

**Compiled Declaration of Covenants, Conditions and  
Restrictions for Riverwood  
(Including Amendments)**

**NOT RECORDED**

**Approved for use as a Reference Document  
By the Riverwood Board of Directors  
2/22/2017**

**Compiled By:            Jack Stanley  
                              RCA, Board Vice President  
                              May 24, 2017**

**PREFACE**

The Legal Committee consolidated the Covenants, as amended, into one document for the sake of clarity. The consolidation was approved by the RCA Board.

All areas where changes have been made have been highlighted.

Following is a list of the areas which were amended by later amendments and the source of the changes.

Page 11 - Original 3.48 Amendment	changed by #3 on pg. 2 of 5 <sup>th</sup>
Page 11 - Original 4.2 1407/1471	changed by Supplemental Declaration of June 1995 recorded in OR
Page 13 - Original 5.2.1	changed by #4 on pg. 3 of 5 <sup>th</sup> Amendment
Page 14 - Original 5.3.1	changed by #5 on pg. 3 of 5 <sup>th</sup> Amendment
Page 14 - Original 5.3.2	changed by last paragraph on pg. 3 of 5 <sup>th</sup> Amendment
Page 14 - Original 5.4 Amendment	changed by #4 on pg. 2 of 4 <sup>th</sup>
Page 33 - Original 12.1 Amendment	changed by #5 on pg. 3 of 4 <sup>th</sup>
Page 38 - Original 12.8 Amendment	changed by #6 on pg. 5 of 4 <sup>th</sup>
Page 39 - Original 12.12 Amendment	changed by #7 on pg. 6 of 4 <sup>th</sup>
Page 40 - New 12.14 Amendment	New #8 on pg. 6 of 4 <sup>th</sup>
Page 40 - New 12.15 Amendment	New #9 on pg. 6 of 4 <sup>th</sup>
Page 46 - Original 14.1.1 7	all changed by new Article XIV on pg. of 3 <sup>rd</sup> Amendment
Page 46 - Original 14.1.2	" "

Page 47 - Original 14.1.3	"	"
Page 47 - Original 14.1.4	"	"
Page 47 - Original 14.1.5	"	"
Page 47 - Original 14.1.6	"	"
Page 47 - Original 14.1.6.2 "	"	on pg. 8
Page 49 - Original 14.8 Amendment	changed by #6 on pg. 9 of 3 <sup>rd</sup>	
Page 52-55 Original 14.19.1 thru 14.24.7 Amendment	changed by #7 on pg. 9 of 3 <sup>rd</sup>	
Page 60 - Original 16.6 contains a typo	see Supplemental Declaration of September 1994 recorded in OR	
Book 1366	page 82 - corrects the typo	
Page 63 - Original 19.2 Amendment	changed by #10 on pg. 8 of 4 <sup>th</sup>	

The original Declaration of Covenants, Conditions and Restrictions for Riverwood are recorded in the Public Records of Charlotte County in Official Records Book 1227, Page 1371.

The Third Amendment is recorded in Official Records Book 2349, Page 1460.

The Fourth Amendment is recorded in Official Records Book 2408, Page 1522.

The Fifth Amendment is recorded in Official Records Book 3532, Page 1168.

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DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR RIVERWOOD

**DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS  
FOR RIVERWOOD**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 14<sup>th</sup> day of July, 1992, by Riverwood Development, Inc., a Florida Corporation (hereinafter referred to as "Declarant"), and is joined in by Riverwood Community Association, Inc., a Florida non-profit corporation (the "Association"), Robert M. Taylor as Trustee (the "Trustee") and Riverwood Community Development District.

**STATEMENT OF BACKGROUND INFORMATION**

A. Terms capitalized in this Declaration are defined in article III hereof.

B. Declarant is the master land developer of the Initial Property.

C. The Trustee is the current owner of the Initial Property.

D. The Properties will be developed as a master planned mixed use project to be known as "Riverwood."

E. The Declarant has formed the Association to fulfill the Association's obligations as set forth in this Declaration.

F. This Declaration and the Association will govern these Properties.

**STATEMENT OF DECLARATION**

Declarant hereby declares that the Initial Property and any portion of the Property subsequently annexed to this Declaration shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the following covenants, conditions, restrictions, easements and provision.

**ARTICLE I**

**GENERAL PLAN OF DEVELOPMENT**

The Properties, including without limitation development tracts, lake and drainage tracts and conservation tracts, will be developed in accordance with the approvals granted for a Development of Regional Impact as described in Charlotte County Resolution Numbers 90-285, 90-286, and 90-287, any additional resolutions or amendments to such resolutions, and all other applicable permits and approvals. The Properties will be developed as a mixed use project consisting of varying commercial, residential, recreational and other uses. The Properties will be developed in increments.

It is the intention that the Properties will be subject to this Declaration. The Properties, whether residential, commercial or recreational, will be developed as a series of Neighborhoods, each of which will be subject either to a Supplemental Declaration or Neighborhood Documents as well as this Declaration. The Association is responsible for the administration of this Declaration and any Supplemental Declarations.

**ARTICLE II**

**INTENT OF DECLARATION**

Declarant desires to provide for the preservation and enhancement of the value, desirability and attractiveness of the Properties and, therefore, Declarant intends by this Declaration to impose upon the Properties mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners of Private Property within the Properties. Declarant desires to provide a flexible and reasonable procedure for the overall development of the Properties, and to establish a method for the administration, maintenance, preservation, use and enjoyment of the Properties, and maintenance of rights-of-way.

**ARTICLE III**

**DEFINITIONS**

Section 3.1 "Area of Common Responsibility" shall mean and refer to the Common Area, together with those areas, if any, which by the terms of this Declaration, or by contract or agreement with any Neighborhood Association, Commercial or Recreational Property Owner or a governmental agency become the responsibility of the Association. The Areas of Common Responsibility may include, without limitation, maintenance and replacement of bicycle racks and paths provided within the Commercial or Recreational Properties and maintenance of rights-of-way.

Section 3.2 "Articles of Incorporation" or "Articles" shall mean and refer to the Articles of Incorporation of Riverwood Community Association, Inc., as filed with the Secretary of State of Florida, and as may be amended from time to time.

Section 3.3 "Assessment" or "Assessments" shall mean and refer to those charges, fees and/or obligations set forth in Article XII hereof.

Section 3.4 "Association" shall mean and refer to Riverwood Community Association, Inc., a Florida non-for-profit corporation its successors or assigns, whose purpose is to administer the Properties in accordance with the provisions of this Declaration.

Section 3.5 "Benefit Assessment" shall mean and refer to Assessments levied against all Members benefiting from a special service or amenity for the cost incurred for providing such service or amenity which shall include without limitation maintenance, repair, replacement and insurance, solid waste collection and disposal, and cable television service.

Section 3.6 "Board of Directors" or "Board" shall be the elected body of the Association having its normal meaning under Florida corporate law.

Section 3.7 "By-Laws" shall mean and refer to the 'By-Laws of Riverwood Community Association, Inc'. as may be amended from time to time.

Section 3.8 "Common Area" or "Common Property" shall be an inclusive term referring to all real property owned or held by the Association, including all Exclusive Common area, and intended to be devoted to the common use and enjoyment of the Owners of Private Property in accordance with this declaration. The term "Common Property" shall also include any personal property acquired by the Association if said property is designated as "Common Property" in the bill of sale or instrument transferring same or subsequently declared by the Association or the Declarant to be Common Property. Any land or personal property leased by the Association shall lose its character as Common Property upon the expiration of such lease. No portion of the Recreational Property shall be included in or shall be deemed to be Common Area or Common Property.

Section 3.9 "Common Assessment" shall mean and refer to Assessments levied against all Members in the Properties to fund Common Expenses.

Section 3.10 "Common Expenses" shall mean and include the actual and estimated expenses incurred by the Association for maintenance, operation and other services required or authorized to be performed by the Association which is attributable to the Area of Common Responsibility, including any reasonable reserves, all as may be found to be necessary or appropriate by the Board pursuant to this Declaration, the By-Laws, and the Articles of Incorporation of the Association.

Section 3.11 "Community Development District" or "CDD" shall mean and refer to the Riverwood Community Development District which is a special purpose government created under Chapter 190, Florida Statutes, and which may fund, construct, operate and maintain certain infrastructure within or outside the Properties.

Section 3.12 "Community-Wide Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standards may be more specifically determined by the Board of Directors and by the Declarant so long as the Declarant owns one or more Lots within the Properties. Community-wide Standards shall be part of the Rules and Regulations of the Association.

Section 3.13 "Declarant" shall mean and refer to Riverwood Development, Inc. or its successors; or successor-in-title to any portion of the property described on Exhibits "A" or "B" hereof pursuant to an instrument which is duly recorded in the Public Records of Charlotte County, Florida and which conveys and assigns to the grantee thereof all or any portion of the rights of Riverwood Development, Inc. hereunder. Such conveyance and assignment may be partial in which event Riverwood Development, Inc.'s rights so conveyed shall be limited as provided in the instrument, in which latter event shall vest such successor with all of the rights of Riverwood Development, Inc. hereunder at which time Riverwood Development, Inc. will be released of all liability hereunder.

Section 3.14 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Riverwood as the same may be amended or Supplemented from time to time.

Section 3.15 "Environmental Preservation Guidelines" shall mean and refer to those guidelines promulgated by the Declarant from time to time relative to the maintenance, upkeep monitoring and preservation of those portions of the Properties which are or shall be under the jurisdiction and control of any governmental agency and/or for which the Declarant desires or requires environmental or wildlife protection or controls.

Section 3.16 "Exclusive Common Area" which shall mean and refer to certain portions of the Common Area are for the exclusive use and benefits of one (1) or more, but less than all, of the members of the Association. All costs associated with maintenance, repair, replacement and insurance of Exclusive Common Areas shall be assessed against the Owners and their Private Properties which are benefited thereby as a Neighborhood or Benefit Assessment. By way of illustration and not limited, Exclusive Common Areas may include recreational facilities intended to the exclusive use of Owners within a particular Neighborhood or Neighborhoods and supported exclusively by Neighborhood Assessments. Initially, any Exclusive Common Areas shall be designated as such and the exclusive use thereof shall be assigned in the deed or Plat conveying or dedicating the Common area to the Association, as the case may be. A portion of the Common Area may be assigned as Exclusive Common Area of a particular Neighborhood or Neighborhoods, Recreational or Commercial Property and Exclusive Common Area. Neighborhoods, Recreational or Commercial Property and Exclusive Common Area may be reassigned upon the vote of a majority of voters within a neighborhood(s), Recreational or Commercial Property to which they are assigned and the approval thereof by the Declarant as the case may be. A portion of the Common Area may be assigned as Exclusive Common Area of a particular neighborhood or Neighborhoods, Recreational or Commercial Property and Exclusive Common Area may be reassigned upon the vote of a majority of the voters within the Neighborhood(s), Recreational or Commercial Property to which they are assigned and the approval thereof by Declarant.

Section 3.17 "First Mortgagee" shall mean and refer to any Institutional Lender who holds a first mortgage on the Lot, Recreational or Commercial Property and who has notified the Association in writing of its holdings.

Section 3.18 "Golf Course" shall mean, the portion of the Properties comprising the golf course and related facilities to the constructed and operated by the owner of such property, as the same may be modified from time to time.

Section 3.19 "Initial Property" shall mean the real

property legally described in Exhibit "A" attached hereto and incorporated herein.

Section 3.20 "Institutional Lender" shall mean and refer to a bank, life insurance company federal or state savings and loan association, real estate or mortgage investment trust, qualified pension, profit sharing, IRA accounts or trusts, or lender generally recognized in the community as an institutional lender.

Section 3.21 "Lot" shall mean and refer to a portion of the Properties, whether developed or undeveloped, intended for development, use or occupancy as an attached or detached residence for a single family and shall, unless otherwise specified, include within its meaning (by way of illustration, but not limitation) single family lots, attached or detached villas, cluster homes, patio or zero lot line homes, single-family detached houses on one (1) or more separately platted lots and condominium units, as well as vacant land intended for development as such, all as may be developed, used, and defined as herein provided or as provided in Supplemental Declarations covering all or part of the Properties. The term shall include all portions of the lot owned as well as any structure thereon. In the case of an apartment building or other structure which contains multiple dwellings, each dwelling shall be deemed to be a separate Lot. Any two (2) or more Lots which are under common ownership and on which a single residence has been constructed shall nevertheless be considered to be two (2) or more separate Lots for purposes of voting, assessment and all other matters hereunder. The term unimproved Lot shall mean a Lot upon which a foundation slab has not been poured.

In the case of a parcel of vacant land or land which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for such parcel on the site plan approved by Declarant until such time a certificate of occupancy is issued on the parcel by the local governmental entity having jurisdiction, after which the portion designated in the certificate of occupancy shall constitute a separate Lot or Lots as determined above and the number of Lots on the remaining land, if any, shall continue to be determined in accordance with this paragraph. For any parcel of vacant land upon which development has not been completed three (3) years after the commencement of development, the number of Lots applicable to such parcel shall be determined by certificates of occupancy issued for completed buildings on such parcel and the balance of the Lots designated on the applicable site plan may be redetermined by Declarant in its sole discretion. At such time as a certificate of occupancy has been issued for all Lots to be constructed on a parcel of land, any Lots contained within the original Site Plan which exceed the actual number of Lots completed shall revert to the Declarant to

be assigned to the other vacant parcels of land.

Section 3.22 "Marina" shall mean and refer to any portion of the Properties which is developed and operated by the Declarant or its assigns as a private marina and related facilities.

Section 3.23 "Master Plan" shall mean and refer to the plan for the development of the property described on Exhibits "A" and "B" most recently approved by Charlotte County, Florida, and all other governmental agencies having jurisdiction thereof, as it may be amended from time to time.

Section 3.24 "Member" shall mean and refer to a Person entitled to membership in the Association, as provided herein and in the By-Laws.

Section 3.25 "Merchant Builder" shall mean and refer to all builders who purchase Lots or parcels of vacant land to construct buildings and who are participants in any organized builder program which may be implemented by the Declarant.

Section 3.26 "Modifications Committees" or "MC" shall refer to those committees as established by the Board of Directors and described in Article XIII hereof.

Section 3.27 "Neighborhood" shall mean and refer to each portion of the Properties developed and designated as a separate Neighborhood by a Supplemental Declaration executed and recorded by Declarant, such Neighborhood being comprised of one (1) or more housing types, Commercial or Recreational Property subject to this Declaration, whether or not governed by a Neighborhood Association, in which Owners may have common interests other than those common to all Association Members, such as a common theme, entry feature, development name, and/or common areas and facilities which are not available for use by all Members. Each parcel of land intended for development as shown on Master Plan shall constitute a Neighborhood subject to division. Where the content permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association. It shall not be necessary for any Neighborhood to be governed by a Neighborhood Association except as required by law. Neighborhoods may be divided or combined in accordance with article XV of this declaration.

Section 3.28 "Neighborhood Assessments" shall mean Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses. Any Neighborhood Assessment shall be levied equally against all Lots in the Neighborhood(s) benefiting from the services supported thereby, provided that in the event of Assessments for exterior maintenance of structures, or insurance on structures, or replacement reserves which pertain to particular structures, such Assessments for the use and benefit of particular Lots

shall be levied on a pro rata basis among the benefited Lots.

Section 3.29 "Neighborhood Association" shall mean or refer to any condominium or homeowner association which may be formed within a particular Neighborhood to govern the business affairs and any property within that Neighborhood. The formation of a Neighborhood Association is not required, except for condominiums constructed on a parcel.

Section 3.30 "Neighborhood Committee" shall mean a group of three (3) to five (5) people elected by the Owners within a Neighborhood in accordance with the By-Laws. If there is a Neighborhood Association within a Neighborhood, the Board of Directors of that Neighborhood will serve as the Neighborhood Committee.

Section 3.31 "Neighborhood Documents" shall mean the declaration of covenants, conditions and restrictions or declaration or declaration of condominium, and the articles of incorporation and by-laws of a Neighborhood Association and any other documents governing a Neighborhood, all changes to such documents, and any and all budgets of such Neighborhood Associations as adopted from time to time.

Section 3.32 "Neighborhood Expenses" shall mean and include the actual and estimated expenses incurred by the Association for the benefit of Owners of Private Property within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, all as may be specifically authorized from time to time by the Board of Directors and as more particularly authorized herein. Neighborhood Expenses may be shared by one (1) or more benefited Neighborhoods.

Section 3.33 "New Construction Committee" or "NCC shall refer to that committee as established by the Board of Directors and described in Article XIII hereof.

Section 3.34 "Owner" shall mean and refer to the record title holder, whether one (1) or more persons or entities, of the fee simple title to any Lot situated within or upon the Properties. Owners shall not include any mortgagee unless and until such mortgagee has acquired title to a Lot pursuant to an action for foreclosure or any proceeding in lieu of foreclosure. If a Lot is sold under a recorded contract for deed and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Lot is subject to a written lease with a term in excess of one (1) year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Association but the fee owner shall remain responsible for all obligations relative to such Lot.

Section 3.35 "Person" means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

Section 3.36 "Plat" or "Plats" shall mean any plat or plats recorded in the Public Records of Charlotte County, Florida, affecting any or all of the Properties.

Section 3.37 "Private Property" shall mean and refer collectively to Lots, Commercial and Recreational Property.

