and all other persons handling or responsible for funds of, or administered by, Association. In the event Association delegates some or all of the responsibility for the handling of the funds to a professional management company or licensed manager, such bonds shall be required for its officers, employees and agents, handling or responsible for funds of, or administered on behalf of Association. The amount of the fidelity bond shall be based upon reasonable business judgment. The fidelity bonds required herein must meet the following requirements (to the extent available at a reasonable premium):

14.6.1. The bonds shall name Association as an obligee.

14.6.2. The bonds shall contain waivers, by the issuers of the bonds, of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee" or similar terms or expressions.

14.6.3. The premiums on the bonds (except for premiums on fidelity bonds maintained by a professional management company, or its officers, employees and agents), shall be paid by Association.

14.6.4. The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date), Club Owner and Association.

14.7. Association as Agent. Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by Association and to execute and deliver releases upon the payment of claims.

14.8. Casualty to Common Areas. In the event of damage to the Common Areas, or any portion thereof, Association shall be responsible for reconstruction after casualty. In the event of damage to a Parcel or Home, or any portion thereof, the Owner shall be responsible for reconstruction after casualty. In the event of damage to the Club, the responsibility for reconstruction shall be as provided in the Club Covenants.

14.9. **Nature of Reconstruction.** Any reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original improvement, or as the improvement was last constructed, subject to modification to conform with the then current governmental regulation(s).

14.10. **Additional Insured.** Developer, Club Owner and their respective Lender(s) shall be named as additional insured on all policies obtained by Association, as their interests may appear.

14.11. **Cost of Payment of Premiums.** The costs of all insurance maintained by Association hereunder, and any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof are Operating Costs.

15. **Property Rights.**

15.1. **Owners' Easement of Enjoyment.** Every Owner, and its immediate family, tenants, guests and invitees, and every owner of an interest in Baywinds shall have a non-exclusive right and easement of enjoyment in and to those portions of the Common Areas which it is entitled to use for their intended purpose, subject to the following provisions:

15.1.1. Easements, restrictions, reservations, conditions, limitations and declarations of record, now or hereafter existing, and the provisions of this Declaration, as amended.

15.1.2. The right of Association to suspend an Owner's rights hereunder or to impose fines in accordance with Section 617.305, Florida Statutes, as amended from time to time.

15.1.3. The right of Developer and/or Association to dedicate or transfer all or any part of the Common Areas. No such dedication or transfer shall be effective prior to the Community Completion Date without prior written consent of Developer and, at any time, without prior written consent of the Club Owner.

15.1.4. The right of Developer and/or Association to modify the Common Areas as set forth in this Declaration.

15.1.5. The perpetual right of Developer to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. Association and each Owner shall give Developer unfettered access, ingress and egress to the Common Areas so that Developer and/or its agents can perform all tests and inspections deemed necessary by Developer. Developer shall have the right to make all repairs and replacements deemed necessary by Developer. At no time shall Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Developer relative to any portion of the Common Areas.

15.1.6. The rights of Developer and/or Association and/or Club Owner regarding Baywinds as reserved in this Declaration, including the right to utilize the same and to grant use rights, etc. to others.

15.1.7. Rules and Regulations adopted governing use and enjoyment of the Common Areas.

15.2. **Ingress and Egress.** An easement for ingress and egress is hereby created for pedestrian traffic over, and through and across sidewalks, paths, walks, driveways, passageways, and lanes as the same, from time to time, may exist upon, or be designed as part of, the Common Areas, and for vehicular traffic over, through and across such portions of the Common Areas as, from time to time, may be paved and intended for such purposes.

15.3. **Development Easement.** In addition to the rights reserved elsewhere herein, Developer reserves an easement for itself or its nominees and creates an easement in favor of the Club Owner over, upon, across, and under Baywinds as may be required in connection with the development of Baywinds, the Club, and other lands designated by Developer and to promote or otherwise facilitate the development, construction and sale and/or leasing of Parcels

and Homes, the Club, and other lands designated by Developer. Without limiting the foregoing, Developer specifically reserves the right to use all paved roads and rights of way within Baywinds for vehicular and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Telecommunications System provided by Developer. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Areas. Developer shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of the Association payable by all Owners as part of Operating Costs. Without limiting the foregoing, at no time shall Developer be obligated to pay any amount to Association on account of Developer's and Club Owner's use of the Common Areas for construction purposes. Developer intends to use the Common Areas for sales of new and used Homes and for the leasing of Homes within Apartment Buildings. Further, Developer may market other residences and commercial properties located outside of Baywinds from Developer's sales facilities located within Baywinds. Developer has the right to use all portions of the Common Areas in connection with its marketing activities, including, without limitation, allowing members of the general public to inspect model Homes, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new and used residential Homes or the leasing of residential apartments. The easements created by this Section, and the rights reserved herein in favor of Developer, shall be construed as broadly as possible and supplement the rights of Developer set forth in Section 21 of this Declaration. At no time shall Developer incur any expense whatsoever in connection with its use and enjoyment of such rights and easements. Developer may non-exclusively assign its rights hereunder to each Builder.

