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INSTR # 5594080
OR BK 03750 PG 3673
RECORDED 10/14/2002 02:21:52 PM
CHARLIE GREEN, CLERK OF COURT
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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
PALM ISLAND, PHASE 2**

THIS DECLARATION is made this 3 day of OCTOBER, 2002,
by U.S. Home Corporation, a Delaware corporation, hereinafter called the
"Declarant," for itself and its successors, grantees, and assigns.

PREMISES:

WHEREAS, Declarant owns certain real property located in Lee County, Florida, and intends to create thereon a residential planned development and related recreational and other common facilities and amenities, to be known as Palm Island Phase 2.

WHEREAS, the real property which is intended to be developed as Palm Island Phase 2 (the "Lands") is described in Exhibit "A" to this Declaration, as it may be amended from time to time; and

WHEREAS, to preserve, protect and enhance the values of the property and amenities in the Community, and the general health, safety and welfare of the members, Declarant deems it desirable to subject the Community to certain protective covenants, conditions, and restrictions; and

WHEREAS, to provide a means for meeting the purposes and intents herein set forth, Palm Island Phase 2 Community Association, Inc., a Florida corporation not for profit (hereinafter the "Community Association") has been incorporated; and

WHEREAS, Declarant shall, in its sole discretion, from time to time, convey, lease or grant a license or other use right to lands within or without the Community by deed, easement, or otherwise to the Community Association (which must accept the same) for the purpose of maintenance, landscaping, drainage, recreation or other purposes for the use and benefit of the members and their families, tenants and guests;

NOW THEREFORE, the Declarant, and any other person owning an interest in the subject property who consents to or joins in the making of this Declaration, hereby declares that the Lands described in Exhibit "A" hereto, as it may be amended from time to time, are and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Declaration, which shall run with the Lands and be binding on all parties having any right, title or interest in the Lands or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof. Additional real property may be added to the Lands by an amendment to Exhibit "A," consented to or joined in by the Declarant and all persons having a record ownership interest in the property being added. Nothing herein contained, and no violation of these covenants, conditions and restrictions shall invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value. Further, the express intent of Declarant is that substantive contract rights created hereunder shall not be retroactively offered by legislation enacted subsequent to the recording of this Declaration.

1. DEFINITIONS. The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, or if not defined below unless the context clearly requires another meaning.

1.1 "Architectural Review Committee" ("ARC") means the Architectural Review Committee as established and empowered in Section 6 of this Declaration.

1.2 "Assessment" or "Assessments" means a share of the funds required for the payment of the expenses of the Community Association which from time to time is assessed against the members, including without limitation annual assessments and special assessments, as authorized by Section 9 of this Declaration.

1.3 "Community Association" means Palm Island Phase 2 Community Association, Inc., a Florida corporation not for profit, which has its principal place of business in Lee County, Florida, and its successors and assigns.

1.4 "Board" means the Board of Directors of Palm Island Phase 2 Community Association, Inc.

1.5 "Builder" shall mean and refer to any party, other than the Declarant or Member, constructing a residential unit on a lot owned by such party.

1.6 "Common Area" or "Community Common Area" means and refers to all property whether real or personal which is intended to be owned and operated by the Community Association. The term "common area" shall include, but not be limited to, the water management system, private sewer and water utilities, if any, recreational parcel or tracts, and the private streets and roads as may be depicted as common area on the subdivision plat.

1.7 "Community" means all real property comprising Palm Island Phase 2 Community Association, Inc., and the improvements thereon.

1.8 "County" or "the County" means Lee County, Florida.

1.9 "Declarant" means U.S. Home Corporation, a Delaware corporation, its successors or assigns.

1.10 "Developer" means Lennar Homes, Inc., a Florida corporation, its successors or assigns, or any other developer to which the Declarant specifically assigns all rights it may have under this Declaration to develop part or all of Palm Island Phase 2 Community Association, Inc. The Declarant will also be a Developer.

1.11 "Governing Documents" means this Declaration, and the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Community Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority as listed herein.

1.12 "Institutional Mortgagee" means:

(A) a lending institution having a first mortgage lien upon a Lot, Parcel or Tract, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loan (including without limitation the Federal National Mortgage Association), Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees or insures a first mortgage upon a Lot or Living Unit; or

(C) the Developer, and any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Developer to acquire, develop, or construct improvements upon, the Community and who have a mortgage lien on all or a portion of the Community securing such loan. An Institutional Mortgage" is a mortgage held by an Institutional Mortgagee encumbering a Lot or Living Unit.