Section 3.38 "Property" or "properties" shall mean and refer to the real property described in Exhibit "A" attached hereto, together with such additional property as may be hereafter subjected to this Declaration by Supplemental Declaration(s).

Section 3.39 "Recreational Property" shall mean and refer to the portions of the properties operated for commercial recreational purposes, including without limitation, the Golf Club and Marina, as opposed to those properties that are civic in nature and designated as Common Areas. THE RECREATIONAL PROPERTY SHALL NOT BE COMMON AREA.

Section 3.40 "Riverwood" shall mean and refer to the master planned community approved by Resolution numbers 90-285, 90-286, 90-287 and any additional or supplemental resolutions thereto by the Board of County Commissioners of Charlotte County.

Section 3.41 "Rules and Regulations" shall mean the Rules and Regulations adopted by the Board as same may be amended from time to time.

Section 3.42 "Special Assessment" shall mean and refer to Assessments levied in accordance with Article XII, Section 5 of this Declaration.

Section 3.43 "Supplemental Declaration" or "Supplement" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant or its successors in interest which subjects additional property to this Declaration and/or imposes, additional restrictions and obligations or removes restrictions and lot obligations on the land described therein, and/or designates Voting Groups. The term shall also refer to the instrument recorded by the Association pursuant to Article X, to subject additional property to this Declaration.

Section 3.44 "Surfacewater Management System" shall mean that portion of the Properties consisting of swales, inlets, culverts, lakes, outfalls, storm drains, and the like, and all connecting pipes and easements, used in connection with the retention, drainage and control of surface water, including, but not by way of limitation, that portion of the Properties subject to the jurisdiction of the Southwest Florida Water Management District and the Community Development District.

Section 3.45 "Transition" shall mean the period of time between incorporation of Association and Turnover of the Association.

Section 3.46 "Turnover" shall mean that date following conversion of Class "B" votes to Class "A" votes upon which the Declarant transfers majority control of the Board as provided in the By-laws.

Section 3.47 "Voting Group" shall mean one (1) or more Voting Members who vote on a common slate for election of directors to the Board of Directors of the Association, as more particularly described in Article V, section 3, of this Declaration or, if the context

permits, the group of Members whose Lots are represented thereby.

Section 3.48 "Voting Member" shall mean and refer to (a) with respect to class "A" Members, each Member as to such Member's lot, and (b) with respect to the class "C" Members and the class "D" Members, the representative selected by the owners of commercial and recreational properties for casting all votes attributable to the commercial and recreational properties, respectively, for election of directors, amending this declaration or the By-laws, and all other matters provided for in this Declaration and in the By-laws. All references in the Declaration to Voting Members shall refer to, with respect to class "A" Member, each class "A" Member as to such Member's lot, and with respect to the class "C" Members and the class "D" Members, the voting Member selected as provided above.

**ARTICLE IV:**

**PROPERTY RIGHTS AND PROPERTY SUBJECT TO THIS DECLARATION AND ADDITIONS THERETO**

Section 4.1 Initial Property. The real property which initially is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is the Initial Property.

Section 4.2 A) Terms used as defined terms herein without definition shall have the meaning ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Riverwood recorded in O.R. book 1227, Page 1371 et seq. of the Public Records of Charlotte County, Florida, as amended or supplemented (collectively, the "Declaration"). (B) Declarant, with the joinder of Landowner, Association and CDD, has previously supplemented the Declaration to enlarge and expand the Property subject to the terms of the Declaration to include additional Properties, as such additional Properties have been platted, by the following Supplements to the Declaration all recorded in the Public Records of Charlotte County, Florida (hereafter collectively referred to as the "Previous Supplements").

Supplemental Declaration recorded in Official Records Book 1246, Page 91;

Supplemental Declaration recorded in Official Records Book 1264, Page 2111;

Supplemental Declaration recorded in Official Records Book 1264, Page 2116;

Supplemental Declaration to Declaration of Covenants, Conditions and Restrictions for Riverwood recorded in Official Records Book 1307, Page 1081;

Supplemental Declaration recorded in Official Records Book 1320, Page 2192;

Supplemental Declaration recorded in Official Records Book 1342, Page 1775;

Supplemental Declaration recorded in Official Records Book

1365, Page 718;

Amended and Restated Supplemental Declaration recorded in Official Records Book 1371, Page 336; and Page 346.

First Amendment To Supplemental Declaration To Declaration Of Covenants, Conditions and Restrictions For Riverwood recorded in Official Records Book 1385, Page 998.

Section 4.3 Enjoyment of Common Areas. Every Owner of a Lot shall have a right and easement of enjoyment in and to the Common Area, subject to this Declaration as it may be amended from time to time, Rules and Regulations, payment of use or access fees or other charges reasonably imposed by the Association and subject to any restrictions or limitations contained in any deed conveying such property to the Association. Any Owner of a Lot may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to this Declaration, reasonable regulation by the Board and in accordance with Rules and Regulations adopted from time to time. An Owner who leases his or her Lot shall be deemed to have delegated all such rights to the lessee of the Lot. Owners of Commercial or Recreational Property and their guests, invitees and lessees shall be entitled to an easement of enjoyment in and to the Common Area as reasonably necessary to obtain access to or as otherwise set forth in a Supplement or Plat.

#### **ARTICLE V:**

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

Section 5.1 Membership. Every Owner of a Lot shall be deemed to have either a Class "A" or Class "B" membership in the Association, as provided in Section 2 below. The Owners of the Recreational Properties, as the Class "C" Members of the Association as provided in subsection 3 hereof and the Owners of the Commercial Properties, as the: Class "D" Members as provided in subsection 4, shall have such rights and/or obligations relative to the Association as are set forth herein, but neither the class "C" or the Class "D" Member shall be considered a Member or an Owner for any other purposes, unless the context requires or suggests otherwise.

No Owner of a Lot, whether one (1) or more Persons, shall have more than one (1) membership per Lot. In the event the Owner of a Lot is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provision of this Declaration and the By-Laws. In the event a Member is a corporation, partnership, trust or other entity or joint form of ownership, membership rights and privileges may only be exercised by the individuals listed on a certificate filed with the Secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership of Private Property except as otherwise provided herein. Change of membership in the Association shall be established by recording in the Public Records of Charlotte County, Florida, a deed or other instrument conveying record fee title to

Private Property, and by the delivery to the Association of a copy of such recorded instrument. The Owner designated by such instrument shall, by said Owner's acceptance of such instrument, become a Member of the Association and the membership of the prior owner shall be terminated. In the event a copy of said instrument is not delivered to the Association, said Owner(s) shall become a Member, but shall not be entitled to voting privileges enjoyed by his predecessor in interest until such delivery is accomplished, but such Owner(s) shall nevertheless be responsible for all obligations required of an Owner hereunder. The foregoing shall likewise not limit the Association's powers or privileges to enforce covenants, Assessments and abate violations.

Section 5.2 Voting. The Association shall have four (4) classes of membership, Class "A", Class "B", Class "C" and Class "D" as follows:

5.2.1 Class "A". Class "A" Members shall be all Owners of Lots with the exception of the Class "B" Member.

Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership. The vote for each Lot shall be exercised by the Member. When more than one person holds the ownership interest in a Lot, the single vote of such persons with respect to the Lot owned by them shall be exercised as they, among themselves, determine; however, in no event shall less than or more than (1) vote be cast with respect to any Lot which is owned by more than one person.

5.2.2 Class "B". The Class "B" Member shall be the Declarant or its assigns or successors in interest. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member shall be entitled to appoint a majority of the members of the Board of Directors until Turnover, as specified in the By-Laws. After Turnover, the Declarant shall have a right to disapprove actions of the Board of Directors and any committee as provided in Section 5.5 hereof. The Class "B" membership shall terminate and become converted to Class "A" membership upon the Turnover.

Upon and after the Turnover, the Class "B" member shall be deemed to be a Class "A" member entitled to one (1) vote for each Lot in which the interest required for membership under Section I hereof is held. At such time, the Declarant shall call a meeting as provided in the By-Laws for special meetings to advise the membership of the termination of Class "B" status (hereafter called "Turnover Meeting")

5.2.3 Class "C". The Class "C" Member shall be the owners of the Recreational Properties. Each Recreational Property Owner shall designate a voting Member in writing for casting its votes. For purposes of voting only, the Class "C" Member shall be allocated one (1) vote for every twenty five (25) acres if the Recreational Property is the Golf Club, or one (1) vote for every ten (10) slips if the

Recreational Property is a Marina. If other Recreational Properties are provided within the Properties voting and assessments for such property will be as provided in a Supplement.

5.2.4 Class "D". The Class "D" Members shall be the Owners of Commercial Properties. Each Commercial Property Owner shall designate a voting Member in writing for casting its votes. For purposes of voting only, voting Members representing Commercial Properties shall be allocated one (1) vote for every 15,000 square feet of gross land area if the Commercial Property is a shopping center or other retail establishment or one (1) vote for every 5,000 square feet of gross rentable space if the Commercial Property consists office space. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to contain the types and amount of square footage designated for such parcel on the site plan approved by the Declarant until such time as a certificate of occupancy is issued on the parcel by the local governmental entity having jurisdiction for the entire parcel. If other types of Commercial Properties are provided within the Properties, voting and assessments for such property will be as provided in a Supplement.

Section 5.3 Voting Members and voting Groups.

5.3.1 Voting Members. Voting on Association matters requiring a vote of the Members will be cast solely by the class "A" members and by the Voting Members selected by the Owners of Recreational and Commercial properties in accordance with this Declaration, the By-Laws and any supplemental Declaration. Each Recreational and Commercial Property Owner shall be entitled to elect one (1) Voting Member in accordance with the By-Laws who will proportionally represent the collective votes of each Recreational and Commercial Property, respectively. In the event of any conflict between the terms and the provisions related to the voting procedure described in this Declaration and in the terms and provisions set forth in the By-Laws, the terms and provisions contained in the By-Laws, as amended from time to time, shall control and be given effect.

5.3.2 Voting groups. The election of the Board of Directors shall be determined under the procedures set forth in the By-Laws, in lieu of a system of voting groups.

Section 5.4 Declarant's Rights in the Association. Prior to the Turnover, whether the Declarant exercises the right to appoint a majority of the Board of Directors or not, the Board shall have no authority to, and shall not, without the written consent of the Declarant, which may be withheld for any or no reason whatsoever, undertake any action which shall:

5.4.1 prohibit or restrict in any manner the sales and marketing program of the Declarant, any Merchant Builder or any Owner of Commercial or Recreational Property or the leasing activities of the Declarant, any Merchant Builder or any Owner of Commercial or Recreational Property;

5.4.2 decrease the level of maintenance services of the Association performed by the initial Board of Directors;

5.4.3 make any Special or Benefit Assessment against or impose any fine upon the Declarant's property within Riverwood or the Declarant;

5.4.4 change the membership of the NCC or diminish its powers as stated herein;

5.4.5 alter or amend the Declaration, the Articles or By-Laws of the Association;

5.4.6 terminate or waive any rights of the Association under this Declaration;

5.4.7 convey, lease, mortgage, alienate or pledge any easements, Common Area or Exclusive Common Area of the Association;

5.4.8 accept the conveyance, lease, mortgage, alienation or pledge of any real or personal property to the Association;

5.4.9 terminate or cancel any easements granted hereunder or by the Association;

5.4.10 terminate or impair in any fashion any easements, powers or rights of the Declaration or the Commercial or Recreational Property Owners hereunder;

5.4.11 restrict the Declarant's rights of use, access and enjoyment of any of the Properties, or

5.4.12 cause the Association to default on any obligation of it under any contract or this Declaration.

In any such matter, the Declarant's consent shall be exercised by the appointee on the Board or other person designated to so act by the Declarant.

Section 5.5 Right of Declarant to Disapprove Actions. This section 5.5 may not be amended without the express written consent of Declarant.

So long as the Declarant is entitled to appoint at least one (1) member to the Board, the Declarant shall have a right to disapprove actions of the Board and any committees, as is more fully provided in this Section. This right shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument, or who become a successor Declarant pursuant to a recorded assignment or court order. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until ten (10) days following the meeting held pursuant to the terms and provisions hereof. At any time prior to the expiration of such ten (10) day period, the Declarant may exercise its right to disapprove actions of the Board and any committees and the Association shall not take any action or implement any policy, program or Rule or Regulation previously

approved by the Association.

This right to disapprove shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 5.6 Right of Class "C" Members to Disapprove Actions. This section 5.6 may not be amended without the express, written consent of a sixty-seven percent (67%) vote of the Class "C" Members.

The Class "C" Members through its Director, shall have a right to disapprove actions of the Board and any committees which, in its reasonable judgment, materially and adversely affect the use of the Recreational Property or its rights or obligations under this Declaration. This right may be exercised by the Director elected by the Class "C" Members within ten (10) days following notice of approval of such action.

Section 5.7 Right of Class "D" Members to Disapprove Actions.

This Section 5.7 may not be amended without the express, written consent of a sixty-seven percent (67%) vote of the Class "D" Members.

The Class "D" Members through its Director, shall have a right to disapprove action of the Board which, in its reasonable judgment, materially and adversely affect its use of the Commercial Properties or its rights or obligations under this Declaration. This right may be exercised by the Director elected by the Class "D" Members within ten (10) days following notice of approval of such action.

Section 5.8 Arbitration. The Association shall not implement any proposed action objected to by Declarant without calling for arbitration in accordance with this section. The Association may implement any proposed action objected to by the Class "C" or Class "D" Members, provided the Class "C" or Class "D" Members may call for arbitration over such action.

In the event any party calls for arbitration, the Board shall, within ten (10) days of notice of an arbitration request, request from the American Arbitration Association ("AAA") a list of AAA approved arbitrators qualified in community association operations. Each party to the arbitration proceeding shall select one arbitrator within five (5) days after receipt of the list of arbitrators. The two (2) appointed arbitrators shall select a third AAA qualified arbitrator, who together will comprise the arbitration panel.

The decision of the arbitration panel, where appropriate, shall take into account the operation of the Association in comparison with the operation of other similar community associations in the State of Florida. The arbitration panel shall investigate the facts and shall hold hearings at which the parties may present evidence and arguments, be represented by counsel and conduct cross examination. The arbitrators shall render a written decision upon the matter

presented to them by determining whether the action violated the standards set forth in this Article within thirty (30) days after the date the matter was submitted to arbitration. Judgment upon the decision rendered in such arbitration (on the claim or for costs) may be entered by any court having jurisdiction thereof.

The arbitration proceeding shall be governed by the rules of the AAA then in force. If necessary, the parties shall advance on an equal basis any costs of the arbitration, such reporter's fees and arbitrator's fees. The prevailing party shall be entitled to recover as part of the award all such advanced costs and reasonable attorneys' fees and related costs, fees and expenses of the arbitration. In the event of any dispute over any such fees and costs, each party may apply to the arbitrator within thirty (30) days of the decision on the merits for a determination of an award of fees, costs and expenses. The arbitrator shall enter an award on such application within thirty (30) days from its receipt, without a hearing, but with consideration of any factual material or brief submitted by the parties, and such award shall be paid within sixty (60) days from the date of such award. In the event the Declarant, the Class "C" or Class "D" Members are awarded costs, such amounts shall be assessed against all Lots owned by persons other than the Declarant as a Special Assessment without any requirement of a vote. In the event the Board of Directors are awarded costs, such amounts shall be paid by party exercising its right of disapproval over such action, whether it is the Declarant, the Class "C" or Class "D" Members. If the Class "C" or Class "D" Members are required to pay costs, such amount shall be assessed as a Special Assessment against the Private Property of such members without any vote.

#### **ARTICLE VI:**

#### **MAINTENANCE**

Section 6.1 Preamble. The responsibility for the maintenance of the Properties is divided between the Association, the CDD and the Owners. In the event that the Declarant or its successors forms one or more Neighborhood Associations for the purposes described herein, some of the maintenance responsibilities of the Association or the Owners may become the obligation of one (1) or more of such Neighborhood Associations. Interior maintenance of Private Property is the responsibility of each Owner. Maintenance of the exterior to Private Property, unless otherwise provided in this Declaration, any Supplemental Declaration or any Neighborhood Documents, is the responsibility of each Owner. Unless otherwise provided in any of the Supplemental Declarations described in the foregoing sentence, the maintenance of the Area of Common Responsibility is the responsibility of the Association in the manner provided in this Declaration, Supplemental Declaration, agreements or contracts. The Board of Directors has the right to require the Owners or Neighborhood Association to maintain their property in accordance with the Community-Wide Standards; and it is the responsibility of the Owner and any Neighborhood Association, unless otherwise assumed by the Association in accordance with the terms of this Declaration,

Supplemental Declaration, agreements or contracts to maintain landscaping in a neat and trimmed manner, and to remove all objectionable debris or material as may be located on their Lot or Common Area. After notice by the Board of Directors to correct deficient maintenance, if said deficiencies remain uncorrected, then the Board of Directors shall have the right to employ maintenance people to perform maintenance work as shall be prescribed by the Board of Directors and for the purpose the Members grant unto the Board of Directors, its agents, employees, and all others designated by the Board of Directors, the right to enter upon the property of any Member for the purpose of completing such maintenance work, all without liability or responsibility, criminal or civil, for trespass or any other action. The cost of such work required by the Board of Directors to cure maintenance deficiencies (together with an overhead surcharge equal to 10% of such cost) shall be assessed against the Owner and his Private Property as provided herein.