15.4. **Public Easements.** Fire, police, school transportation, health, sanitation and other public service and utility company personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas. In addition, Telecommunications Providers shall also have the right to use all paved roadways for ingress and egress to and from Telecommunications Systems within Baywinds.

15.5. **Delegation of Use.** Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas and Club to occupants or lessees of that Owner's Home subject to the provisions of this Declaration and the Rules and Regulations, as may be promulgated, from time to time. Any such delegation or lease shall not relieve any Owner from its responsibilities and obligations provided herein.

15.6. **Easement for Encroachments.** In the event that any improvement upon Common Areas, as originally constructed, shall encroach upon any other property or improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist.

15.7. **Permits, Licenses and Easements.** Prior to the Community Completion Date, Developer, and thereafter Association, shall, in addition to the specific rights reserved to Developer herein, have the right to grant, modify, amend and terminate permits, licenses and easements over, upon, across, under and through Baywinds (including Parcels and/or Homes) for Telecommunication Systems, utilities, roads and other purposes reasonably necessary or useful as it determines, in its sole discretion. To the extent legally required, each Owner shall be deemed to have granted to Developer and, thereafter, Association an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

15.8. **Support Easement and Maintenance Easement.** An easement is hereby created for the existence and maintenance of supporting structures (and the replacement thereof) in favor of the entity required to maintain the same. An easement is hereby created for maintenance purposes (including access to perform such maintenance) over and across Baywinds (including Parcels, Homes and the Club) for the reasonable and necessary maintenance of Common Areas, Club, utilities, cables, wires and other similar facilities.

15.9. **Drainage.** A non-exclusive easement shall exist in favor of Developer, Club Owner, Association, and their designees, and any applicable water management district, state agency, county agency and/or federal agency having jurisdiction over Baywinds over, across and upon Baywinds for drainage, irrigation and water management purposes. An easement or ingress, egress and access shall exist for such parties to enter upon and over any portion of

Baywinds (including Parcels and Homes) in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, irrigation systems and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of Baywinds and/or installation or maintenance of utilities or which may obstruct or retard these flow of water through Baywinds and/or water management areas and facilities or otherwise interfere with any drainage, irrigation and/or easement provided for in this Section or the use rights set forth elsewhere in this Declaration.

15.10. Club Easements: A non-exclusive easement shall exist in favor of the Club Owner and its respective designees, invitees, guests, agents, employees, and members over and upon the Common Areas and portions of Baywinds necessary for ingress, egress, access to, construction, maintenance and/or repair of the Club. Club Owner, Club employees, agents, invitees, guests, any manager of the Club, and all members of the Club shall be given access to the Club on the same basis as Owners, but without any charge therefor (in the term of Assessments or otherwise).

15.11. Lake and Canal Common Areas: The rear yard of some Homes may border on the lakes and canals forming part of the Common Areas. The Association shall maintain any portion of the Common Areas contiguous to the rear lot line of such Home (but outside the boundary of the Home) which comprise part of the lake slopes and banks and/or canal slopes and banks to prevent or restore erosion of slopes and banks due to drainage or roof culvert outfalls. The Owner of each Home bordering on the lakes and canals shall ensure that lake and canal banks and slopes remain free of any structural or landscape encroachments so as to permit vehicular access for maintenance when needed. Each Owner hereby grants Association an easement of ingress and egress across his or her Home to all adjacent lake and canal areas for the purpose of insuring compliance with the requirements of this provision. If the lake and canal slopes lie within a Home, then the Owner of such Home shall be responsible for the maintenance of the lake and canal slopes and banks, as set forth in the applicable Neighborhood Declaration. Erosion of slopes and banks is possible due to drainage or roof culvert outfalls and runoff can effect the integrity of the lake or canal bank. An Owner should perform maintenance if the lake bank erodes more than 10" from its original shape. It is recommended that any maintenance to correct such erosion be performed during the months of November through April. Further, each such Owner shall ensure that lake and canal banks and slopes remain free of any structural or landscape encroachments so as to permit vehicular access for maintenance when needed. The Association may establish from time to time additional maintenance standards for the lake and canal maintenance by Owners who own Homes adjacent to Common Area waterbodies (the "Lake Slope Maintenance Standards"). Such standards may include requirements respecting compaction and strengthening of lake banks. Association shall have the right to inspect such lake and canal slopes and banks to insure that each Owner has complied with its obligations hereunder and under the Lake Slope Maintenance Standards. Each Owner hereby grants Association an easement of ingress and egress across his Home to all adjacent lake and canal areas for the purpose of insuring compliance with the requirements of this provision and the Lake Slope Maintenance Standards. For the purposes of this Declaration, each day that an Owner fails to comply with the requirements of this paragraph or any Lake Slope Maintenance Standards shall be deemed a separate and independent violation of this Declaration.