1.13 "Lands" means the land described in Exhibit "A" to this Declaration, as it may be amended from time to time.

1.14 “Living Unit” or “Unit” means any residential structure, including a dwelling located within the Community and intended for occupancy by one family or household. If a Living Unit is a free-standing detached single family home located on a Lot, the use of the term “Living Unit” or “Unit” shall be interpreted as if the term was followed immediately by the words “and the Lot on which it is located.”

1.15 “Lot” means one or more of the platted portions of land into which the Community has been subdivided, upon each of which a single Living Unit has been or is intended to be constructed. Unless the context clearly requires a different interpretation, the term “Lot” shall be interpreted as if it were followed by the words “and the Living Unit constructed thereon.”

1.16 “Member” means any or all of those persons who are entitled to membership in the Community Association, as provided in the Governing Documents.

1.17 “Palm Island Phase 2” is the name of the Community.

1.18 “Owner” means the record owner of legal title to any Lot, Living Unit, Tract or Parcel.

1.19 “Parcel” means any and all unplatted portions of the Community.

1.20 “Rules and Regulations” means the administrative regulations governing use of the Common Areas and procedures for administering the Community Association, as adopted, and amended from time to time by resolution of the Board of Directors.

1.21 “SFWMD” means South Florida Water Management District.

1.22 “Service Assessment” means a charge against one or more Lots or Living Units for any service, material or combination thereof which may be provided by the Community Association for the use and benefit of the owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Community Association on behalf of the owners accepting or receiving such material or service shall be a service assessment against the Lots or Living Units so benefitted. An owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.

1.23 “Structure” means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof.” The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and storage sheds.

1.24 "Tract" means any and all platted portions of the Community other than the Lots.

1.25 "Voting Interests" means the arrangement established in Section 2 of the Bylaws of the Community Association by which certain classes of members are entitled to vote in the affairs of the Community Association.

2. GENERAL DEVELOPMENT PLAN. The Community is a residential community, initially comprised of approximately 16.97 acres of land which includes certain recreation facilities. Under the current site plan, the Developer initially anticipates the construction and development of sixty-three (63) single family units. Notwithstanding however, Developer has the right to add additional land to this Declaration and the right to plat or construct significantly more or fewer units based upon plans as approved and as amended by the Developer.

2.1 LONG TERM DEVELOPMENT. SOME AREAS OF PALM ISLAND PHASE 2 MAY BE UNDER DEVELOPMENT FOR AN EXTENDED TIME. INCIDENT TO THE DEVELOPMENT PROCESS, THE QUIET ENJOYMENT OF THE COMMUNITY MAY BE UNAVOIDABLY INTERFERED WITH TO SOME EXTENT BY THE CONSTRUCTION OPERATIONS. FROM TIME TO TIME, DECLARANT, BUILDERS AND OTHERS MAY PRESENT TO THE PUBLIC, CERTAIN RENDERINGS, PLANS AND MODELS SHOWING POSSIBLE FUTURE DEVELOPMENT OF PALM ISLAND PHASE 2. DECLARANT DOES NOT WARRANT IN ANY WAY THE SCHEMES IN THESE RENDERINGS, PLANS OR MODELS OR HOW THE FUTURE IMPROVEMENTS IN PALM ISLAND PHASE 2 WILL ACTUALLY BE DEVELOPED. ANY SUCH RENDERINGS, PLANS OR MODELS ARE PRIMARILY THEMATIC AND IN NO WAY REPRESENT A GUARANTEED FINAL DEVELOPMENT PLAN FOR PALM ISLAND PHASE 2.

3. THE COMMUNITY ASSOCIATION'S PURPOSES AND POWERS. The primary purposes of the Community Association are to hold title to, operate and maintain the Common Areas of Palm Island Phase 2; to enforce restrictive covenants applicable to the Community; to provide architectural and aesthetic control; and to take such other action as the Community Association is authorized or required to take with regard to the Community pursuant to the Governing documents. The Community Association shall operate, insure, maintain and repair all property and related improvements designated by Declarant as Community Common Areas, regardless of whether legal right or title to that property has been formally conveyed to the Community Association. If the streets, roads and road rights-of-way are dedicated to the public, the Community Association may nevertheless expend Community Association funds to maintain and repair such property including providing betterments and enhancements to said property.