Section 6.2 Maintenance by Association. The Association shall maintain and keep in good repair the Area of Common Responsibility, such maintenance to be funded as hereinafter provided. Nothing contained herein shall be deemed to mean that the Association is responsible for the maintenance of any portion of the Recreational or Commercial Properties unless such maintenance is mandated by the terms of this Declaration or by a separate agreement as between the Recreational or Commercial Property Owner(s) and the Association. The maintenance to be performed by the Association shall include, but need not be limited to, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements, including all private streets, sidewalks, buildings and other improvements owned by the Association, situated upon the Common Area, and such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or by a contract or agreement with the Association. Such maintenance may also include insect, pest, and aquatic control to the extent necessary or desirable, in the judgment of the Association. Such pest or aquatic weed control may also be provided by the CDD. The Association for the benefit of itself and the CDD reserves a perpetual right and easement on and over and, under all properties to dispense pesticides and to take other action, which in the opinion of the Association or CDD is necessary to control insects and vermin on the Properties exclusive of the interior of buildings and other structures constructed on the properties. The providing of pest services as described above shall not be construed as an obligation on the part of the Association to provide such services.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of Areas of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Common Assessment. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a Neighborhood Expense assessed as a Neighborhood Assessment solely against the Lots within the Neighborhood(s) to which the Exclusive

Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder. All Lots on which no improvements have been constructed shall be mowed and groomed on a periodic basis as determined by the Association and such services shall be provided by the Association and the cost thereof divided among the affected Owners and assessed directly to the individual Owner as a Benefit Assessment.

The Association shall also be responsible for exterior grounds maintenance within any Neighborhood and maintenance, repair and replacement of other property within any Neighborhood to the extent designated in any Supplemental Declaration affecting the Neighborhood. The Association may also assume maintenance responsibilities with respect to any Neighborhood in addition to those designated by Supplemental Declaration. This assumption of responsibility may take place either by agreement with the Neighborhood Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard of the Properties. (All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood or Benefit Assessment only against the Lots within the Neighborhood to which the services are provided). The providing of services in accordance with this section shall not constitute discrimination within a class. For the purpose of performing the exterior maintenance authorized by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Lot Owner, to enter upon any Lot or exterior of any Lot or other structures or improvements, at reasonable hours of any day.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, property dedicated to or owned by the CDD, or property, forming part of the Recreational or Commercial Properties, if the (a) Declarant prior to Turnover and (b) the Board of Directors after Turnover (subject to the written consent of Declarant so long as Declarant is entitled to appoint one (1) member to the Board) determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The costs of such maintenance shall be allocated among the benefited properties as a Common Assessment, Neighborhood Assessment or Special Assessment, as the Board of Directors determines reasonable and appropriate.

Any walls and fences surrounding portions of the properties may be maintained by the Association, if such property is within the Area of Common Responsibility, and a perpetual easement of ingress and egress over the walls and fences, and Private Property is hereby granted to the Association for purposes of construction and maintenance activities related to any such walls and fences.

The Association may contract with any Person for the management of all or part of the Properties for purposes of carrying out all or a portion of the maintenance services provided for in the Declaration.

In the event the Association shall fail to carry out any of its

maintenance activities hereunder, then any aggrieved Owner(s), may seek to enforce the provisions of this Declaration subject to the terms and provisions hereof.

Section 6.3 Maintenance by CDD. The CDD shall maintain and keep in good repair all properties which are owned by, dedicated to or controlled by the CDD, such maintenance shall be funded by taxes, assessments or fees and charges to be levied by the CDD. Portions of the property owned or controlled by the CDD may be maintained by the Association through a separate agreement between the CDD and the Association. All such maintenance whether performed by the CDD or the Association shall be subject to compliance with the Community Wide Standards.

Section 6.4 Owner's Responsibility. Each Owner shall maintain his or her Private Property and all structures, parking areas and other improvements thereon. In the event a Lot is going to be unoccupied for a consecutive period of one (1) month or longer, the Owner must designate a responsible firm or individual to undertake his or her general maintenance responsibilities, which responsibilities shall include, at a minimum maintaining exterior appearance, safeguarding the property to prepare for hurricane or tropical storm watches and warnings by, among other things, removing any unfixed items on patios, balconies and lanais and storing same indoors and repairing the property in the event of any damage therefrom. The name(s) and address of such firm or individual must be furnished to the Association. In addition, Owners of Private Property which are adjacent to the Golf Course shall maintain and irrigate that portion of the Golf Course property between the Private Property boundary and the irrigated portion of the Golf Course or lake water's edge or wetland. Owners of Private Property which are adjacent to any portion of the Property on which walls or fences have been constructed shall maintain and irrigate that portion of the area which lies between the wall or fence and the Private Property boundary. Owners of Private Property fronting on any roadway within the Properties shall maintain driveways serving their respective Private Property and shall maintain and irrigate landscaping on that portion of the area, if any, or right-of-way between the Private Property boundary and the nearest pavement edge. Owners of Private Property fronting on the water's edge or upon greenbelt buffer fronting the water's edge of any lake or other body of water within the properties shall maintain and irrigate all landscaping between the Private Property boundary and such water's edge; provided, the Owners shall have no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XIII hereof. All maintenance required by this section 6.4 shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to a Neighborhood Association pursuant to any Supplemental Declaration or Neighborhood Documents applicable to such Lot. If any Owner fails properly to perform his or her maintenance responsibility, the Association shall have the right, but not the obligation to maintain such property and assess all costs incurred by the Association against the Lot and the

Owner thereof as a Special or Benefit Assessment. Provided, however, except when entry is required due to an emergency situation, the Association shall afford the Owner a minimum of seven (7) day's notice and an opportunity to cure the problem prior to entry.

Section 6.5 Neighborhood Association's Responsibility. Any Neighborhood Association having responsibility for maintenance of all or a portion of the property within a particular Neighborhood pursuant to Neighborhood Documents shall perform such maintenance responsibility in a manner consistent with the community-Wide Standard. In the event that Neighborhood Association fails to adequately maintain property for which it is responsible, the Association shall have the right, but not the obligation, to maintain such property and to assess the costs (including an appropriate charge for administrative overhead) against the Lots located within the maintenance responsibility of the Neighborhood benefited by the maintenance performed by the Association. Each such Lot shall pay its pro-rata share of such expenses incurred by the Association together with an administrative charge of ten percent (10%) of such amount. Such Assessments may be collected as special or Benefit Assessments hereunder and shall be subject to all lien rights provided herein.

If required by virtue of any Supplemental Declaration, any Neighborhood Association with common property adjacent to the Golf Course shall maintain and irrigate that portion of the Golf Course property between the boundary of such common property and the irrigated portion of the golf course or lake water's edge or wetlands preserve. Any Neighborhood Association whose common property is adjacent to any portion of the Property upon which a wall or fence is constructed shall maintain and irrigate that portion of the Common Area between the wall or fence and the Neighborhood Association's property line. Any Neighborhood Association whose common property fronts on any roadway within the Properties shall maintain and irrigate the landscaping on that portion of the right-of-way between the property line and the nearest curb of such roadway.

Any Neighborhood Association whose common property fronts the water's edge, or greenbelt buffer front in the water's edge, of any lake or other body of water within the Properties shall maintain and irrigate all landscaping between its property line and such water's edge; provided, there shall be no right to remove trees, shrubs or similar vegetation from this area without prior approval pursuant to Article XVI hereof.

Section 6.6 Surface Water Drainage and Management System.

6.6.1 All Owners acknowledge that the Property is located within the boundaries of the Southwest Florida Water Management District ("SWFWMD").

6.6.2 Only vegetation approved by the New Construction Committee shall be installed and maintained on any area adjacent to the Surface Water Management System. A list of native and other permitted vegetation is included as part of the guidelines

promulgated by the New Construction Committee.

6.6.3 Pursuant to a Surface Water Management Plan approved by SWFWMD the Surface Water Management System shall be owned and maintained by the Community Development District.

6.6.4 The Association, the Community Development District and SWFWMD, shall have equal and independent rights to enforce any and all of the covenants and restrictions set forth in this Declaration which apply to or are designed to protect the Surface Water Management system. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages against the Person(s) which violate any of the provisions of this Declaration.

Damages against an Owner or any Person using the Owners property will be considered a Benefit Assessment against the Owner's Private Property. Failure by the Association, the Community Development District or SWFWMD or by any Owner to enforce any covenant or restriction herein contained shall in no event be, deemed a waiver of the right to do thereafter nor shall such failure to so enforce create any liability on the part of the Association, the community Development District or SWFWMD. In any act or proceeding under this section, the Association, the Community Development District or SWFWMD, if the prevailing party, shall be entitled to recover its costs and reasonable attorneys' fees, including attorneys' fees and costs on appeal.

6.6.5 It is the responsibility of the Community Development District to operate and maintain the Surface Water Management system, including but not limited to aquatic weed control, in a manner consistent with the original design thereof, and in accordance with the requirements of all applicable governmental authorities. Portions of the properties including without limitation, portions of the Golf Course may provide drainage for the Surface Water Management system. Notwithstanding anything to the contrary, such portions of the Properties are burdened with an easement for drainage purposes and the owner of any such portion of the Property shall not alter the flow of drainage over such property without the consent of the Community Development District, the Association and SWFWMD.

6.6.6 Portions of the Surface Water Management system are located within the boundaries of the Golf Course or adjacent thereto. Such areas of the Surface Water Management system are hereby burdened with an easement for reasonable use in connection with golf play, including without limitation play over such bodies of water, retrieval of golf balls by persons utilizing the Golf Course and the Owner for retrieval of golf balls which are not retrieved by persons utilizing the Golf Course, and drainage of the Golf Course into the Surface water Management System. No person other than the

owner of the Golf Course shall have the right to retrieve any golf balls which are not retrieved by golfers during play. In addition the owner of the Golf Course may, in its sole discretion, maintain areas of the Surface Water Management system which are utilized in connection with golf play or operation of the Golf Course to a higher standard of maintenance than that performed by the Community Development District.

6.6.7 The Community Development District, the Association and their designees shall have a non-exclusive easement over, upon and for use of Surface Water Management System, and an easement for ingress, egress and access to enter upon any portion of the Property in order to construct, maintain or repair, as necessary, any portion of the Surface Water Management System.

6.6.8 Any amendment of this Declaration which would affect the Surface Water Management System must be approved by SWFWMD.

#### **ARTICLE VII:**

#### **INSURANCE AND CASUALTY LOSSES**

Section 7.1 Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain blanket all-risk coverage insurance for all insurable improvements on the Common Area, or if blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy covering loss or damage by fire or other hazards, including extended coverage, vandalism, and malicious mischief. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from such hazard.

The Association shall not have any insurance responsibility for any Lot, common area of a Neighborhood Association, Recreational or Commercial Properties, other than the Common Area located within those properties, if any. Insurance obtained on the properties within any Neighborhood obtained by a Neighborhood Association, shall at minimum comply with the applicable provisions of this section 1, including the provisions of this Article applicable to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area, except liability limits may be reduced pursuant to a Supplement affecting the Neighborhood. All such insurance shall be for the full replacement cost. All such policies shall provide for a certificate of insurance to be furnished to each Member insured, to the Association, and to the Neighborhood Association, if any.

The Board shall also obtain a public liability policy covering the Common Area, the Association, and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance.

The public liability policy shall have at least Three Million Dollars {\$3,000,000.00) per person limit, as respects bodily injury and property damage, a Three Million Dollar {\$3,000,000.00) limit per occurrence, and the property damage limit shall be not less than Three Hundred Thousand Dollars (\$300,000.00).

Premiums for all insurance on the Common Area (other than Exclusive Common Area) shall be Common Expenses of the Association and shall be included in the Common Assessment; premiums for insurance on Exclusive Common Area shall be charged to those Neighborhoods as a Neighborhood Assessment. The policy may contain a reasonable deductible, and in the case of casualty insurance, the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

All insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the respective benefited parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth.

7.1.1 All policies shall be written with a company authorized to do business in Florida which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or if not available, the most nearly equivalent rating.

7.1.2 All policies on the Common Area shall be for the benefit of the Association and its Members.

7.1.3 Exclusive authority to adjust losses under policies obtained by the Association on the properties shall be vested in the Association's Board of Directors. No First Mortgagee or other lien holder shall have any right of participation with respect to losses pertaining to the Common Area.

7.1.4 In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by Neighborhood Associations, individual Owners, occupants, or their First Mortgagees and the insurance carried by the Association shall be primary.

7.1.5 All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one (1) or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Southwest Florida area.

7.1.6 The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

7.1.6.1 a waiver of subrogation by the insurer as to

any claims against the Association's Board of Directors, the Owners, and their respective tenants, servants, agents, and guests.

7.1.6.2 a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

7.1.6.3 a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal account of any one (1) or more individual Owners;

7.1.6.4 a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or First Mortgagee;

7.1.6.5 that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

7.1.6.6 that the Association will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

In addition to the other insurance required by this Section, the Board shall obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, a fidelity bond or bonds on directors, officers, employees, and other Persons handling or responsible for the Association's funds, and flood insurance on Common Areas, if required. The amount of fidelity coverage shall be determined in the directors' best business judgment but, if reasonably available, may not be less than three (3) months' Assessments on all Lots, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

Section 7.2 Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Lot(s) and structures constructed thereon, unless the Neighborhood Association in which the Lot is located carries such insurance (which they are not obligated to do hereunder). Each Owner of a Lot further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Lot, the Owner shall remove all debris within sixty (60) days and complete repair or reconstruction of the damaged structure within one (1) year in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XIII of this Declaration.

The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the

structure is totally destroyed, the Owner of the Lot may decide not to rebuild or not to reconstruct, in which case the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Association shall continue to maintain the Lot in a neat and attractive condition consistent with the community-wide Standard as it is provided in Article VII hereof. The Owners of commercial or Recreational Property shall repair any damage to such property promptly or if an improvement on such property is totally destroyed, the Owner may either reconstruct the improvement or restore such property to its normal state. Any such repair or reconstruction shall be substantially in accordance with the original plans and specifications (allowing for building or fire code changes and technical or functional improvements) or as otherwise approved by Declarant.

All policies of insurance required by the terms of this section shall name the Association and any Neighborhood Association (if applicable) as additional insured and shall require that the Association (and the Neighborhood Association, if applicable) will be given at least thirty (30) days prior written notice of any cancellation, substantial modification, or non-renewal.

A Neighborhood Association may have more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lots within the Neighborhood Association and the standard for returning the Lots to their natural state in the event the structures are not rebuilt or reconstructed.

### Section 7.3            Damage and Destruction.

7.3.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the affected portion of the Properties to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes or other governmental requirements.

7.3.2 Any damage or destruction to the Common Area, or the Exclusive Common Area of any Neighborhood, or the common property of any Neighborhood Association shall be repaired or reconstructed unless (a) if Common Area, the voting Members representing at least seventy-five percent (75%) of the votes attributable to Lots, the Class "C" and Class "D" vote of the Association, or (b) if Exclusive Common Area or the common property of any Neighborhood Association, the Lot Owners representing at least seventy-five percent (75%) of

the total votes of Lots within the Neighborhood whose Exclusive Common Property or Neighborhood Association common property is damaged, shall decide within sixty (60) days after the casualty not to repair or reconstruct. The foregoing may be made more stringent by the applicable Neighborhood Documents. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the association within said period, then the period shall be extended until such funds or information shall be made available; provided however, such extension shall not exceed sixty (60) additional days. No holder of any lien relative to the Properties or any Lot therein shall have the right to participate in the determination of whether the damage or destruction to Common Area or Exclusive Common Area shall be repaired or constructed.

7.3.3 In the event that it should be determined in the manner described above that the Common Area, Exclusive Common Area or Neighborhood Association Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained undeveloped by the Association, or the Neighborhood Association, as applicable, in a neat and attractive condition consistent with the Community-Wide Standard.

Section 7.4 Disbursement of Proceeds.

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

7.4.2 If it is determined, as provided in Section 7.3 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner as provided for excess proceeds described above.

Section 7.5 Repair and Reconstruction. If the damage or destruction to the Common Area for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Voting Members, levy a Special

Assessment against all Owners on the same basis as provided for Common Assessments; provided, if the damage or destruction involves the Exclusive Common Area appurtenant to a specific Neighborhood, only the Owners of Lots in the affected Neighborhood shall be subject to assessment therefor. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited in a capital account for the benefit of the Association.

**ARTICLE VIII:**

**NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Properties or any part thereof seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**ARTICLE IX:**

**CONDEMNATION**

Whenever all or any part of the Common Area shall be taken by (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Voting Members representing at least sixty-seven percent (67%) of the total votes attributable to Lots, Class "C" and Class "D" vote in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibits "A " or "B") any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, so long as the Declarant owns any property described in Exhibits "A" and "B" of this Declaration, and voting Members representing at least sixty-seven percent (67%) of the total votes attributable to Lots, the Class "C" and Class "D" vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the provisions regarding the disbursement of funds in respect to casualty, damage or destruction which is to be repaired shall apply.

If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are funds remaining after any such restoration or

replacement is completed, then such award or funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine, in its sole discretion.