15.12. Duration: All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary.

16. Club Covenants: Association and each Home Owner, where applicable, shall be bound by and comply with the Club Covenants which are incorporated herein by reference. Although the Club Covenants are an exhibit to this Declaration, the Association Documents are subordinate and inferior to the Club Covenants. In the event of any conflict between the Club Covenants and the Association Documents, the Club Covenants shall control.

17. Assessments:

17.1. Types of Assessments. Each Owner and Builder, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including any purchaser at a judicial sale, shall hereafter be deemed to have covenanted and agreed to pay to Association at the time and in the manner required by the Board, assessments or charges and any special assessments as are fixed, established and collected from time to time by Association (collectively, the "Assessments"). All Owners shall pay Assessments. Each

Builder shall pay such portion of Operating Costs which benefits any Parcel owned by such Builder, as determined by Developer, in Developer's sole discretion. By way of example, and not of limitation, Developer may require that each Builder pay some portion of Assessments on a Parcel owned by a Builder which does not contain a Home. As vacant Parcels owned by Builders may not receive certain services (e.g., Telecommunications Services), Builders shall not be required to pay for the same.

17.2. **Purpose of Assessments.** The Assessments levied by Association shall be used for, among other things, the improvement and maintenance of the Common Areas and any easement in favor of the Association, including but not limited to the following categories of Assessments as and when levied and deemed payable by the Board:

17.2.1. Any monthly, quarterly, semi-annually, or annually assessment or charge, as the Board may determine, for the purpose of operating the Association and accomplishing any and all of its purposes, as determined in accordance herewith, including, without limitation, payment of Operating Costs and collection of amounts necessary to pay any deficits from prior years' operation (hereinafter "Installment Assessments");

17.2.2. Any special assessments for capital improvements, major repairs, emergencies the repair or replacement of the Surface Water Management System, or nonrecurring expenses (hereinafter "Special Assessments");

17.2.3. Any specific fees, dues or charges to be paid by Owners for any special services provided to or for the benefit of an Owner or Home, for any special or personal use of the Common Areas, or to reimburse Association for the expenses incurred in connection with that service or use (hereinafter "Use Fees"); and

17.2.4. Assessments of any kind for the creation of reasonable reserves for any of the aforesaid purposes. At such time as there are improvements in any Common Areas for which Association has a responsibility to maintain, repair, and replace, the Board may, but shall have no obligation to, include a "Reserve for Replacement" in the Installment Assessments in order to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements comprising a portion of the Common Area (hereinafter "Reserves"). Assessments pursuant to this Section shall be payable in such manner and at such times as determined by Association, and may be payable in installments extending beyond the fiscal year in which the Reserves are disapproved. Until the Community Completion Date, Reserves shall be subject to the prior written approval of Developer, which may be withheld for any reason.

17.2.5. Assessments for which one or more Owners (but less than all Owners) within Baywinds is subject ("Individual Assessments") such as costs of special services provided to a Home or Owner or cost relating to enforcement of the provisions of this Declaration or the architectural provisions hereof as it relates to a particular Owner or Home. By way of example, and not of limitation, all of the Owners within a Plat may be subject to Individual Assessments for maintenance, repair and/or replacement of facilities serving only the residents of such Plat (e.g., a gatehouse attendant and private gatehouse). Further, in the event an Owner fails to maintain the exterior of his Home (other than those portions of a Home maintained by Association) or a lake or canal slope or bank in a manner satisfactory to Association, Association shall have the right, through its agents and employees, to enter upon the Home and to repair, restore, and maintain the Home as required by this Declaration. The cost thereof, plus the reasonable administrative expenses of Association, shall be an Individual Assessment. As a further example, if one or more Owners receive optional Telecommunications Services such as Toll Calls, Basic Service, and/or Data Transmission Services, and Association pays a Telecommunications Provider for such services, then the cost of such services shall be an Individual Assessment as to each Owner receiving such services. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment.

17.3. **Club Charges.** Notwithstanding anything in this Declaration to the contrary, to the extent directed by Club Owner, Association shall collect from the Owners Club Charges in addition to Assessments. In the event that Association shall receive a partial payment in any month of Assessments and Club Charges from a particular Owner, the payment from such Owner shall be first allocated to the payment of Club Fees, then to the payment of Club Operating Costs, and then to the payment of Assessments. Association shall provide the Club Owner each month with

a list of all Owners that did not remit Club Charges to Association for the prior month. Such list shall include the Owner's name, Home description, and the amount not remitted for the prior month, and the total amount of Club Charges not remitted by such Owner to date.

17.4. **Designation.** The designation of Assessment type shall be made by Association. Prior to the Community Completion Date, any such designation must be approved by Developer. Such designation may be made on the budget prepared by Association. The designation shall be binding upon all Owners.