## **ARTICLE X:**

### **ANNEXATION AND REMOVAL**

Section 10.1 Annexation Without Approval of Membership. Declarant shall have the right, privilege, and option, from time to time at any time until all property described on Exhibit "B" has been subjected to this Declaration to annex all or any portion of the real property described in Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association. Such right of Declarant shall be unilateral. Such annexation shall be accomplished by filing in the Public Records of Charlotte County, Florida, a Supplemental Declaration annexing such property executed solely by Declarant. Such Supplemental Declaration shall not require the consent of any person other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. Declarant shall have the unilateral right to transfer to any other Person the said right, privilege, and option to annex additional property which is herein reserved to Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by the Declarant.

Section 10.2 Annexation with Approval of Membership. Subject to the consent of the owner thereof, upon the written consent or affirmative vote of a majority of the votes represented by the voting Members (other than Declarant) of the Association present at a meeting duly called for such purpose, the Association may annex real property other than that described on Exhibit "B", to the provisions of this Declaration and the jurisdiction of the Association by filing of record in the Public Records of Charlotte County, Florida, a Supplemental Declaration describing the property to be annexed. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form or notice of any meeting called for the purpose of considering annexation of property pursuant to this section 2 and to ascertain the presence of a quorum at such meeting.

Section 10.3 Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, located within the Properties described in Exhibits "A" or "B" which upon conveyance or dedication to the Association shall be

accepted by the Association without further action and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 10.4 Removal of Property. Declarant reserves the right to amend this Declaration from time to time prior to Turnover, in its sole discretion, without the prior notice or consent of any Person to remove any portions of the Property then owned by the Declarant (or any affiliate of Declarant) or by the Association from the provisions of this Declaration if and to the extent such property was originally subjected to this Declaration in error or if Declarant changes the development plan for the Properties, provided, however, that such withdrawal does not materially and adversely change the general plan for development of the Properties.

Section 10.5 Amendment. This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any property described in Exhibits "A" or "B" hereof.

#### **ARTICLE XI:**

#### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

##### Section 11.1 Common Area.

11.1.1 On or before Turnover, the Declarant shall convey the Common Areas to the Association. The Association shall accept title to any interest to any real or person property transferred to it by Declarant. Property interests transferred to the Association by Declarant may include fee simple title, easements, leasehold interests and licenses to use. Any fee simple interest in property transferred to the Association by Declarant shall be transferred to the Association by limited warranty deed, free and clear of all liens (other than the lien for property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and any and all easements, rights-of-way, reservations, covenants, conditions, restrictions, equitable servitudes and other encumbrances of record or reserved by Declarant in the instrument of conveyance. The property or interest in property transferred to the Association by Declarant may impose special restrictions governing the uses of such property and special obligations on the Association with respect to the maintenance of such property.

THE ASSOCIATION SHALL ACCEPT "AS IS" THE CONVEYANCE OF SUCH PROPERTY WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, OR WITH RESPECT TO THE IMPROVEMENTS AND REPAIRS TO BE COMPLETED AFTER THE CONVEYANCE, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY,

COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO

THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE, ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH PROPERTY OR REPAIRS, EXCEPT AS SET FORTH HEREIN BY ACCEPTANCE OF AN INTEREST ANY SUCH PROPERTY OR THE DEED TO ANY LOT, THE, ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION, OR COMPLETENESS OF SUCH PROPERTY OR REPAIRS OR FOR INCIDENTAL OR CONSEQUENTIAL

DAMAGES ARISING THEREFROM. All costs and expenses of any conveyance of any property by Declarant to the Association shall be paid for by the Association.

11.1.2 Upon the Declarant's completion of any building, right-of-way, sidewalk or installation of equipment costing in excess of \$10,000, the Board of Directors of the Association, in its sole discretion, may select experts to inspect such improvements to determine whether same have been constructed in substantial compliance with the plans and specifications, as modified by any change orders, and to inspect for construction defects and for governmental code violations and operating condition. The Association shall pay the cost of the required inspections. All Owners by accepting a deed to a Lot acknowledge and agree to the inspectors selected by the Board and agree to abide by said inspectors' determination. The Declarant will make all necessary repairs to such improvements indicated by the inspection reports at its sole cost and expense. The Declarant will have no obligation to make any additional repairs to such improvements other than the repairs indicated as necessary by the inspection reports. The Association and all Owners, by the acceptance of title to any property or the deed to any Lot release Declarant from any further obligations with respect to repairs to Common Area improvements.

11.1.3 The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible. for the management and control of the Areas of Common Responsibility and shall maintain and keep the Areas of Common Responsibility in good repair and in accordance with the Community-Wide Standard, such maintenance to be funded as hereinafter provided. This maintenance shall include, but not be limited to, maintenance, repair and replacement, subject to any insurance then in effect, of all landscaping and other flora, structures, and improvements. All Owners, by the acceptance of title to any property or the deed to any Lot, release and indemnify the Association from all claims arising from its actions pursuant to the Section.

Section 11.2 Rules and Regulations. The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot or Lots and suspension of the right to vote and the right to use any recreational

facilities on the Common Area, and exclusion from the Properties of any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of such rules and regulations. The Board shall, in addition, have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of sanctions shall be subject to the procedures for disciplinary action provided in the By-Laws of the Association. Fines shall constitute Benefit Assessments subject to the lien rights provided in this Declaration.

The Association, through the Board, by contract or other agreement, shall have the right to enforce all applicable federal, state and local laws, ordinances and regulations to permit the CDD, Charlotte County, the Southwest Florida Water Management District or any other governmental agency having jurisdiction to enforce such parties' rules and ordinances on the Properties.

Section 11.3 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 11.4 Environmental Preservation Guidelines. The Association shall be responsible for implementing and carrying out the Environmental Preservation Guidelines established by the Declarant in accordance with the Development Orders for the Properties and the management plans and requirements of applicable governmental agencies. Such guidelines shall include, without limitation, provisions for maintenance, monitoring and compliance of the following:

(a) Requirements within Charlotte County Resolutions 99-285, as amended, 90-286, as amended, and 90-287 including, without limitation:

(i) restrictions on development within primary and secondary Bald Eagle zones must be consistent with the Bald Eagle Management Plan,

(ii) monitoring Gopher Tortoise mitigation in compliance with the applicable guidelines promulgated by the Florida Game and Fresh Water Fish Commission,

(iii) use of xeriscape principles in design and maintenance of landscaping, and

(b) Requirements within Bald Eagle Management Plan dated April 2, 1991, as amended by Charlotte County Board of County Commission Resolutions 91-267 and 91-268 dated October 22, 1991, including, without limitation:

(i) providing each lot purchaser and Merchant Builder with a critical habitat guidebook approved by the Florida Game and Fresh Water Fish commission,

(ii) vegetating with indigenous vegetation any unvegetated areas in the primary zones which leave the line of sight of either eagle pair open to developing tracts,

(iii) marking zone barriers including the river and lakes with appropriate signage.

The cost of implementing any monitoring or compliance with the Environmental Preservation Guidelines as the same exist from time to time shall be a Common Expense allocated among all Lots, recreational and Commercial Properties.

Section 11.5 Hurricane Education. The Association shall annually provide an educational program on hurricane preparation, risks and hazards. In addition, the Association shall make available to Members hurricane awareness information concerning the need for evacuation, description of evacuation routes and the location and use of hurricane shelters.

**ARTICLE XII:  
ASSESSMENTS**

Section 12.1 Creation of Assessments. There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board of Directors to be commenced at the time and in the manner set forth in this Article. There shall be four (4) types of Assessments: (a) Common Assessments for Common Expenses for the benefit of all Members of the Association; (b) Neighborhood Assessments for Neighborhood Expenses benefiting only Lots within a particular Neighborhood or Neighborhoods; (c) Special Assessments as described in section 12 below; and (d) Benefit Assessments as described in section 12 below. Common Assessments shall be allocated as follows:

Residential                      One (1) assessment per Lot

Commercial Retail              One (1) assessment per 15,000 sq. ft.

Office                              One (1) assessment per 5,000 sq. ft gross rentable space

In the case of a parcel of vacant and or land which improvements are under construction, the parcel shall be deemed to contain the types and amount of square footage designated for such parcel on the site plan approved by Declarant until such time as a certificate of occupancy is issued on the entire parcel by the local governmental entity having jurisdiction.

Recreational

Club                                One (1) assessment per 25 acres

Marina                             One (1) assessment per ten slips

Neighborhood Assessments shall be levied equally on all Lots within the Neighborhood for whose benefit Neighborhood Expenses are incurred as provided in section 4 below.

All Assessments, together with interest (at a rate not to exceed the highest rate allowed by Florida usury law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the Private Property (and improvements) to which they pertain and shall be a continuing lien upon the Private Property against which each assessment is made. Each such assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who owned such Private Property at the time the assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable to the time of conveyance, except as otherwise provided in Section 12.11 below.

The Association shall, upon the written request of any Owner, furnish, within ten (10) days after such written request, to any Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such Assessment has been paid as to his particular Lot. Such certificate shall be conclusive evidence of payment to the Association of such assessment therein stated to have been paid. The Association may require the advance payment of a processing fee not to exceed three month's Common Assessment on one Lot for the issuance of each such certificate. The Declarant shall be obligated to pay Assessments on Lots, Recreational and Commercial Properties which it owns and are platted and are part of the Association. (i.e. no deficit funding).

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors and such determinations by the Board may include, without limitation, acceleration of that fiscal year's Common Assessments and any Neighborhood Assessments for delinquencies. Unless the Board otherwise provides, the Common Assessment and any Neighborhood Assessments shall be paid in quarterly installments and any Benefit assessments shall be paid monthly in advance or as incurred.

No Owner may waive or otherwise exempt himself from liability for Assessments, including, by way of illustration and not limitation, by non-use of Common Areas or abandonment of the property. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. The Class "C" Member, Class "D" Member and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be expressed in any such deed, shall be deemed to covenant and agree to pay the Assessments and such obligations shall be binding on all Merchant Builders or developers purchasing Lots for development and/or resale. No diminution or abatement of Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Declarant in connection

with the development of Riverwood or from any action taken to comply with any law,

ordinance, or with any order or directive of any municipal or other governmental authority.

The Declarant shall be obligated to pay Assessments on Lots, Recreational and Commercial Properties which it owns and are platted and are part of the Association (i.e. no deficit funding)

Section 12.2 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the purpose of promoting the proper maintenance, replacement, repair and management of the Properties and in particular for operation of the Association and fulfilling its obligations under the Declaration and all documents and agreements executed in connection herewith.

Section 12.3 Computation of Common Assessment. It shall be the duty of the Board annually to prepare a budget covering the estimated Common Expenses of the Association during the coming year. It shall be the duty of the Board at least fifteen (15) days prior to the budget workshop as described in the By-Laws to prepare a budget covering the estimated costs of operating the Association during the coming year and mail the same to all voting Members. The budget may include a capital contribution establishing a reserve fund, in accordance with a reserve budget separately prepared, and shall separately list general and specific expenses, if any. The Board shall cause a copy of the Common Expense budget, and the notice of the Common Assessment amount, to be delivered to each Owner at-least thirty (30) days prior to the beginning of each fiscal year. Prior to Turnover, the budget and Common Assessments shall be determined by the Board of Directors in their sole and absolute discretion. After Turnover, the budget and Common Assessments shall become effective unless disapproved at the budget workshop by a vote of the voting Members representing at least a majority of the total Association membership. The Common Assessment for unimproved Lots shall include an additional charge for the maintenance of said Lot by the Association. This charge shall be equal to the cost of the maintenance of all unimproved Lots (except those owned by Declarant) divided by a number of unimproved Lots owned by Owners other than the Declarant on the day of such Assessment. For the purposes of the foregoing an "unimproved Lot" shall be deemed to mean a Lot upon which a foundation slab has not yet been poured.

Notwithstanding the foregoing, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year; provided, however, that upon the adoption of a new budget, the same shall be deemed retroactive to the beginning of the then current budget year and each Owner shall pay the increase, if any, in the Common Assessment from the beginning of such year at the time the next quarterly installment is due.

The common Assessment to be levied for the coming year against each Property subject to assessment shall be computed by dividing the budgeted Common Expenses by the total number of assessment units described in section 12.1 subject to Assessment and reasonably anticipated to become subject to Assessment during the fiscal year. The Declarant shall be obligated to pay assessments on lots, recreational and commercial properties which it owns and are platted and are part of the Association as set forth in Section 12.1 of the Covenants.

Section 12.4 Computation of Neighborhood Assessments. In addition to the Common Assessments authorized by section 3 hereof, it shall be the duty of the Board annually to prepare a separate budget covering the estimated Neighborhood Expenses to be incurred by the Association for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year at least sixty (60) days prior to the beginning of each fiscal year. The Board shall be entitled to set such budget only to the extent that this Declaration, Supplemental Declaration or written agreement with the Neighborhood Association specifically authorizes the Board to assess certain costs as a Neighborhood Assessment, or the Lot Owners in such Neighborhood authorize same by a majority vote. Any Neighborhood, through its Neighborhood Committee and as evidenced by a petition signed by a majority of the Owners within the Neighborhood, may request that additional services or a higher level of services be provided by the Association, and if the Association, in its sole discretion, agrees to provide such higher level of service, any additional costs shall be added to such budget. Such budget may include a capital contribution establishing a reserve fund for repair and replacement of capital items within the Neighborhood, as appropriate. Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood(s) benefited thereby and shall be levied as a Neighborhood Assessment irrespective of the benefit as to any particular Lot. The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment to be levied on each Lot for the coming year to be delivered to each Owner of a Lot in the benefited Neighborhood(s) at least thirty (30) days prior to the beginning of each fiscal year. Such budget and assessment shall become effective unless disapproved by a majority of the Owners of Lots in the Neighborhood to which the Neighborhood Assessment applies and by the Class "B" Member, so long as the Class "B" membership exists; provided, there shall be no obligation to call a meeting for the purpose of considering the budget except on petition of Owners of at least fifty percent (50%) of the Lots in such Neighborhood and provided further, the right to disapprove shall apply only to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

In the event the proposed budget for any Neighborhood is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year; provided, however, that upon the adoption of a new budget, the same

shall be deemed retroactive to the beginning of the then current budget year and each affected Owner shall pay the increase, if any, in such Neighborhood Assessment from the beginning of the year at the time the next quarterly installment is due.

Section 12.5 Special Assessments.

12.5.1 As To All Members in addition to the Assessments authorized by sections 3 and 4 hereof, the Association may levy special Assessments applicable to that year only, provided any such assessment which would exceed that years Common Expenses for such year shall require the affirmative vote of a majority of the voting Members representing members of the Association and the affirmative vote or written consent of the Class "B" Member, if such exists. Such Special Assessment shall be for the purpose of defraying, in whole or in part, the cost of any acquisition, construction or reconstruction, or any unexpected expense or repair.

12.5.2 Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Lot, Recreational or Commercial Property to reimburse the Association for costs incurred in bringing a Member and his Lot, Recreational or Commercial Property into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, or the Rules and Regulations, which special Assessment may be levied upon the vote of the Board after notice to the Member and an opportunity for a hearing. The Association may also levy a Special Assessment against the Lots in any Neighborhood to (a) cover Neighborhood Expenses in excess of collected Neighborhood Assessments, and (b) reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any amendments thereto, the Articles, the By-Laws, and the Rules and Regulations, which special Assessment may be levied upon the vote of the Board after notice to the voting Member of the Neighborhood and opportunity for a hearing.

Section 12.6 Benefit Assessments. The Board of Directors of the Association may impose a Benefit Assessment upon any Owner whose use or treatment of a Lot increases the maintenance cost to the Association above that which would result from compliance by the Owner with this Declaration or a Supplemental Declaration. The amount of such Assessment shall be equal to such cost increase and may be enforced in the manner provided for any other Assessment.

Any charge imposed by the Association for functions performed under Article XIV or any fine imposed shall be deemed a Benefit Assessment. Any charge for individual services, including, but not limited to, cable television, solid waste collection and disposal, Lot, Recreational or Commercial Property maintenance (including mowing and grooming of unimproved Lots, Recreational or commercial Property) or landscaping maintenance performed by the Association for a particular Lot, Recreational or Commercial. Property shall be deemed a Benefit Assessment.

Section 12.7 Lien for Assessments. Upon recording of a notice of lien on any Lot, Recreational or Commercial Property, there shall exist a perfected lien for unpaid Assessments prior and superior to all liens placed of record after the date of this Declaration, except (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto, and (2) the lien or charge of any First Mortgage of record made in good faith and for value by an Institutional Lender.

The lien of the Association, when delinquent, may be enforced by suit, judgment and foreclosure.

The Association, acting on behalf of its Members, shall have the power to bid for the Lot, Recreational or Commercial property, as applicable, at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot, Recreational or Commercial Property, as applicable, is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessments shall be levied on it; and (c) each other Lot, Recreational or Commercial Property shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have charged the property owned by the Association, had it not been acquired by the Association as a result of foreclosure suit to recover a money judgment for unpaid Assessments and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

Section 12.8 Appropriated Reserves. The Association shall maintain reserve funds for the replacement or repair of all assets ("Appropriated Reserve Funds"). Each reserve fund shall be funded annually on the basis of the expected life of the asset and each reserve fund shall only be used for the intended asset. The reserve funds shall be held in a separate account exclusively for this purpose. Declarant shall deposit or cause such reserve funds to be deposited in said accounts on a quarterly basis as the Assessments are received. Individual asset reserve funds that are currently over or under funded shall be properly adjusted and properly funded beginning with the 2003 budget. After consulting with representatives appointed by the CDD, the Board of Directors of the Association shall adopt and adhere to a comprehensive and detailed policy regarding the Appropriated Reserve Funds. At a minimum, said policy shall include a detailed description of each reserve account, a detailed description of the methodology used to determine the useful life of the asset for which funds are being reserved to replace the asset, a long-term funding schedule for all Appropriated Reserve Funds, an annual line item detailed accounting of the debits and credits to each reserve account, and an annual written determination by the auditors in the annual audit report as to whether or not the reserve funds have been maintained and accounted for in a manner consistent with the policy. The detailed figures for such funds shall be available for inspection and copying by Owners upon request and reasonable notice.

Section 12.9 Date of Commencement of Assessments. The obligation to pay the Assessments provided for herein shall commence as to each Lot, Recreational or Commercial Property on the first day of the first month following the date of conveyance of such Lot, Recreational or Commercial Property by the Declarant.

The first years Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Lot, Recreational or Commercial Property.

Section 12.10 Subordination of the Lien to First Mortgage. The lien of Assessments, including interest, late charges (subject to the limitations of Florida law), and costs (including attorney's fees) provided for herein, shall be subordinate to the lien of an Institutional Mortgagee's first mortgage upon any Lot, Recreational or Commercial Property. The sale or transfer of any Lot, Recreational or Commercial shall not affect the Assessment lien. However, the sale or transfer of Lot, Recreational or Commercial Property or other property which is part of the Properties and which is subject to foreclosure of an Institutional Mortgagee's first mortgage or is conveyed by deed in lieu of foreclosure, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot, Recreational or Commercial Property from lien rights for any Assessments thereafter becoming due. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all the Lots, Recreational or Commercial Property, including such acquirer, its successors and assigns.

Section 12.11 Duties of the Board of Directors The Board of Directors of the Association shall prepare a roster of Owners and Neighborhoods (as applicable) or other property and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner; provided only the Board, an Owner or his First Mortgagee may look at the status of Assessments on the Owners Property.

Section 12.12 Contribution to Working Capital. Upon each and every transfer of record title to a Lot, Recreational or Commercial Property, a contribution shall be made by or on behalf of the purchaser to working capital of the Association in an amount of Three Hundred Dollars (\$300.00). The Declarant or the Association (as applicable) shall collect same upon the transfer of a Lot, Recreational or Commercial Property; provided, however, that where any Lot, Recreational or Commercial Property is sold to a Merchant Builder or other developer, the Declarant may, by reference thereto in a contract for sale or deed of conveyance, postpone the payment thereof to the earlier of (a) two (2) years from the date of conveyance by Declarant or (b) the sale of the Lot by such Merchant Builder or developer. This contribution shall be collected by Declarant or the Merchant Builder or developer, as the case may be, and disbursed therefrom to the CDD for use in covering capital costs and expenses incurred by the Association pursuant to the terms of this Declaration and the By-laws. The Contributions to the Working Capital Fund will be overseen and

administered by the Owners through the CDD. The CDD shall determine how and when the fund will be utilized, within legally permissible limits. The Declarant, its parent, subsidiaries, affiliates and assigns, shall be exempt from payment of the contribution required by this Section. The capital contribution required by this Section shall constitute an assessment against the Lot, Recreational or Commercial Property and shall be subject to the same lien rights and other rights of collection applicable to other Assessments under this Article XII.

Section 12.13 Exempt Property, Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Common Assessments, Neighborhood Assessments, Special Assessments and Benefit Assessments:

12.13.1 all Common Area; and

12.13.2 all property dedicated to and accepted by any governmental authority or public utility, including without limitation the CDD.

Section 12.14 Unappropriated Contingency Fund

12.14.1 The Association shall create an "Unappropriated Contingency Fund" to pay for unanticipated expenses, usually arising as the result of an emergency or other major unanticipated event. This fund is not to be used to fund special projects or equipment that were not included in the adopted budget.

12.14.2 The expenditure of the Unappropriated Contingency Fund shall require a majority vote of the Board of Directors, provided there is at least one affirmative vote from one of the two Board members appointed by the Voting Members (i.e. the resident Owners).

12.14.3 The Unappropriated Contingency Fund shall be budgeted and funded at \$50,000 by 2004. Any unused amount in this Unappropriated Contingency Fund will be carried over in this account from year to year. For 2003 only, the Unappropriated Contingency Fund will be budgeted and funded with \$25,000.

12.14.4 The target amount of the Unappropriated Contingency Fund of \$50,000 may be increased or decreased by a majority vote of the Board, provided that at least two of the Board members appointed by the Voting Members (i.e. the resident Owners) vote in the affirmative to support the change.

12.14.5 The Unappropriated Contingency Fund will not be considered an expense or a budget item for the purpose of Section 12.15 (i.e. this Unappropriated Contingency Fund could not be used to balance the budget)

Section 12.15 Budget

12.15.1 The RCDD will appoint a budget committee comprised of: 1 CDD Board member, residents chosen by the Riverwood Neighborhood Council (RNC), 2 Association resident Board members, 1 Declarant appointee, and the Association Manager.

12.15.2 The Committee shall solicit input from Declarant, the RNC, and from Neighborhood Associations. Association and the Association Manager will timely provide the Budget Committee with the data reasonably necessary to formulate a tentative budget.

12.15.3 A tentative budget will then be presented by the Budget Committee to the Association at an open budget hearing conducted by the Association in October of each year. Following this meeting, the Budget Committee may amend the tentative budget and will provide the final tentative budget recommendation to the Association prior to its November budget adoption meeting.

12.15.4 The Association will adopt a budget in November of each year. The Association will either adopt the budget as presented by the Budget Committee, or amend it. If amending the final budget presented by the Budget Committee, the Association will do so on a line item by line item basis. A separate motion, discussion, and vote will be required for each amended line item.

12.15.5 Unspent funds from a budget year shall not be refunded, but rather shall carryover to the next budget year.

12.15.6 Except for the restrictions and requirements contained in this Declaration and in the December 17, 2002 Agreement between the Declarant, the Association, and the RCDD, the Board has the right to adopt the annual budget. However, each annual Association budget shall contain the reasonably anticipated expenses and revenue for that year.

12.15.7 Except in cases of emergency, each neighborhood's annual maintenance budget shall not be over-spent. Except in cases of emergency, for the remainder of the Association budget, total annual expenses shall not exceed the total annual budget.

#### **ARTICLE XIII:**

##### **CONSTRUCTION and MODIFICATION REVIEW PROCESS**

All property which is now or may hereafter be subjected to this Declaration is subject to architectural and site plan review. This review shall be in accordance with this Article, the Environmental Preservation Guidelines and such standards, including Design Standards and Guidelines for each Neighborhood, as may be promulgated by the Board, the New Construction Committee or the Modification Committee. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the committees established in sections 1 and 2 of this Article. This Article may not be amended without the Declarant's written consent in its sole and absolute discretion so long as the Declarant owns any land subject to this Declaration or subject to annexation under this Declaration.

No construction, which term shall include within its definition clearing, excavation, grading, and other site work, no exterior alteration or modification of existing improvements, and no

plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article and Article XIV, until the requirements below have been fully met, and until the approval of the appropriate committee has been obtained. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of an application for approval hereunder, which fees, if established, shall be paid in full prior to review or any application hereunder. Notwithstanding the foregoing, the Declarant, in its discretion, may establish preliminary procedures for architectural review whereby an Owner or an Owner's agent may meet with the New Construction Committee or the Modifications Committee for the purpose of exhibiting to such body preliminary concepts or drawing for the contemplated construction and in order to assist such Owner or Owner's agent in formulating a design which will comport with the architectural standards of the appropriate committee. Such discussions shall not be binding on either committee.

All structures constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications submitted to the NCC and in accordance with the Design Standards and Guidelines and Supplemental Declarations for each Neighborhood or Properties.

Section 13.1 New Construction Committee. The New Construction Committee or NCC shall have exclusive jurisdiction over all original construction on any portion of the Properties. Until all of the property described on Exhibit "A" and "B" has been developed and conveyed to purchasers (other than Merchant Builders) in the normal course of development and sale, the Declarant retains the right to appoint all members of the NCC, which shall consist of at least three (3), but no more than five (5) persons, none of whom shall be required to be residents of Riverwood and who shall serve terms subject to the sole discretion of Declarant. When builders' plans, other than the Declarant's, are being reviewed, the NCC will invite one member of that Neighborhood Association Board (or Neighborhood Committee if a Neighborhood Association Board does not exist) to be present during the review process. The authority of the NCC is derived from the Declarant and not the Association. Therefore, the NCC has no fiduciary duty to the Association or its members. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the NCC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the NCC in the same manner as provided in Section 2 of this Article for the Modifications Committee.

The NCC shall prepare and promulgate design and development guidelines and application and review procedures. Copies shall be available from the New Construction Committee for review by Owners,

Merchant Builders, and developers who seek to engage in development of or construction upon all or any portion of the Properties and such parties shall conduct their operations in accordance therewith.

The guidelines and procedures shall be those of the Association, and the NCC shall have sole and full authority to prepare and to amend them subject to Board approval. In the event that the NCC fails to approve or disapprove plans submitted to it, or to request additional information it may require, within forty-five (45) days after submission thereof, the plans shall be deemed approved.

Section 13.2 Modifications Committees. The Board of Directors may establish the following Modifications Committees (sometimes collectively or individually referred to as MC as the context indicates): (a) Residential Modification committee, (b) Commercial Property Modifications Committee, and (c) Recreational Property Modification Committee, who shall only have jurisdiction over modifications, additions or alterations to previously improved Lots, commercial Property and Recreational Property, respectively. Each MC shall consist of at least three (3) persons, a majority of whom shall be owners of the type of Private Property over which that MC has jurisdiction, and a minority of whom shall not be required to be residents of Riverwood or an Owner. The term of the Modifications Committee resident member shall be two years and terms shall be staggered to prevent the complete turnover of resident members in any one year. Members of the MC who are not Members of the Association may include architects or similar professionals. The Board of Directors shall appoint members to Modifications Committees.

The Residential Modifications Committee may delegate its authority to any appropriate board or committee of any Neighborhood Association or groups of Neighborhood Associations subsequently created or subsequently subjected to this Declaration so long as the Residential Modifications Committee has determined that such board or committee has in force review and enforcement practices, procedures and appropriate written guidelines and procedures at least equal to those of the Residential Modifications Committee. Such delegation may be revoked and jurisdiction reassumed at any time by written notice.

Notwithstanding anything to the contrary, Neighborhood Associations shall have the right to propose changes to their Neighborhood Design Standards and Guidelines and/or the Supplemental Declaration enacting the Design Standards and Guidelines. Any such proposed changes are subject to the approval of the Modification Committee and the Declarant so long as Declarant owns any land subject to this Declaration in the Neighborhood, with such approval not being unreasonably withheld. In the event the Modification Committee denies approval of the changes proposed by the Neighborhood Association, the Neighborhood Association shall have the right to appeal this decision to the Board of Directors of the Riverwood Community Association in the manner set forth in Section 13.8 entitled Right of Appeal. The Neighborhood Association shall have no right to appeal the denial of the Declarant, unless the claim is that the Declarant unreasonably

withheld approval

The Modifications Committees shall promulgate standards and procedures governing their areas of responsibility and practice, subject to the approval of the Board of Directors and consistent with those of the NCC. In any event of any conflict, the ruling of the NCC shall be controlling. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications additions, or alterations, shall be submitted to the appropriate MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures; topography, and finish grade elevation.

In the event that applicable MC fails to approve or to disapprove such plans or to request additional information required within forty-five (45) days after submission, the plans shall be deemed approved.

Nothing contained herein shall be construed to limit the right of an Owner to remodel or paint the interior of his Private Property or to prohibit the right of an Owner to perform items as set forth in Section 14.23 entitled Maintenance Items.

Section 13.3 No Waiver of Future Approvals. The approval of either the NCC or MC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the NCC or MC, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matter whatever subsequently or additionally submitted for approval or consent.

Section 13.4 Variance. The NCC and MC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and after all Owners within 50 feet of the affected Lot have been notified in writing of the details of the request for a variance and these Owners comments, if any, have been considered by the Committee. No variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this section, the inability to obtain the issuance of any permit, or the terms of any financing shall not necessarily be considered a hardship warranting a variance.

Section 13.5 Compliance. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the guidelines and procedures promulgated by the NCC or MC may be excluded by the Board from the Properties without liability to any person, subject to the notice and hearing

procedures contained in the By-Laws.

Section 13.6 Right to Inspect. During the construction process there is specifically reserved unto the NCC the right of entry and inspection upon any Private Property for the purpose of determination by the NCC whether there exists any construction or any improvements which violate the terms of any approval by the NCC or the terms of which Declaration or of any other covenant, conditions and restrictions to which its deed or other instrument of conveyance or plat makes reference.

In regard to the MC, there is specifically reserved the right of inspection upon any Private Property, other than that owned by the Declarant, for the purpose of determination by the MC whether or not there are proposed or existing modifications which violate the terms of any approval by the MC or the terms of this Declaration or of any other covenant, conditions or restrictions to which its deed or other instrument of conveyance or Plat make reference. Prior to such an inspection, the MC shall notify the Owner of the Private Property or Owner's designated representative as to the reason for the inspection and to schedule a mutually agreeable date and time for the inspection to take place. Notification to the Owner or Owner's designated representative shall be in writing, and an affidavit of the person mailing or hand delivering the aforesaid notice stating that it was properly mailed or delivered shall be conclusive evidence of the proper notification. The Owner or Owner's designated representative may accompany the inspection of the Private Property if they so desire.

The NCC and MC are specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party shall be entitled to recovery of all court costs, expenses, reasonable attorney's fees in connection therewith and the same shall be assessable and collectible in the same manner as any assessment provided for herein. The Association shall indemnify and hold harmless the NCC and MC from all costs, expenses, and liabilities, including attorney's fees, incurred by virtue of any service by a member of the NCC or MC as a member of the NCC or MC.

Section 13.7 Rights of Golf Club Owner. The Golf Club Owner shall be given Notice of all meetings of the NCC and the MC wherein the improvement under consideration (or any portion thereof) is contiguous to the Golf Club. If in the reasonable opinion of the Golf Club Owner the construction or modification being reviewed has a material adverse impact on the Golf Course whether by restriction of view, hazards to person or otherwise, then, in that event, the Golf Club Owner may disapprove the proposed construction irrespective of the approval of same by the NCC or the MC and the Owner shall resubmit to the NCC or the MC the proposed construction or modification so as to take into account the objection of the Golf Club Owner which shall be given in writing to the Owner by the NCC or the MC.

Section 13.8 Right of Appeal. Owners shall have the right to appeal the decisions of the NCC or MC directly to the Board of Directors. A request of appeal must be in writing and be submitted to the Association and applicable Committee within 10 days of the decision of the Committee. The Board must consider any appeal in a hearing with the Owner. Such hearing shall be held within thirty (30) days of receipt of request of appeal. No Committee decision will become effective until after a requested appeal hearing and decision by the Association has been made. The decision of the Association does not stop the Committee or Association from withholding or consenting to any similar appeal submitted for approval or consent.

#### **ARTICLE XIV:**

#### **USE RESTRICTIONS**

The Properties shall be used only for residential, recreational, and commercial purposes as may more particularly be set forth in Charlotte County Resolution Number 90-287 (Riverwood Planned Development zoning) and this Declaration and any amendments or Supplement hereto. Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood, Recreational or Commercial Property may impose stricter standards than those contained in this Article. The Association, acting through its Board of Directors, shall have standing and the power to enforce such standards contained in any such Supplemental Declaration.

The Association, acting through its Board of Directors, shall have the authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein. Additional restrictions of a uniform and non-discriminating character may be approved by the Association as to individual Neighborhoods in order to take into account special circumstances within such Neighborhoods. The use restrictions set forth in this Article shall apply to the Commercial or Recreational Properties only in the event specifically referred herein. The use restrictions set forth in this Article shall be binding until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total votes in the Association and by the Class "B" Member, so long as such membership shall exist.

Such regulations and use restrictions shall be binding upon all Owners or Lots and occupants. Notwithstanding anything to the contrary herein, the Declarant shall be exempt from application of the provisions of this Article so long as it owns any property described on Exhibits "A" or "B" primarily for development and/or resale.

#### Section 14.1 Parking and Vehicular Restrictions.

14.1.1 Permitted Parking. Parking in the properties shall be restricted to private automobiles, and passenger-type vans, jeeps and pick-up trucks having a capacity of no more than two (2) tons, and only within the parking areas therein designated for such

purpose. This restriction is designed to prohibit parking of "Commercial Vehicles" (as defined below) on Private Property unless fully enclosed in a closed garage.

14.1.2 Commercial Vehicles. "Commercial Vehicles" shall mean those which are not designed and used for customary personal/family purposes. The absence of a commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a Commercial Vehicle.

14.1.3 Repairs. No owner shall conduct repairs (except in an emergency) or restorations of any motor vehicle, or other vehicle upon any portion of the Properties, except in an enclosed area with the doors thereto closed at all times or in a portion of the Commercial Properties or Recreational Properties designated for such purpose, such as by way of example and not limitation, a maintenance yard at the Golf Course or service station constructed on the Commercial Property.