17.5. **Allocation of Operating Costs.**

17.5.1. For the period until the adoption of the first annual budget, the allocation of Operating Costs shall be as set forth in the initial budget prepared by Developer.

17.5.2. Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Installment Assessments shall be allocated so that each Owner shall pay his pro rata portion of Installment Assessments, Special Assessments, and Reserves based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Homes in Baywinds conveyed to Owners or any greater number determined by Developer from time to time. Developer, in its sole and absolute discretion may change such denominator from time to time. Under no circumstances will the denominator be less than the number of Homes owned by Owners other than Developer.

17.5.3. In the event the Operating Costs as estimated in the budget for a particular fiscal year are, after the actual Operating Costs for that period is known, less than the actual costs, then the difference shall, at the election of Association: (i) be added to the calculation of Installment Assessments for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Installment Assessments, which Special Assessment shall relate back to the date that the Installment Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment) except to the extent specifically provided herein.

17.5.4. Each Owner agrees that so long as it does not pay more than the required amount it shall have no grounds upon which to object to either the method of payment or non-payment by other Owners of any sums due.

17.6. **General Assessments Allocation.** Except as hereinafter specified to the contrary, Installment Assessments, Special Assessments and Reserves shall be allocated equally to each Owner.

17.7. **Use Fees and Individual Assessment.** Except as hereinafter specified to the contrary, Use Fees and Individual Assessments shall be made against the Owners benefitting from, or subject to the special service or cost as specified by Association.

17.8. **Commencement of First Assessment.** Assessments shall commence as to each Owner on the day of the conveyance of title of a Home to an Owner. Notwithstanding the foregoing, each Home in an Apartment Building is subject to Assessments upon the issuance of a final or temporary Certificate of Completion for such Apartment Building. Assessments shall commence as to each Builder on the day of conveyance of title of a Parcel to such Builder.

17.9. **Shortfalls and Surpluses.** Each Owner acknowledges that because Installment Assessments, Special Assessments, and Reserves are allocated based on the formula provided herein, or upon the number of Homes conveyed to Owners on or prior to September 30 of the prior fiscal year, it is possible that Association may collect more or less than the amount budgeted for Operating Costs. Prior to the Turnover Date, Developer shall have the option to (i) fund all or any portion of the shortfall in Installment Assessments not raised by virtue of income receivable by Association or (ii) to pay Installment Assessments on Homes or Parcels owned by Developer. Developer shall never be required to (i) fund shortfalls in Installment Assessments if Developer has elected to fund the deficit instead of paying

Installment Assessments on Homes or Parcels owned by Developer or (ii) pay Special Assessments, management fees or Reserves. Any surplus Assessments collected by Association may be allocated towards the next year's Operating Costs or, in Association's sole and absolute discretion, to the creation of Reserves, whether or not budgeted. Under no circumstances shall Association be required to pay surplus Assessments to Owners.

17.10. **Budgets.** The initial budget prepared by Developer is adopted as the budget for the period of operation until adoption of the first annual Association Budget. Thereafter, annual budgets shall be prepared and adopted by Association. THE INITIAL BUDGET OF ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESSER OR GREATER THAN PROJECTED.

17.11. **Establishment of Assessments.** Assessments shall be established in accordance with the following procedures:

17.11.1. Installment Assessments shall be established by the adoption of a twelve (12) month operating budget by the Board. The budget shall be in the form required by Section 617.303(6) of the Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than ten (10) days in advance of the due date of the first installment thereof. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of the Association.

17.11.2. Special Assessments and Individual Assessments against the Owners may be established by Association, from time to time, and shall be payable at such time or time(s) as determined. Until the Community Completion Date, no Special Assessment shall be imposed without the consent of Developer.

17.11.3. Association may establish, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company, Use Fees. The sums established shall be payable by the Owner utilizing the service or facility as determined by Association.

17.12. **Working Capital Fund.** Association has established a working capital fund for the operation of Association (the "Working Capital Fund"). There shall be collected from each Owner that purchases a Home from Developer at the time of conveyance of each Home an amount equal to two (2) months' Assessments. There shall be collected from each Builder that purchases a Parcel from Developer at the time of conveyance of each Parcel an amount equal to two (2) months' Assessments (or such greater amount determined by Developer from time to time) for each Home which Developer determines can be built on such Parcel. At the time that such Builder conveys a Home to an Owner, such Owner shall pay such Builder an amount equal to the amount paid by such Builder for such Home in order to compensate Builder for the amount advanced. Each Owner's share of the Working Capital Fund shall be transferred to Association immediately after the closing of the Home. The Working Capital Fund shall be used to reduce the deficit that might otherwise be funded by Developer or for any other purposes deemed appropriate by Developer and/or Association. Without limiting the foregoing, no portion of the Working Capital Fund shall be used for the payment of legal fees or litigation expenses. To the extent of any deficiencies in the Common Areas, Association shall use the Working Capital Fund to remedy such deficiencies before making any claim against Developer. Moreover, the total amount of such funds and interest accrued thereon, if any, shall be a set-off against any amounts payable by Developer to Association. Amounts paid into the Working Capital Fund are not to be considered as advance payment of Assessments and may be used by Association for any purpose whatsoever, including without limitation, reducing funding obligations, if any, of Developer relative to Association. Notwithstanding anything herein to the contrary, Developer shall have the option to waive contributions to the Working Capital Fund. Developer shall determine when, if ever, the Owner of an Apartment Building shall contribute to the Working Capital Fund and the amount of any contribution due from the Owner of an Apartment Building, if any (which may be significantly less than that required of other Owners).