14.1.4 General Parking Restrictions. Parking on lawns or vacant lots is not permitted and parking on streets between 2:00 am. and 6:00 am. is not permitted unless approved by (a) the Board of Directors or (b) the governmental authority having jurisdiction over the right-of-way. No owner shall keep any vehicle on the Common Areas as such an action shall be considered a nuisance by the Board.

14.1.5 Parking Lots. Overnight parking (2:00 am. through 6:00 am.) is not permitted in the Activity Center parking lot or in any other residential parking lot, unless a Neighborhood Association approves parking in a parking lot or in parking spaces within its boundaries. Restricted vehicles, other than Commercial Vehicles, are not permitted to park in the Activity Center parking lot or any other residential parking lot.

14.1.6  
Parking of  
Restricted  
Vehicles.

14.1.6.1 Restricted Vehicles Defined. The following are defined as "Restricted Vehicles": Commercial Vehicles, campers, mobile homes, motor homes, house trailers, or trailers of every other description, recreational vehicles, non-passenger type vans, boats, and boat trailers. The prohibition on parking of Restricted Vehicles contained in this section shall not apply to temporary parking of Commercial Vehicles such as for construction use or providing pick-up and delivery and other commercial services nor to any vehicles of the Declarant, the Recreational or Commercial Properties. More lenient parking restrictions may be permitted for Commercial Property or Recreational Property if specifically designated in a Supplement. Restricted Vehicles shall not be permitted to be parked or stored at any place within the Properties except in spaces, if any, specifically designated by the Declarant or the Association, or in fully enclosed garages. At no time are restricted vehicles permitted to park on the

street, vacant lots, or parking lots, except for Commercial Vehicles as described above. Restricted Vehicles are prohibited from parking in the driveway of a residence unless the Owner of that Lot complies with the Temporary Driveway Parking of Restricted Vehicles Procedure set forth in Section 14.1.6.2 below.

14.1.6.2 Temporary Driveway Parking of Restricted Vehicles Procedure. Restricted Vehicles are normally prohibited from parking in driveways. Short term driveway parking will, however, be permitted as follows: A Restricted Vehicle is permitted to park in a driveway for a maximum of one hour no more than twice in a calendar day, or for overnight (6:00 pm. - 9:00 am.) loading or unloading prior to or following an extended trip. In the instance of overnight loading or unloading, the Owner shall notify Riverwood Security in advance. At any time a Restricted Vehicle is parked in a driveway in violation of these rules, Riverwood security personnel may notify the Owner that he/she has one hour to remove the vehicle. Notification may be made by phone or in person by Riverwood security personnel. In all cases, the first attempt at notification by Riverwood security personnel shall be the start of the one hour period for removal of the restricted vehicle.

Section 14.2 Occupants Bound. All provisions of the Declaration, By-Laws and of any Rules and Regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, guests, invitees and lessees of any Owner. Every Owner shall cause his occupants to comply with the Declaration, By-Laws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations and losses to the Properties caused by such occupants, notwithstanding the fact the such occupants are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and Rules and Regulations adopted pursuant thereto.

Section 14.3 Animals and Pets. No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Properties, except that dogs, cats or other usual and common household pets may be permitted in a Lot and pet shops or similar business establishments operated within the Commercial Properties. All pets shall be controlled by their Owner at all times. Those pets which, in the sole discretion of the Association, endanger the health, make objectionable noise or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board within three (3) days of written request. No pets shall be kept, bred, or maintained on any Lots for commercial purposes. Household pets shall at all times whenever they are outside a Lot be confined on a leash held by a responsible person. Pets shall only be permitted on the Common Areas in such portions thereof as are so designated by the Association. All persons bringing a pet onto the Common Areas and all vacant Lots shall be responsible for removing any solid waste of the pet.

Section 14.4 Nuisances. No portion of the Properties shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious, illegal or offensive activity shall be carried on upon any portion of the Properties, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using any portion of the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Properties.

Section 14.5 Hazardous Materials. Hazardous materials shall only be stored on the Property if reasonably necessary to the maintenance of the Properties or operation of any permitted business within the Properties. All hazardous materials shall be stored, utilized and accounted for in accordance with all governmental requirements.

Section 14.6 Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted on the properties except in containers located in appropriate areas, if any, and in all events such containers shall not be visible from any of the Properties except for the minimum time necessary for its collection. All trash dumpsters on Private Property must be screened from view on all four (4) sides and must be removed from the Properties on a regular basis so as not to cause an unsanitary condition. No odor shall be permitted to arise therefrom so as to render the Properties or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Appropriate flexibility shall be afforded food service operations, however. No clothing or household fabrics shall be hung, dried or aired in a manner which is visible from any roadway, and no lumber, grass, shrub or tree clippings or plant waste, metals, bulk material or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any portion of the Properties, except within an enclosed structure appropriately screened from view erected for that purpose, if any.

Section 14.7 Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner of a Lot, Recreational and Commercial Property to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Lot, Recreational or Commercial Property, respectively.

Section 14.8 Outside Installations. No exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of radio or other signals other than television shall be

placed, allowed, or maintained upon the exterior Lot or Common Area, unless the same is approved by NCC. A Property Owner may install an antennae or a satellite dish that is used to receive direct broadcast satellite service or television broadcast signals so long as such antennae or satellite dish is one meter or less in diameter and is not installed in a location that is visible from the street. Notwithstanding the above, the Property Owner may install an antennae or satellite dish which is visible from the street if alternative installation locations preclude reception or transmission of an acceptable quality signal or if the alternative location unreasonably delays or prevents the installation, maintenance, or use (or unreasonably increases the cost of installation, maintenance, or use). The Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Properties, should any such master system or systems be utilized and require any such exterior apparatus. No radio station or shortwave operations of any kind shall operate from any Lot or Common Areas, except for communication equipment utilized by the

Association, Recreational and Commercial properties.

Section 14.9 Subdivision of Lot and Time sharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board of Directors of the Association. The Board may permit a division in ownership of any Lot intended for a single family detached residence as shown on a Plat, but solely for the purpose of increasing the size of the adjacent Lots. In the event of a division in ownership of any Lot, the Owners among whom the ownership is divided shall be treated as co-owners of the divided Lot for purposes of voting and shall be jointly and severally liable for all Assessments against the Lot hereunder. Declarant hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations.

No Lot shall be made subject to any type of timeshare program, interval ownership or similar program whereby the right to exclusive use of the Lot rotates among multiple owners or members of the program on a fixed or floating time schedule over a period of years. This section shall not prohibit ownership of a Lot intended for residential use by up to two (2) joint tenants or tenants-in-common nor shall it prohibit ownership by an owner who is not a natural person. Notwithstanding anything to the contrary, the Declarant shall specifically be exempt from any timeshare or interval ownership development restrictions imposed by this Declaration.

Section 14.10 Firearms. The discharge of firearms within the Properties is prohibited except with the prior approval of the Board of Directors. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. This restriction shall not prohibit the discharge of firearms in connection with "shotgun" start tournaments held at the Golf Course. Notwithstanding anything to the contrary contained herein or in the

By-Laws, the Association shall not be obligated to take, any action to enforce this Section.

Section 14.11 Irrigation. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within the Properties shall be installed, constructed or operated within the Properties by any Person, other than the Association, the Golf Club or the COD. In the event effluent irrigation becomes available, the Association, Owners of Lots, Commercial and/or Recreational Properties may, in the Declarant's sole discretion, be required to connect the irrigation system on their property to the effluent source, all at the Owner's sole cost and expense.

THESE REQUIREMENTS RELATING TO THE USE OF EFFLUENT IRRIGATION HAVE BEEN IMPOSED PURSUANT TO GOVERNMENTAL APPROVALS FOR THE PROPERTIES. NEITHER THE DECLARANT, THE ASSOCIATION, THE RECREATIONAL PROPERTY OWNER, THE CDD NOR ANY DIRECTOR, SUPERVISOR, OFFICER OR EMPLOYEE THEREOF SHALL HAVE ANY LIABILITY TO ANY OTHER PERSON RELATING TO THE USE OF EFFLUENT IRRIGATION OR PROPERTY DAMAGE OR PERSONAL INJURY RELATING THERETO.

Section 14.12 Tents, Trailers, and Temporary Structures. Except as may be permitted by the Board of Directors, no tent, utility shed, shack, trailer, outbuilding, basement or other structure of a temporary nature shall be placed upon any Lot unless such structure will be used for special short-term occasions.

Section 14.13 Insurance Rates. Nothing shall be done or kept in the Common Area which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on any Private Property, or the Common Areas which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

Section 14.14 Sight Distance at Intersections All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

Section 14.15 Utility Lines. No overhead utility lines, including without limitation lines for electric, telephone and cable television, shall be permitted within the Properties, except for temporary lines as required during construction, lines on or adjacent to the boundaries of the Property as the same exist or may be replaced and high voltage lines if required by law or for safety purposes.

Section 14.16 Wetlands, Lakes and Water Bodies. All lakes, ponds and streams within the Properties, if any, shall be designated as aesthetic amenities only or for limited recreational use. Such use shall be defined by the Board of Directors by appropriate signage or by Rules or Regulations. If a lake, pond or stream has been

designated as an aesthetic amenity only no use thereof, including, without limitation, swimming, boating, playing, fishing or use of personal flotation devices, shall be permitted. If a lake, pond or stream has been designated as a limited recreational area, swimming and the use of personal flotation devices shall be prohibited, but boating, fishing and other activities will be permitted to the extent designated in the Rules and Regulations. Notwithstanding anything to the contrary, residents of Vizcaya Lakes Mobile Home Community shall be permitted to use the 30 acre lake adjacent to the property now known as the Vizcaya Lakes Mobile Home community in accordance with the Lake Usage Agreement dated May 11, 1988. The Association shall be responsible to fulfill the Purchaser's responsibility under the Lake Usage Agreement. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Properties. This section shall not restrict the right of the Class "C" Member to permit other use of bodies of water within the Golf Club in connection with golf course play or other activities of the Golf Club.

Section 14.17 Playground. Any playground or other play areas or equipment furnished by the Association or any Neighborhood Association or erected with the Properties shall be used at the risk of the user, and neither the Association or any Neighborhood Association shall be held liable to any Person for any claim, damage, or injury occurring thereon or related to use thereof.

Section 14.18 Business Use. No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a Lot may conduct business activities within the Lot so long as: (a) the existence or operation of the business activity in not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all governmental requirements; (c) the business activity does not involve persons coming onto the residential properties who do not reside in the Properties or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of Lot and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section. This section shall not apply to

operation of the Recreational or Commercial Property nor to any activity conducted by the Declarant with respect to his development and sale of the properties or its use of any Lots which it owns within the Properties or the Recreational or Commercial Properties. As to this latter area, the Declarant or any purchaser of such property shall have the right to use such property for uses permitted by applicable governmental ordinances and any Supplement.

Section 14.19 Leasing of Lots.

14.19.1 Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Lot by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to a fee, service gratuity, or emolument.

14.19.2 Leasing Provisions.

14.19.2.1 General. Lots may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of Lots or assignment of leases unless prior written approval is obtained from the Board of Directors. All leases shall be in writing except with the prior written consent of the Board of Directors. The terms and restrictions on leasing for Lots within a Neighborhood shall be as described in the Supplemental Declaration for the Neighborhood or the Neighborhood Documents.

Section 14.20 Landscaping. Installation and removal of landscaping shall be subject to the prior approval of the NCC or MC. No trees shall be removed except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons and such removal may be conditioned upon replacement of removed trees. Notwithstanding the foregoing, the Owners of Private Property have the right to remove and replace flowers, shrubs, lawn and trees without prior approval, provided that the lawn replacement is of the same variety as permitted under the Neighborhood Design Standards and Guidelines and that the diameter of any tree being removed is less than four inches.

Section 14.21 Septic Tanks. Septic tanks are not permitted on any portion of the property, except for sales centers, model homes and construction offices.

Section 14.22 Private Golf Carts. Except as set forth below or as specifically provided in a Supplemental Declaration, the use of private golf carts within the Properties shall be permitted. The Board may impose reasonable liability insurance requirements on Owners to protect the Association. Owners who have private golf cart privileges shall not operate golf cart on sidewalks or on streets within Riverwood where signs are posted by the Association or the CDD prohibiting their use. All such carts shall be utilized only by licensed drivers and in compliance with the manufacturer's instructions and all rules and regulations promulgated by the Association and the Golf Club Owner. Owners of Commercial and Recreational Properties shall be permitted to use private golf carts

for maintenance and operation of their Commercial or Recreational Property.

Any use of golf carts within the Properties shall be at the sole risk of the operator thereof and no action shall be made against the Association, the Declarant or the CDD in relation to personal injury or property damage resulting from such use, and each Owner who uses a private golf cart or permits the same to be used by his family, guests, invitees or agents agrees to indemnify the Association, Declarant and CDD from any claim, loss, damage, fee or costs resulting from use of the private golf cart by the Owner, his family, guests, invitees and agents. Use of golf carts on any streets within the Properties is further subject to compliance with Florida law and each Owner and user of a private golf cart agrees to comply with any requirements of such law. An owner may have his or her privileges to operate a golf cart limited, suspended, or terminated by the Association for operating a golf cart in a reckless, dangerous or inappropriate matter.

Section 14.23 Maintenance Items. Owners of the Private Property have the right to perform or have others perform for him or her the items listed below. The performance of any or all of these items does not require the filing of any application nor the approval of any other party except for those that are required by various governmental agencies or in accordance with Article XIII.

14.23.1 Replacement. The repair, replacement, or maintenance of the interior or exterior of the residence including such items as window panes, door frames, doors, fascia boards, gutters, lanai screens, or roof tiles provided that the repair, replacement or maintenance does not materially change the color or the appearance of the residences or other improvements.

14.23.2 Re-Painting. The repainting of the exterior of the residence or other improvements provided that the colors used in the repainting are not materially different from the existing color.

14.23.3 Water Usage. The washing, pressure or otherwise, of residences, roofs, driveways, automobiles and the watering of lawn, shrubs, trees and flowers provided that such actions are in accord with any governmental agencies having jurisdiction over water usage.

14.23.4 Furnishings. The furnishing (excluding Window Coverings which are covered under Section 14.24.13), decorating and lighting of the interior of the residences including the screened porch and/or the lanai.

Section 14.24 Approval by NCC or MC. The following use restrictions are restrictions that permit or prohibit certain conduct or uses and require certain permitted uses to be approved by the NCC or MC in accordance with Article XIII. The following restrictions are illustrative only and shall in no event be deemed a comprehensive list of items subject to approval in accordance with Article XIII.

14.24.1 Signs. No sign, billboard or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected within the Properties without the written consent of the Association, except as may be required by legal proceedings, and except signs, regardless of size, used by Declarant, its successor and assigns, and replacement of such signs (similar or otherwise). The Association shall not grant permission to erect signs on any Lot after such lot is improved and sold by Declarant or a Merchant Builder unless the sign is reasonably necessary to avert serious hardship to the Owner. If permission is granted to any Owner to erect a sign within the Properties, the Association reserves the right to restrict the size, color, lettering, height, material and location of the sign. Under no circumstances shall signs, flags, banners or similar items' advertising or providing directional information with respect to activities being conducted outside the Properties be permitted within the Properties. No sign shall be nailed or otherwise attached to trees.

14.24.2 Driveways, Garage Doors, Walkways and Mailboxes. All driveways, sidewalks and mailboxes shall be maintained in the style originally established or approved in accordance with Article XIII. With respect to driveway, culverts installed herein shall be of a type and quality approved by Declarant and the grade of same shall be set by Declarant.

Individual Neighborhood's Mailboxes shall be of the same design, color and installations for all homes as specified by the Neighborhood Design standards and Guidelines or, if the absence of such, as promulgated by the residents of an individual Neighborhood.

Garage doors are to be kept in a closed position except when the garage is in use or for ingress and egress of vehicles.

14.24.3 Pools. No above-ground pools shall be erected, constructed or installed on any Lot except that above-ground pools which are integrated within the construction of a building or decking around the building and above-ground spas or Jacuzzi's, may be permitted if approved in accordance with Article XIII. All pools, spas, or Jacuzzi's within the Properties must comply with all applicable Florida and Local rules, laws, codes and regulations for safety and construction.

14.24.4 Wells and Drainage. No private water system or well shall be constructed on any Lot. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant, the CDD or the Association may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant hereby reserves for itself, the CDD and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow and Declarant, the CDD and the Association may require any Owner of Lot, Commercial or Recreational Property, or Neighborhood Association

to treat any irrigation water which causes unsightly or unsanitary conditions.

14.24.5 Air Conditioning Units. No window air conditioning units may be installed on any Lot, Commercial or Recreational Property, except as approved in accordance with Article XIII.

14.24.6 Lighting. Temporary holiday decorative colored lighting may be displayed on a house and / or on a Lot fifteen (15) days before and up to three days after a holiday. The exception to this is Christmas holiday lighting, which may be displayed from Thanksgiving until January 10th. Such lights do not require approval as in Article XIII. All other temporary lighting and all permanent landscape lights must be clear in color and require approval in accordance with Article XIII.

14.24.7 Artificial Vegetation, Exterior and Similar Items. All artificial vegetation, exterior sculpture, fountains, Sculptures, bird feeders, bird baths, bird houses, flags and similar yard and exterior ornamentation must be approved in accordance with Article XIII. Nothing contained herein shall prohibit an Owner from displaying artificial vegetation, sculptures, fountains, potted plants, and similar items on the screened porch or lanai of the Owner's residence.

14.24.8 Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot, Commercial or Recreational Property unless it is an integral and harmonious part of the architectural design of a structure, and is approved in accordance with Article XIII.

14.24.9 Fences. No dog runs, animal pens or fences of any kind shall be permitted on any Lot, Commercial or Recreational Property except as approved in accordance with Article XIII.

14.24.10 On-site Fuel Storage. No on-site storage of gasoline or other fuels shall be permitted on any Lot except that up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment. Notwithstanding this provision, underground fuel tanks for storage of heating fuel for dwellings, pools, gas grills and similar equipment may be permitted on a Lot if approved in accordance with Article XIII.

14.24.11 Storm Precautions. No hurricane or storm shutters shall be permanently installed on any structure on a Lot unless first approved in accordance with Article XIII. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect structures on a Lot, while the threat of a hurricane or similar storm is imminent; provided, all such shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed. NEITHER THE DECLARANT, THE ASSOCIATION OR ANY OF THEIR DIRECTORS, OFFICERS, COMMITTEE MEMBERS OR

EMPLOYEES SHALL HAVE ANY LIABILITY FOR THE FAILURE TO PERMIT THE INSTALLATION OF PERMANENT STORM SHUTTERS.

Storm shutters that are to be installed for an extended period of time, including all hardware, must meet the following criteria set forth below. All storm shutter installations first require written approval from the Riverwood Modification Committee, and are subject to the following: (1) roll down, accordion and storm panels are acceptable types of shutter for use in Riverwood; (2) all shutters/tracks must be painted to match the color of the surface to which they are attached; (3) storm panels must be painted to match the body or trim of the house, or be painted white. No mill finish storm panels will be approved; (4) all storm shutters must be installed by a licensed contractor with proper Charlotte County permitting.

14.24.12 Play Equipment. All bicycles, tricycles, scooters, skateboards and other movable play equipment, wading pools, baby strollers and similar items shall be stored so as not to be visible from streets or property adjacent to a Lot. No such items shall be allowed to remain on the Common Area or on Lots so as to be visible from adjacent property when not in use. All swing sets, basketball hoops and backboards and similar sporting or playground equipment, may be erected on Lots provided it is approved in accordance with Article XIII.

14.24.13 Window coverings. All window coverings on any structure which are visible from the street or dwellings on other Lots shall have a white or off-white backing, natural finishes such as wood, or blend with the exterior color of the dwellings unless first approved in accordance with Article XIII. Darkly tinted window glass, dark window film or highly reflective, mirror-like glass or film, stained glass windows, decorative colored window film or any similar material may be installed with approval in accordance with Article XIII. However nothing contained herein shall prohibit the installation of clear or lightly tinted window film used primarily for protection against flying glass. Awnings, canopies or shutters may only be permanently installed on the exterior of any building with approval in accordance with Article XIII.

14.24.14 Displaying the American Flag. Nothing contained herein shall prevent an Owner from displaying the American Flag on his property subject to the following rules and regulations: (1) no more than three flags may be displayed at any given time; (2) the flagstaff may be mounted on the front and/or the rear of the residence by means of wall brackets or be free standing; (3) permanent flagpoles are not permitted; (4) the size of any flag shall not exceed four feet by six feet; (5) the flag must be portable or removable; and (6) the flag must be displayed in a respectful manner and in accordance with established codes.

**ARTICLE XV:**

## **NEIGHBORHOODS**

Section 15.1 General. Every Lot shall be located within a Neighborhood. The Lots within a particular Neighborhood may be subject to additional covenants and/or the Lot Owners may all be members of a Neighborhood Association in addition to the Association. Any Neighborhood which does not have a Neighborhood Association shall elect a Neighborhood Committee at a Neighborhood meeting as described in the By-Laws. The Declarant must coordinate a Neighborhood meeting within sixty (60) days after fifty-one percent (51%) of Lots in a Neighborhood have been sold to persons other than Merchant Builders. Until a Neighborhood Committee is elected, the Declarant shall have the right to appoint the voting Member for the Neighborhood.

Section 15.2 Request for Services. Each Neighborhood, upon the written consent of the Declarant (so long as the Declarant owns one (1) or more Lots within the Properties) and Owners (including Declarant, representing a majority of the Lots) within the Neighborhood, which such latter consent shall be delivered to the Association and shall contain the signatures of such majority, may request that the Association provide a higher level of service or special services for the benefit of Lots in such Neighborhood, the cost of which shall be assessed against the benefited Lots as a Neighborhood Assessment.

Section 15.3 Division of Neighborhoods. The Declarant shall designate Neighborhoods by Supplemental Declaration. The Merchant Builder of any such Neighborhood, with the written consent of the Declarant (so long as the Declarant owns one or more Lots within the Properties), may apply to the Board of Directors to divide the parcel constituting the Neighborhood into more than one (1) Neighborhood or to combine two (2) Neighborhoods into one (1) Neighborhood at any time. Upon a petition signed by a majority of the Lots Owners in the Neighborhood, and the written consent of the Declarant (so long as the Declarant owns one or more Lots within the Properties), any Neighborhood may also apply to the Board of Directors to divide the property comprising the Neighborhood into two (2) or more Neighborhoods or to combine two (2) Neighborhoods into one (1) Neighborhood. Any such application shall be in writing and shall include a Plat or Survey of the entire parcel which indicates the boundaries of the proposed Neighborhoods. A Neighborhood division requested by the Neighborhood or by the Merchant Builder and which has the written approval of the Declarant if so required, shall automatically be deemed granted unless the Board of Directors denies such application or request additional information in writing within thirty (30) days its receipt thereof. The Board may deny an application only upon determination that there is no reasonable basis for distinguishing between the areas proposed to be divided into separate Neighborhoods.

## **ARTICLE XVI:**

### **RECREATIONAL PROPERTY**

Section 16.1. General. The portions of the Properties which are operated for commercial for-profit recreational purposes shall be designated as Recreational Properties. The Recreational Property shall include, without limitation, the Golf Club and the Marina. Each Owner of a Recreational Property will be a Member of the Association and will appoint one (1) voting Member. The Recreational Property is not Common Area.

Section 16.2 Golf Club. The Golf Club facilities are private property owned and operated by the Declarant or its assigns and administered according to membership policies and rules and regulations adopted by the owner thereof from time to time. Owners shall not be permitted to begin play from Lots and the same shall be deemed a trespass. The Golf Club facilities may include, without limitation, golf courses, clubhouses, tennis courts, swimming pools, etc. which are separate from the Common Areas. These facilities shall be developed and provided at the discretion of the owner of the Golf club. Such Owner has the exclusive right to determine from time to time, in its sole discretion and without notice or approval of any change, how and by whom these facilities shall be used, if at all. By way of example, but not limitation, such owner have the right to approve users and determine eligibility for use, to reserve use rights to terminate any or all use rights, to change eliminate or cease operation of any or all of the facilities, to transfer any or all of the Golf Club or the operation thereof to anyone (including without limitation a member-owned or equity club) and on any terms, to limit the availability of use privileges, and to require the payment of membership fees, dues, use charges and other charges for use privileges. Ownership of a Lot or any other portion of the Property or membership in the Association or any Neighborhood Association does not give any vested right or easement, prescriptive or otherwise, to use the Golf Club, and does not grant any ownership or membership interest therein.

Section 16.3 Marina. The existing development orders for Riverwood as of the date of this Declaration contemplate that boat slips, launches or related facilities may be approved by development orders for future increments. The Declarant as of the date of this Declaration makes no representations or warranties that these facilities will be permitted or constructed. If these facilities are constructed, it is anticipated the Marina will be a for-profit venture operated by Declarant or an assignee of Declarant; provided the Declarant, in its sole and absolute discretion, may convey all or any portion of the Marina to the Association to be Common Area or Exclusive Common Area. If the Marina is operated as a for-profit venture, it shall be owned, operated and administered according to policies established by the owner thereof from time to time. The facilities available at the Marina may include without limitation wet slips, dry storage, dock master office, ships store, restaurants, locker facilities, clubhouses, maintenance yard, etc. These facilities shall be developed and provided at the discretion of the owner of the Marina. The owner has the exclusive right to determine from time to time by whom and how such facilities shall be used,

owned, operated and maintained. The owner specifically reserves the right to discontinue operation of such facilities or to sell such facilities to any person(s) whomsoever, including without limitation pursuant to a dockminium or marina slip sales program. Ownership of a Lot or any other portion of the Property or membership in the Association or any Neighborhood Association does not give any vested right or easement, prescriptive or otherwise, to use of or an ownership interest in the Marina or the facilities available at the Marina.

Section 16.4 Rights of Access and Parking. The Recreational Property Owners and the person permitted to use the Recreational properties by the Recreational Property Owners (regardless of whether such members are Owners hereunder) shall at all times have a right and non-exclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel to and from the entrances to the Properties from and-to the Recreational Property, respectively, and, further, over those portions of the properties (whether Common Area or otherwise) reasonably necessary to the use, operation, maintenance, repair and replacement of the Recreational Property, without limiting the generality of the foregoing, members of the Golf club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Properties at reasonable times before, during, and after golf tournaments and other similar functions held by or at the Golf Club.

Section 16.5 Jurisdiction and Cooperation. It is Declarant's intention that the Association, Community Development District and the owners of the Recreational Property cooperate to the maximum extent possible in the operation of the Properties and the Recreational Property. Each shall reasonably assist the other in upholding the community-wide standard as set from time to time. The Association shall have no power to promulgate Rules and Regulations affecting activities on or use of the Recreational Property without the prior written consent of the owners of the Recreational Property.

Section 16.6 Easement for Golf Balls. Habitat Reserves, Habitat Buffer Planting Areas, and Conservation Tracts (collectively "Protected Tracts") are identified on the Plats. Certain Protected Tracts are adjacent to the Golf Course, and in accordance with the Plat and this Declaration are burdened with an easement for golf play, maintenance of the golf course, operation of the golf course, drainage of the Golf course on to the Protected Tracts, and golf carts crossing easements noted on the Plats or inadvertently placed within the Protected Tracts. In addition, the owner of the Golf Course may, in its sole discretion, maintain areas of the Protected Tracts which are utilized in connection with golf play or operation of the Golf Course to a higher standard of maintenance than that performed by the Community Development District, provided the same complies with conditions, standards and conditions of governmental entities or agencies having jurisdiction over the Protected Tracts.

Section 16.7 Easement for Golf Balls. Every lot is burdened with an easement permitting golf balls hit from the Golf Course to unintentionally come upon the Lot and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of the Lot to retrieve errant golf balls; provided, however, if the Lot is fenced or walled, the golfer shall seek the Owner's or occupant's permission before entry. All Owners, by acceptance and delivery of a deed to a Lot, assume all risks associated with errant golf balls, and all Owners agree and covenant not to make any claim or institute any action whatsoever against the Declarant, the Association, the Owner if the Golf Course, the golf course designer, any Merchant Builder, or any other party other than the golfer who caused the property damage or personal injury, arising or resulting from any errant golf balls or golf clubs, any property damage or personal injury that may be caused thereby, or for negligent design of the golf course or siting of the Lot. Nothing in this paragraph shall in any way relieve golfers from liability for damages resulting from errant golf balls.

Section 16.8 Assumption of Risk and Indemnification. Each Owner by its purchase of a Lot in the vicinity of the Golf Club hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of the Golf Club, including, without limitation: (a) noise from maintenance equipment and it being specifically understood that such maintenance typically takes place around sunrise or sunset, (b) noise caused by golfers, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the Golf Club, (f) errant golf balls and golf clubs, and (g) design of the Golf Club and agrees that neither Declarant, Association nor any of Declarant's affiliates or agents nor any other entity owning or managing the golf course shall be liable to Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the Golf Club, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, Association or any other entity owning or managing the golf course. The Owner hereby agrees to indemnify and hold harmless Declarant, Association and any other entity owning or managing the golf course against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

#### **ARTICLE XVII:**

#### **COMMERCIAL PROPERTIES**

Section 17.1 General. Portions of the Properties will be developed for commercial use and will be designated as Commercial Properties in Supplemental Declarations. The Commercial Properties may

include, without limitation, shopping centers, office buildings and convenience retail areas. Each Owner of Commercial Property will be a Member of the Association.

Section 17.2 Rights of Access. The Owners of Commercial Property, their guests, invitees, and the employees, agents, contractors, and designees of the Commercial Property shall at all

times have a right and non-exclusive easement of access and use over all roadways located within the Properties reasonably necessary to travel to and from the entrances to the Properties from and to the Commercial Property, respectively, and, further, over those portions of the Properties (whether General Common Area otherwise reasonably necessary to the operation, maintenance, repair and replacement of the Commercial Properties.

Section 17.3 Jurisdiction and Cooperation. It is the Declarant's intention that the Association and the commercial Property Owner cooperate to the maximum extent possible in the operation of the properties and the Commercial Property. Each shall reasonably assist the other in upholding the Community-Wide Standard as set from time to time.

#### **ARTICLE XVIII:**

#### **CABLE TELEVISION**

Section 18.1 CATV Agreement. The Association may, but shall not be required to enter into a bulk rate cable television agreement ("CATV Agreement") for all or a portion of the properties. If a CATV Agreement is entered into, all Lots subject to the CATV Agreement for which a certificate of occupancy has been issued shall be charged for basic cable service as a Benefit Assessment, regardless of whether the Owner desires cable television service. It is anticipated that if CATV Agreement is entered into by the Association, tier channels, remotes, pay channels and other services offered by the cable provider will be available on an individual subscriber basis.

Section 18.2 Easements. Declarant and the Association shall have the right to grant easements to the cable provider for installation and maintenance of the cable television system, including without limitation head-ends, wiring, switches and amplifiers. The cable provider shall also have the right to use easement area dedicated for utilities. Notwithstanding anything to the contrary, the cable provider shall retain ownership of all cable television equipment installed within the Property.

Section 18.3 Prewire. If a CATV Agreement is entered into by the Association, the Association and Declarant may permit the cable provider to pre-wire each building or home constructed on the Property for cable television service (collectively, the "Prewire") at its sole cost and expense. Each owner acknowledges, in this event, that the Prewire installed within the building shall be and remain personal property of the cable provider. Owners shall have no ownership interest in the Prewire and the right of use thereof shall remain solely with the cable provider. Each Owner by acceptance of title to

a Lot hereby grants to the cable provider an irrevocable easement to install and maintain the Prewire in the building and agrees not to permit any other provider of cable television to utilize the Prewire within the prior written consent of the cable provider, which consent may be withheld by the cable provider in its discretion. Upon termination of the CATV Agreement, the cable provider may, but is not obligated to, remove all or any portion of the Prewire within the Building, after reasonable notice to Owner, provided no material or substantial injury to the building would result from such removal.

## **ARTICLE XIX:**

### **GENERAL PROVISIONS**

Section 19.1 Term. The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any properties subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by sixty seven percent (67%) of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein. Notwithstanding the forgoing, any terms, provisions, covenants, restrictions or prohibitions contained herein which relate to, pertain to or affect any environmentally sensitive areas of the Properties or any portion of the Properties which is subject to the rules, ordinances or regulations of the Federal Government, the State of Florida or the County of Charlotte or any agency or body of the foregoing shall be applicable to the Properties in perpetuity unless the waiver of same shall have been obtained from the appropriate party or unless the rule, ordinance or regulation shall have been abrogated or repealed by the appropriate party.

Section 19.2 Amendment. Until the Turnover, the Declarant may unilaterally amend this Declaration provided said amendments do not have a direct adverse financial impact on the Owners. Whether before or after the Turnover, Declarant may amend the Declaration and By-Laws and any other documents which have a direct adverse financial impact on the Owners only if any such amendment first has the prior written approval of the CDD. After Turnover, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendments are (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule, requirement or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on Private Property; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for

example, the Federal National Mortgage Association or Federal Home Loan Mortgage corporation, to enable such lender or purchaser to make or purchase mortgage loans on Private Property; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Private Property; or (e) correct any stenographic, scrivener's or surveyor's error or any error of a like nature; provided, however, any such amendment shall not adversely affect the title to any Private Property unless the Owner thereof shall consent thereto in writing. After the Turnover, (a) any non-Declarant initiated amendment, or (b) any Declarant initiated amendment which has a materially adverse effect on the Owner of Private Property shall require the affirmative vote (in person or by alternate) or written consent, or any combination thereof, voting Members representing sixty-seven percent (67%) of the total votes in the Association, including sixty-seven percent (67%) of the votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant owns one (1) or more Lots, Recreational or Commercial Properties within the Properties. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the Public Records of Charlotte County, Florida.

No amendment which affects the Surface Water Management System within the properties or maintenance thereof shall be effective without the prior written consent of the COD and the Southwest Florida Water Management District.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant, as the case may be, or the assignee of such right or privilege.

Notwithstanding anything to the contrary set forth in this section 19.2, no amendment shall be effective without the written joinder and consent of the Declarant (so long as the Declarant owns one or more Lots, Recreational or Commercial Properties within the Properties) to the amendment.