17.13. **Assessment Estoppel Certificates.** No Owner shall sell or convey its interest in a Home unless all sums due to the Association have been paid in full and an estoppel certificate in recordable form shall have been

received by such Owner. Association shall prepare and maintain a ledger noting Assessments and Club Charges due from each Owner. The ledger shall be kept in the office of Association, or its designees, and shall be open to inspection by any Owner and Club Owner. Within ten (10) days of a written request therefor, there shall be furnished to an Owner an estoppel certificate in writing setting forth whether the assessments have been paid and/or the amount which is due as of any date. As to parties other than Owners who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any Assessment therein stated. The Owner requesting the estoppel certificate shall be required to pay Association a reasonable sum to cover the costs of examining records and preparing such estoppel certificate. Each Owner waives its rights (if any) to an accounting related to Operating Costs or Assessments.

17.14. **Payment of Home Real Estate Taxes.** Each Owner shall pay all taxes and obligations relating to its Home which, if not paid, could become a lien against the Home which is superior to the lien for Assessments created by this Declaration.

17.15. **Creation of the Lien and Personal Obligation.** Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title to a Home, shall be deemed to have covenanted and agreed that the Assessments, and/or other charges and fees set forth herein, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees at all levels of proceedings including appeals, collections and bankruptcy, shall be a charge and continuing lien in favor of Association encumbering the Home and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien is effective from and after recording a Claim of Lien in the Public Records stating the legal description of the Home, name of the Owner, and the amounts due as of that date, but shall relate back to the date that this Declaration is recorded. Without limiting the foregoing, any Claim of Lien filed by the Association shall have priority and be superior to any lien of a Neighborhood Association. The Claim of Lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Owner of the Home at the time when the Assessment became due, as well as the Owner's heirs, devisees, personal representatives, successors or assigns.

17.16. **Subordination of the Lien to Mortgages and Club Charges.** The lien for Assessments shall be subordinate to bona fide first mortgages on any Home, if the mortgage is recorded in the Public Records prior to the Claim of Lien, and to Club Charges. The lien for Assessments shall not be affected by any sale or transfer of a Home, except in the event of a sale or transfer (by deed in lieu of foreclosure or otherwise) of a Home pursuant to a foreclosure of a bona fide first mortgage, or a lien for Club Charges, in which event, the acquirer of title, its successors and assigns, shall not be liable for Assessments encumbering the Home or chargeable to the former Owner of the Home which became due prior to such sale or transfer. However, any such unpaid Assessments for which such acquirer of title is not liable may be reallocated and assessed to all Owners (including such acquirer of title) as a part of Operating Costs included within Installment Assessments. Any sale or transfer (by deed in lieu of foreclosure or otherwise) pursuant to a foreclosure shall not relieve the Owner from liability for, nor the Home from the lien of, any Assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof, or the enforcement of collection by means other than foreclosure.

17.17. **Acceleration.** In the event of a default in the payment of any Assessment, Association may accelerate the Assessments then due for up to the next ensuing twelve (12) month period.

17.18. **Non-Payment of Assessments.** If any Assessment is not paid within fifteen (15) days (or such other period of time established by the Board) after the due date, a late fee of \$25.00 per month (or such greater amount established by the Board), together with interest in an amount equal to the maximum rate allowable by law (or such lesser rate established by the Board), per annum, beginning from the due date until paid in full, may be levied. Association may, at any time thereafter, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Home, or both. Association shall not be required to bring such an action if it believes that the best interests of Association would not be served by doing so. There shall be added to the Assessment all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees

and paraprofessional fees, at all levels of proceedings, including appeals, collection and bankruptcy. No Owner may waive or otherwise escape liability for Assessments provided for herein by non-use of, or the waiver of the right to use the Common Areas or the Club or by abandonment of a Home.