Section 19.3 Indemnification. The Association shall indemnify and hold harmless every officer, director, and committee member against any and all expenses, including counsel and paralegal fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own

individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association), and the Association shall indemnify and forever hold each such officer) and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member, or former officer, director, or committee member may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 19.4 Easements for Utilities, Etc. There is hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibits "A" and "B", the Association, the CDD, and the designees of each (which may include, without limitation, Charlotte County, Florida, and any utility company), blanket easements upon, over, across, and under all of the Properties of ingress and egress; dispensing pesticides; installation, replacing, repairing, relocating and maintaining restricted access and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewer, meter boxes, telephones, gas and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry into any Lot shall be made only after reasonable notice to the Owner or occupant thereof. Without limiting the generality of the foregoing, there are hereby reserved for the local water, electric and gas supplier easements across all Lots, Recreational and Commercial properties for ingress, egress, installation, reading, replacing, repairing, and maintaining meter boxes. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties, except as may be approved by the Association's Board of Directors or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board of Directors shall have the right to grant such easement over the properties without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other recorded easement on the properties.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to the COD, Charlotte County, Florida, or to any other local, state or federal governmental entity, subject to such approval requirements as may be contained in this Declaration.

Section 19.5 Severability. Invalidation of any one of these, covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 19.6 Right of Entry. The Association shall have the right, but not the obligation, to enter into any Lot, Recreational or Commercial Property for emergency and safety reasons, to abate nuisances (including, without limitation, false burglar alarms) and to inspect for the purpose of ensuring compliance with this Declaration, the By-Laws and the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include, but not be limited to, the right of the Association to enter a Lot, Recreational or Commercial Property to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after request by the Board.

Section 19.7 Perpetuities. If any of the covenants, conditions, restrictions, or the provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Bush, President of the United States of America.

Section 19.8 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the voting Members representing seventy-five percent (75%) of the total votes in the Association. In the case of such a vote, and notwithstanding anything contained in this Declaration or the Articles of Incorporation or By-Laws of the Association to the contrary, a voting Member shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of seventy-five percent (75%) of all Members of the Neighborhood, Recreational or Commercial Properties represented by the Voting Member. This section shall not apply, however, to (a) actions brought by the Association against parties other than the Declarant to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation or (d) counter claims brought by the Association in proceedings instituted against it. In the event the Association brings suit against the Declarant, the Association shall assess all Owners (other than the Declarant) for the costs and fees thereof and no funds from Common Assessments may be used for such purpose. This section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant

to the same procedures, necessary to institute proceedings as provided above. Notwithstanding anything to the contrary in this section, the Voting Members shall be required obtain a consensus of their constituency prior to approving any litigation as provided in this section.

Section 19.9 Cumulative Effect; Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of any Neighborhood Association and the Association may, but shall not be required to, enforce the latter; provided, however, in the event of conflict between or among such covenants and restrictions, and provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of any Neighborhood Association shall be subject and subordinate to those of the Association. The foregoing priorities shall apply, but not be limited to, the liens for Assessments created in favor of the Association.

Section 19.10 Use of the Term Riverwood. No person shall use the term Riverwood or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the term Riverwood in printed or promotional matter where such term is used solely to specify that particular property is located within Riverwood and the Association, Recreational and Commercial Properties shall be entitled to use the word Riverwood in their respective names.

Section 19.11 Compliance. Every Owner and occupant of any Lot, Commercial or Recreational Property and all members of the Golf Club, their guests and invitees, shall comply with all lawful provisions of this Declaration, the By-Laws and Rules and Regulations of the Association. Failure to comply shall be grounds for an action to recover sums dues, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Property. Further, in the event of any violation of any ordinances, rules or restrictions imposed by the County of Charlotte with respect to the Properties, the county of Charlotte may, without the consent of the Association or any Person, seek judicial enforcement of such ordinances, rules or restrictions and if such enforcement shall be required by a court of competent jurisdiction, the County of Charlotte shall be entitled, in addition to all other awards or directions of enforcement, to all reasonable attorney's fees and court costs incurred by said county relative to its enforcement of the foregoing.

Section 19.12 Independent Builders. The properties are a master planned mixed use community being developed by the Declarant. The individual buildings constructed within the Properties may be constructed by the Declarant, Merchant Builders or others who are independent contractors who purchase unimproved Lots from the Declarant. If a building is constructed by a person or entity other than the Declarant, the Declarant shall have no liability whatsoever for such builder's activities, whether direct or indirect, including,

without limitation, marketing or construction of the building or actions of any principal, officer, trustee, partner, agent or subcontractor.

Section 19.13 Notice of Transfer of Lot, Commercial or Recreational Property. In the event that any Owner (other than the Declarant) desire to sell or otherwise transfer title of his or her Lot, Residential or Commercial Property, such Owner shall give the Board of Directors at least seven (7) 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 of Directors may reasonably require. Until such written notice is received by the Board of Directors and the capital contribution required by Article XII, Section 12.9 hereof is paid in full the transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner of the Lot, Commercial or Recreational Property, including payment of all Assessments, notwithstanding the transfer of title to the Lot, Commercial or Recreational Property

Section 19.14 Documents to Grantees. All Lot Owners shall be obligated to deliver the documents originally received from the Declarant, containing this Declaration and all other declarations and documents, to any grantee of such Owners.

Section 19.15 Dissolution of Association. The Association shall not be dissolved nor shall it dispose of any real property contained within the Common Area, by sale or otherwise (except to an entity organized for the purpose of owning and maintaining such Common Areas), without the prior approval of all Owners., their mortgagees and any governmental agencies having jurisdiction over the Properties.

Section 19.16 Recognition by Owners of Declarant's Rights to Develop and Construct Improvements on the Properties. Each Owner on his, her or its own behalf and on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of Riverwood may occur over an extended period of time and that incident to such development and the construction associated therewith the quiet use and enjoyment of the Properties and each portion thereof may be temporarily interfered with by the development and construction work occurring on those portion of the Properties owned by the Declarant or its successors and assigns and each Owner, on behalf of such Owner's heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns does do hereby waive all claims for interference with such quiet enjoyment and use as a result of the development and construction of the balance of the Properties. Each Owner on behalf of such Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns agrees that the development, construction and completion of the balance of the Properties may interfere with such Owner's original and existing views, light and air and diminish the same and each such Owner or such Owner's behalf and on behalf of such Owner's heirs, assigns,

personal representatives, successors, mortgagees, lienors and assigns does hereby release the Declarant and its successors in interest and others involved from all claims that they may have in connection therewith.

**ARTICLE XX:**  
**MORTGAGEE/PROVISIONS**

The following provisions are for the benefit of First Mortgagees holding mortgages on Lots, Commercial or Recreational Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 20.1 Notice to Mortgagee. A First Mortgagee who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) will be entitled to timely written notice of:

20.1.1 any condemnation loss or any casualty loss which affects a material portion of the Properties;

20.1.2 any delinquency in the payment of Assessments or charges owed by an Owner of a Lot, Commercial or Recreational Property subject to the mortgage of such First Mortgagee, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any First Mortgagee, upon request, is entitled to written notice from the Association of any default in the performance by such Owner of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

20.1.3 any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or any proposed action which would require the consent of a specified percentage of eligible holders.

Section 20.2 Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven percent (67%) of the First Mortgagees or voting Members representing at least sixty-seven percent (67%) of the total Association vote entitled to be cast thereon consent, the Association shall not:

20.2.1 by act or omission seek to abandon, alienate, release, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consisting with the intended use of the Common Area shall not be deemed a transfer within the meaning of this subsection);

20.2.2 change the method of determining the obligations, Assessments, dues, or other charges which may be levied against an Owner of a Lot (a decision, including contracts, by the Board or provisions of any Supplemental Declaration recorded on any portion of the Properties regarding Assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or Supplemental Declaration is otherwise authorized. by this Declaration);

20.2.3 by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Lots and of the Common Area (The issuance and amendment of architectural standards, procedures, rules and regulations, of use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

20.2.4 fail to maintain insurance, as required by this Declaration; or

20.2.5 use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

Section 20.3 Taxes. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and First Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 20.4 No Priority. No provision of this Declaration nor the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 20.5 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

Section 20.6 Amendment by Board. Should the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirement less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

Section 20.7 Applicability of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Florida law for any of the acts set out in this Article.

Section 20.8 Failure of Mortgagee to Respond. Any Institutional

Lender who received a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Institutional Lender within thirty (30) days of the date of the Association's request.

Section 20.9 Management Agreement Limitations Notwithstanding anything contained herein which might otherwise be construed to the contrary, any agreement for professional management of the Association, or any other agreement providing for services by the Declarant to the Association, may not exceed one (1) year and must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or fewer written notice.

#### **ARTICLE XXI:**

##### **DECLARANT'S RIGHTS**

Section 21.1 Declarant. The Declarant and its successors or assigns will undertake the work of constructing buildings, dwellings and improvements related thereto. The completion of that work and the sale, rental and other disposal of Lots, Commercial or Recreational Property is essential to the establishment and welfare of Riverwood as a community. As used in this section and its subparagraphs, the words "its successor or assigns" specifically do not include purchasers of completed Lots, Commercial and Recreational Property. In order that said work may be completed and Riverwood established as a fully occupied community as rapidly as possible, no Owner or the Association shall do anything to interfere with the Declarant's activities without limiting the generality of the foregoing, nothing in this Declaration or the Articles or By-Laws shall be understood or construed to:

21.1.1 Prevent the Declarant, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work, including without limitation, the alteration of its construction plans and designs as the Declarant deems advisable in the course of development (all models or sketches showing plans for future development of the Properties may be modified by the Declarant at any time and from time to time, without notice); or

21.1.2 Prevent the Declarant, its successors or assigns or its or their contractors, subcontractors or representatives from erecting, constructing and maintaining on any property owned or controlled by the Declarant, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business of completing said work and establishing Riverwood as a community and disposing of the same by sale, lease or otherwise; or

21.1.3 Prevent the Declarant, its successors or assigns or its or their contractors or subcontractors, from conducting on any property owned or controlled by the Declarant or its successors or

assigns, its or their business of developing, subdividing, grading and constructing improvements on the Properties and of disposing of Lots therein by sale, lease or otherwise; or

21.1.4 Prevent the Declarant, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of Riverwood. Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records of Charlotte County, Florida. Nothing in this Declaration shall be construed to require Declarant or any successor to develop any of the property set forth in Exhibit "B" in any manner whatsoever.

The Declarant expressly reserves the right to grant easements and rights-of-way over, under and through the Common Areas so long as the Declarant owns any property described on Exhibits "A" or "B" hereof primarily for development and/or resale; provided, no such easement shall materially interfere with the use of the Common Area by the Members.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as construction and initial sale of Lots, Recreational and Commercial Property shall continue, it shall be expressly permissible for Declarant to maintain and carry-on upon portions of the Common Area and Lots, Recreational and Commercial Property owned by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, Recreational and Commercial Property, including, but not limited to, business offices, signs, model lots, and sales offices, and the Declarant shall have an easement for access to such facilities. The right to maintain and carry-on such facilities and activities shall include specifically the right to use any Lot, Recreational and Commercial Property owned by the Declarant and any clubhouse or activity center which may be owned by the Association, as models, or information or sales offices.

So long as Declarant continues to have rights under this paragraph, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

Section 21.2 Future Easements and Modifications. Declarant reserves the right to grant, modify or enter into easements, dedications, agreements, licenses, restrictions, reservations, covenants and rights of way to modify the boundary lines and to

plat or replat portions of the Property for development of the Riverwood. The Association, any Neighborhood Association, each Owner, Merchant Builder and the Owners of the Recreational Property and Commercial Property agree to execute and deliver any and all agreements, documents, plats and instruments which are necessary or desirable to accomplish the same.

Section 21.3 Amendment. This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (a) thirty (30) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written W statement that all sales activity has ceased.

**ARTICLE XXII:**

**COMMUNITY DEVELOPMENT DISTRICT**

Section 22.1 General. Declarant and each Owner of a Lot, Commercial or Recreational Property Owner acknowledge that the CDD has been created in accordance with Chapter 190, Florida Statutes, for the purpose of implementing a program for the acquisition, construction, operation and maintenance of community facilities and services including, but not limited to, certain roads within the Property, the surface water management system for the Property, a potable water system, sanitary sewer system, and non-potable irrigation system.

Section 22.2 Covenant to Pay Community Development Charges. Declarant and each Owner of a Lot, Commercial or Recreational Property, for all real property now or hereafter owned within the COD covenants and agrees to pay any and all community development assessments, fees, charges and taxes which may be imposed upon such property to fund all or part of the cost of the acquisition, construction, operation and maintenance of community improvements and facilities, debt service thereof, and any other cost incurred by the CDD.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first written.

Signed, Sealed and Delivered  
in the presence of:

/s/ JoAnn Bennett  
Print Name: JoAnn Bennett  
/s/ JoAnn Carpenter

RIVERWOOD DEVELOPMENT, INC.  
By: /s/ Bryan P. Brown\_  
Its: Vice President  
Print Name and Address:

Print Name: JoAnn Carpenter\_

Bryan P. Brown  
12800 University Drive, Suite 350  
Ft. Myers, FL 33907

/s/ JoAnn Bennett

Print Name: JoAnn Bennett

/s/ JoAnn Carpenter

Print Name: JoAnn Carpenter\_

RIVERWOOD COMMUNITY ASSOCIATION,  
INC.

By:/s/ Stephen A. Clayton

Its: President

Print Name and Address:

Stephen A. Clayton  
12800 University Drive, Suite 350  
Ft. Myers, FL 33907

STATE OF FLORIDA

COUNTY OF Lee

The foregoing instrument was acknowledged before this 14<sup>th</sup> day of July, 1992 by Bryan P. Brown, Vice President of Riverwood Development, Inc., a Florida Corporation, on behalf of the corporation. He is personally known to me or has provided a driver's license as identification and did take an oath.

/s/ Florence Simmons

Print Name: Florence Simmons

Notary Public cc# 061333

State of Florida

My Commission Expires:

November 4, 1994

STATE OF FLORIDA

COUNTY OF Lee

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of July, 1992 by Stephen A. Clayton, President of Riverwood Community Association, Inc., a Florida not-for-profit Corporation, on behalf of the corporation. He is personally know to me or has provided a driver's license as identification and did take an oath.

/s/ Florence Simmons  
Print Name: Florence Simmons  
Notary Public cc# 061333  
State of Florida  
My Commission Expires:  
November 4, 1994

JOINDER OF TRUSTEE

Robert M. Taylor, as Trustee under the Trust Agreement created pursuant to Trust Agreement dated May 12, 1989 hereby joins in this Declaration for the sole purpose of agreeing that the Initial Property shall be subject to and encumbered by the Declaration. THE ASSOCIATION AND EACH OWNER ACKNOWLEDGES AND AGREES THAT ROBERT M. TAYLOR, AS TRUSTEE SHALL HAVE NO LIABILITY WHATSOEVER IN CONNECTION WITH THE PROMULGATION, AMENDMENT OR ENFORCEMENT OF THIS DECLARATION OR FOR ANY ACTION OR INACTION OF DECLARANT OR THE ASSOCIATION.

Signed Sealed and Delivered  
in the Presence of:

ROBERT M. TAYLOR, AS TRUSTEE

/S/ JoAnn Bennett  
Print Name: JoAnn Bennett  
/s/ JoAnn Carpenter  
Print Name: JoAnn Carpenter

By: /s/ Robert M. Taylor  
Print Name: Robert M. Taylor  
Address:  
12800 University Dr., Ste 350  
Ft. Myers, FL 33907

State of Florida  
County of Lee

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of July, 1992 by Robert M. Taylor as Trustee. He is personally known to me or has provided a driver's license as identification and did take an oath.

/s/ Florence Simmons  
Print Name: Florence Simmons  
Notary Public cc# 061333  
State of Florida  
My Commission Expires:  
November 4, 1994

JOINDER OF CDD

Riverwood Community Development District hereby joins in this Declaration for the sole purpose of agreeing that any portion of the Initial Property owned by or dedicated to it shall be subject to and encumbered by the Declaration.

THE ASSOCIATION AND EACH OWNER ACKNOWLEDGES AND AGREES THAT RIVERWOOD COMMUNITY DEVELOPMENT DISTRICT SHALL HAVE NO LIABILITY WHATSOEVER IN CONNECTION WITH THE PROMULGATION, AMENDMENT OR ENFORCEMENT OF THIS DECLARATION OR FOR ANY ACTION OR INACTION OF DECLARANT OR THE ASSOCIATION.

Signed sealed and Delivered  
in the Presence of:

Riverwood Community Development  
District

/S/ JoAnn Bennett  
Print Name: JoAnn Bennett  
/s/ JoAnn Carpenter  
Print Name: JoAnn Carpenter

By: /s/ Bryan P. Brown  
Print Name: Bryan P. Brown  
Address:  
12800 University Dr., Ste 350  
Ft. Myers, FL 33907

State of Florida  
County of Lee

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of July, 1992 by Bryan P. Brown, Chairman of Riverwood Community Development District. He is personally known to me or has provided a driver's license as identification and did take an oath.

/s/ Florence Simmons  
Print Name: Florence Simmons  
Notary Public cc# 061333

State of Florida

My Commission Expires:  
November 4, 1994