17.19. **Exemption.** Notwithstanding anything to the contrary herein, neither Developer nor Club Owner nor any Home or property owned by Developer or Club Owner shall (unless specified to the contrary by Developer or Club Owner in a separate written instrument) be responsible for any Assessments of any nature or any portion of the Operating Costs. Developer, at Developer's sole option, may pay Assessments on Homes owned by it. In addition, the Board shall have the right to exempt any portion of Baywinds subject to this Declaration from the Assessments, provided that such part of Baywinds exempted is used (and as long as it is used) for any of the following purposes:

17.19.1. Any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;

17.19.2. Any real property interest held by a Telecommunications Provider;

17.19.3. Common Areas or property (other than a Home) owned by a Neighborhood Association;

17.19.4. Any of Baywinds exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration;

17.19.5. Any easement or other interest dedicated or conveyed to not for profit corporations for the use and benefit of residents in the Development of Regional Impact of which Baywinds is a part.

17.20. **Collection by Developer.** If for any reason Association shall fail or be unable to levy or collect Assessments, then in that event, Developer shall at all times have the right, but not the obligation: (i) to advance such sums as a loan to Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, which remedies, including, but not limited to, recovery of attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, shall be deemed assigned to Developer for such purposes. If Developer advances sums, it shall be entitled to immediate reimbursement, on demand, from Association for such amounts so paid, plus interest thereon at the Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection including, but not limited to, reasonable attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy.

17.21. **Rights to Pay Assessments and Receive Reimbursement.** Association, Developer, Club Owner and any Lender of a Home shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Home. If so paid, the party paying the same shall be subrogated to the enforcement rights of Association with regard to the amounts due.

17.22. **Club Charges.** As provided in the club Covenants, Club Owner shall have the right, at its sole option, to require that Association enforce Club Owner's lien to collect Club Charges.

17.23. **Mortgagee Right.** Each Lender may request in writing that Association notify such Lender of any default of the Owner of the Home subject to the Lender's Mortgage under the Association Documents which default is not cured within thirty (30) days after Association learns of such default. A failure by Association to furnish notice to any Lender shall not result in liability of Association because such notice is given as a courtesy to a Lender and the furnishing of such notice is not an obligation of Association to Lender.

18. **Information to Lenders and Owners.**

18.1. **Availability.** There shall be available for inspections upon request, during normal business hours or under other reasonable circumstances, to Owners and Lenders current copies of the Association Documents.

18.2. **Copying.** Any Owner and/or Lender shall be entitled, upon written request, and at its cost, to a copy of the documents referred to above.

18.3. **Notice.** Upon written request by a Lender (identifying the name and address of the Lender and the name and address of the applicable Owner), the Lender will be entitled to timely written notice of:

18.3.1. Any condemnation loss or casualty loss which affects a material portion of a Home to the extent Association is notified of the same;

18.3.2. Any delinquency in the payment of Assessments or Club Charges owed by an Owner of a Home subject to a first mortgage held by the Lender, which remains uncured for a period of sixty (60) days;

18.3.3. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained hereunder;

18.3.4. Any proposed action (if any) which would require the consent of a specific mortgage holder.

19. **Architectural Control.**

19.1. **Architectural Control Committee.** The ACC shall be a permanent committee of Association and shall administer and perform the architectural and landscape review and control functions relating to Baywinds. The ACC shall consist of a minimum of three (3) members who shall initially be named by Developer and who shall hold office at the pleasure of Developer. Until the Community Completion Date, Developer shall have the right to change the number of members on the ACC; and to appoint, remove, and replace all members of the ACC. Developer shall determine which members of the ACC shall serve as its chairman and co-chairman. In the event of the failure, refusal, or inability to act of any of the members appointed by Developer, Developer shall have the right to replace any member within thirty (30) days of such occurrence. If Developer fails to replace that member, the remaining members of the ACC shall fill the vacancy by appointment. From and after the Community Completion Date, the Board shall have the same rights as Developer with respect to the ACC.

19.2. **Membership.** There is no requirement that any member of the ACC be an Owner or a member of the Association.

19.3. **General Plan.** It is the intent of this Declaration to create a general plan and scheme of development of Baywinds. Accordingly, the ACC shall have the right to approve or disapprove all architectural, landscaping, and improvements within Baywinds by Owners other than Developer or Club Owner. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed improvements, relationship to surrounding structures, topography and conformity with such other reasonable requirements as shall be adopted by ACC. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. Prior to the Community Completion Date, any additional standards or modification of existing standards shall require the consent of Developer, which may be granted or denied in its sole discretion.

19.4. **Master Plan.** Developer has established an overall Master Plan. However, notwithstanding the above, or any other document, brochures or plans, Developer reserves the right to modify the Master Plan or any site plan at any time as it deems desirable in its sole discretion and in accordance with applicable laws and ordinances. WITHOUT LIMITING THE FOREGOING, DEVELOPER AND/OR BUILDERS MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS RESPECTING BAYWINDS. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS ARE NOT A GUARANTEE OF HOW BAYWINDS WILL APPEAR UPON COMPLETION AND DEVELOPER RESERVES THE

RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS DEVELOPER DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

19.5. Community Standards. Each Owner and its contractors and employees shall observe, and comply with, the Community Standards which now or may hereafter be promulgated by the ACC and approved by the Board from time to time. The Community Standards shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as if set forth herein verbatim. The Community Standards shall not require any Owner to alter the improvements previously constructed. Until the Community Completion Date, Developer shall have the right to approve the Community Standards, which approval, may be granted in its sole discretion.

19.6. Quorum. A majority of the ACC shall constitute a quorum to transact business at any meeting. The action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC. In lieu of a meeting, the ACC may act in writing.

19.7. Power and Duties of the ACC. No improvements shall be constructed on a Parcel, no exterior of a Home shall be repainted, no landscaping, sign, or improvements erected, removed, planted, or maintained on a Parcel, nor shall any material addition to or any change, replacement, or alteration of the improvements as originally constructed by Developer (visible from the exterior of the Home) be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and the location of same shall have been submitted to and approved in writing by the ACC.

19.8. Procedure. In order to obtain the approval of the ACC, each Owner shall observe the following:

19.8.1. Each applicant shall submit an application to the ACC with respect to any proposed improvement or material change in an improvement, together with the required application(s) and other fee(s) as established by the ACC. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the applicant shall, if requested, submit to the ACC, such site plans, plans and specifications for the proposed improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications and the times scheduled for completion, all as reasonably specified by the ACC.

19.8.2. In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner shall, within fifteen (15) days thereafter, comply with the request.

19.8.3. No later than thirty (30) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed improvements, the materials of which the improvements are to be built, the site upon which the improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within said thirty (30) day period, the plans and specifications shall be deemed disapproved by the ACC.

19.8.4. Construction of all improvements shall be completed within the time period set forth in the application and approved by the ACC.

19.8.5. In the event that the ACC disapproves any plans and specifications, the applicant may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall

take place no later than thirty (30) days after written request for such meeting is received by the ACC, unless applicant waives this time requirement in writing. The ACC shall make a final written decision no later than thirty (30) days after such meeting. In the event the ACC fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed disapproved.

19.8.6. Upon final disapproval (even if the members of the Board and ACC are the same), the applicant may appeal the decision of the ACC to the Board within thirty (30) days of the ACC's written review and disapproval. Review by the Board shall take place no later than thirty (30) days subsequent to the receipt by the Board of the Owner's request therefor. If the Board fails to hold such a meeting within thirty (30) days after receipt of request for such meeting, then the plans and specifications shall be deemed approved. The Board shall make a final decision no later than thirty (30) days after such meeting. In the event the Board fails to provide such written decision within said thirty (30) days after such meeting, such plans and specifications shall be deemed approved. The decision of the ACC, or if appealed, the Board, shall be final and binding upon the applicant, its heirs, legal representatives, successors and assigns.

19.9. **Alterations.** Any and all alterations, deletions, additions and changes of any type or nature whatsoever to then existing improvements or the plans or specifications previously approved by the ACC shall be subject to the approval of the ACC in the same manner as required for approval of original plans and specifications.

19.10. **Variations.** Association or ACC shall have the power to grant variations from any requirements set forth in this Declaration or from the Community Standards, on a case by case basis, provided that the variance sought is reasonable and results from a hardship upon the applicant. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth herein or in the Community Standards on any other occasion.

19.11. **Permits.** The Owner is solely responsible to obtain all required building and other permits from all governmental authorities having jurisdiction.

19.12. **Construction by Owners.** The following provisions govern construction activities by Owners after consent of the ACC has been obtained:

19.12.1. Each Owner shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in Baywinds shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, work manlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in Baywinds shall be kept clear of construction vehicles, construction materials and debris at all times. No construction office or trailer shall be kept in Baywinds and no construction materials shall be stored in Baywinds subject, however, to such conditions and requirements as may be promulgated by the ACC. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any canal or waterway or Common Areas or other Homes in Baywinds or be placed anywhere outside of the Home upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state and local statutes, regulations and ordinances, and shall not be deposited in any manner on, in or within the construction or adjacent property or waterways. All construction activities shall comply with the Community Standards. If a contractor or Owner shall fail in any regard to comply with the requirements of this Section, the ACC may require that such contractor or Owner post security with Association in such form and amount deemed appropriate by the ACC in its sole discretion.

19.12.2. There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact person), of all contractors, subcontractors, materialmen and suppliers (collectively, "Contractors") and changes to the list as they occur relating to construction. Each Builder and all of its employees and contractors and their employees shall utilize those roadways and entrances into Baywinds as are designated by the ACC for construction activities. The ACC shall have the right to require that each builder's and contractor's employees check in at the

designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC

19.12.3. Each Owner is responsible for insuring compliance with all terms and conditions of these provisions and of the Community Standards by all of its employees and contractors. In the event of any violation of any such terms or conditions by any employee or contractor, or, in the opinion of the ACC, the continued refusal of any employee or contractor to comply with such terms and conditions, after five (5) days' notice and right to cure, the ACC shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or contractor from performing any further services in Baywinds.

19.12.4. The ACC may, from time to time, adopt standards governing the performance or conduct of owners, contractors and their respective employees within Baywinds. Each Owner and contractor shall comply with such standards and cause its respective employees to also comply with same. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within Baywinds and each Owner shall include the same therein.

19.13. **Inspection.** There is specifically reserved to Association and ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of Baywinds at any time within reasonable daytime hours, for the purpose of determination whether there exists any violation of the terms of any approval or the terms of this Declaration or the Community Standards.

19.14. **Violation.** If any improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, the Owner shall, upon demand of Association or the ACC, cause such improvement to be removed, or restored until approval is obtained or in order to comply with the plans and specifications originally approved. The Owner shall be liable for the payment of all costs of removal or restoration, including all costs and attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, incurred by Association or ACC. The costs shall be deemed an Individual Assessment and enforceable pursuant to the provisions of this Declaration. The ACC and/or Association is specifically empowered to enforce the architectural and landscaping provisions of this Declaration and the Community Standards, by any legal or equitable remedy.

19.15. **Court Costs.** In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, Association and/or ACC shall be entitled to recover court costs, expenses and attorneys' fees and paraprofessional fees at all levels, including appeals, collections and bankruptcy, in connection therewith.

19.16. **Certificate.** In the event that any Owner fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ACC, Association and/or ACC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Home stating that the improvements on the Home fail to meet the requirements of this Declaration and that the Home is subject to further enforcement remedies.

19.17. **Certificate of Compliance.** Prior to the occupancy of any improvement constructed or erected on any Home by other than Developer, or its designees, the Owner thereof shall obtain a Certificate of Compliance from the ACC, certifying that the Owner has complied with the requirements set forth herein. The ACC may, from time to time, delegate to a member or members of the ACC, the responsibility for issuing the Certificate of Compliance. The issuance of a Certificate of Compliance does not abrogate the ACC's rights set forth in Section 19.13 herein.

19.18. **Exemption.** Notwithstanding anything to the contrary contained herein, or in the Community Standards, any improvements of any nature made or to be made by Developer, Builder or Club Owner, or their nominees, including, without limitation, improvements made or to be made to the Common Areas, Club or any Home, shall not be subject to the review of the ACC, Association, or the provisions of the Community Standards.

19.19. **Exculpation.** Developer, Association, the directors or officers of Association, the ACC, the members of the ACC, or any person acting on behalf of any of them, shall not be liable for any cost or damages incurred by any Owner or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of Developer, Association, ACC or their members, officers, or directors, in connection with the approval or disapproval of plans and specifications. Each Owner agrees, individually and on behalf of its heirs, successors and assigns by acquiring title to a Home, that it shall not bring any action or suit against Developer, Association or their respective directors or officers, the ACC or the members of the ACC, or their respective agents, in order to recover any damages caused by the actions of Developer, Association, or ACC or their respective members, officers, or directors in connection with the provisions of this Section. Association does hereby indemnify, defend and hold Developer and the ACC, and each of their members, officers, and directors harmless from all costs, expenses, and liabilities, including attorneys' fees and paraprofessional fees at all levels, including appeals, of all nature resulting by virtue of the acts of the Owners, Association, ACC or their members, officers and directors. Developer, Association, its directors or officers, the ACC or its members, or any person acting on behalf of any of them, shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

20. **Owners Liability.**

20.1. **Right to Cure.** Should any Owner do any of the following:

20.1.1. Fail to perform its responsibilities as set forth herein or otherwise breach the provisions of the Declaration; or

20.1.2. Cause any damage to any improvement or Common Areas or Club; or

20.1.3. Impede Developer, Club Owner or Association from exercising its rights or performing its responsibilities hereunder or under the Club Covenants; or

20.1.4. Undertake unauthorized improvements or modifications to a Home, the Common Areas or the Club; or

20.1.5. Impede Developer or Club Owner from proceeding with or completing the development of Baywinds or Club, as the case may be.

Then Developer, Association and/or Club Owner, where applicable, after reasonable prior written notice, shall have the right, through its agents and employees, to cure the breach, including, but not limited to, the entering upon the Home and/or Home and causing the default to be remedied and/or the required repairs or maintenance to be performed, or as the case may be, remove unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs and attorneys' fees and paraprofessional fees at all levels including appeals, collections and bankruptcy, incurred shall be assessed against the Owner as an Individual Assessment.

20.2. **Non-Monetary Defaults.** In the event of a violation by any Owner, other than the nonpayment of any Assessment or other monies, of any of the provisions of this Declaration, Developer or Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, the party entitled to enforce same may, at its option:

20.2.1. Commence an action to enforce the performance on the part of the Owner or to enjoin the violation or breach or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

20.2.2. Commence an action to recover damages; and/or