3.1 Community Common Areas. The Community Association shall operate, maintain and, when deeded by the Developer, hold record title to the Community Common Areas. Community Common Areas will include the private roads and streets as depicted on the Subdivision Plat as

Common Area. If a gate, access barrier or entry mechanism is installed on any part of the streets or roads which are located within the subdivision, or on any other Common Area property, the Community Association shall operate, maintain, repair and replace said device or improvement. In addition, the Declarant is the beneficiary of an easement for ingress/egress and other purposes connecting Palm Island Phase 2 to the Hancock Bridge Parkway. This easement area will be assigned or otherwise deeded to the Association as Common Area. However, portions of this easement may also be used by certain owners and residents of neighboring properties. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Community Common Areas consistent with the Governing Documents. Use of Community Common Areas shall be available to all members and their invitees, guests, family members and tenants, subject to the rules and the Governing Documents.

The costs of operating, maintaining, repairing, insuring and protecting the Community Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Lots and Living Units, subject to the provisions of Section 9.2.

3.2 Manager. The Community Association may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Community Association shall determine to be necessary or desirable.

3.3 Personal Property. The Community Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

3.4 Insurance. The Community Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required in Section 11 below. The Community Association additionally shall cause all persons with access to Community Association funds to be insured or bonded with adequate fidelity insurance or bonds.

3.5 Express and Implied Powers. The Community Association may exercise any rights, power or privilege given to it expressly by the Governing Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom.

3.6 Acts of the Community Association. Unless the approval or affirmative vote of the members is specifically made necessary by some provision of applicable law or the Governing Documents, all approvals or actions permitted or required to be given or taken by the Community Association may be given or taken by its Board of Directors, without a vote of the members. The officers and Directors of the Community Association have a fiduciary relationship to the members. A member does not have the authority to act for the Community Association by reason of being a member.

3.7 Articles of Incorporation. The Articles of Incorporation of the Community Association are attached as Exhibit "B."

3.8 Bylaws. The Bylaws of the Community Association shall be the Bylaws attached as Exhibit "C" as they may be amended from time to time.

3.9 Official Records. The official records of the Community Association shall be maintained within the State of Florida and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within ten (10) business days after receipt by the Community Association of a written request for access. This requirement may be complied with by having a copy of the official records available for inspection or copying within the Community. The Community Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Community Association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.10 Polling Places. Accommodation may be made for the future use of building space within the Common Areas for the purposes of accommodating the function of an electoral polling place.

3.11 Hurricane Preparedness. It shall be the responsibility of the Community Association to establish and maintain an educational program for hurricane preparedness. The program must, at a minimum, consist of annually describing to the residents the risks of hurricane hazards and actions to mitigate the dangers that these hazards present.

3.12 Member Approval of Certain Litigation. Notwithstanding any other provisions of the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least a two-thirds (2/3rds) of all classes of the voting interests of the Community Association prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Community Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the Governing Documents;
- (D) the enforcement of the rules and regulations of the Community Association;

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

(F) filing a compulsory counterclaim.

3.13 The Declarant may enter into a Perpetual Easement and Use Agreement with a separate and distinct neighboring community known as Palm Island Phase1. Said Perpetual Easement and Use Agreement may provide for shared use of various recreation amenities, including but not limited to community building, swimming pool, pool deck, cabana area, as well as roadways and various other associated landscape and parking improvements.

4. COMMUNITY ASSOCIATION MEMBERSHIP VOTING RIGHTS. Every owner of record legal title to a Lot or Living Unit within the Community shall be a member of the Community Association as further defined in Section 4.1 below. The Declarant shall hold Declarant membership as provided for in Section 4.1(B) below. Membership is appurtenant to, and may not be separated from, ownership of a Lot or Living Unit. The rights, powers, duties and privileges of members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Community Association.

4.1 Classes of Membership. The Community Association will initially have two (2) classes of voting membership, as follows:

(A) Regular Members. Regular Members shall be the Owners of Lots or Units within the Community.

(B) Declarant Member. The Declarant shall be a member. Declarant membership and voting rights shall cease to exist at the Turnover Meeting described in Section 8 of the Bylaws, but all of the Declarant's other rights and privileges as the Declarant, as set forth elsewhere in this Declaration or in the Bylaws, shall continue as long as the Declarant holds any property within the Community for sale in the ordinary course of business. If the Declarant conveys undeveloped property within the Community to a successor developer, the Declarant may assign its Declarant membership and/or some or all of its voting rights and privileges to the successor developer.

4.2 Community Association Rights and Easements. Members in good standing have the non-exclusive right to use the Common Areas subject to:

(A) The right of the Community Association, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by members;

(B) The right of the Community Association, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for owners;

(C) The right of the Community Association, by and through its Board of Directors, to suspend a member's right to use Common Areas for the period during which any assessment or charge against the member's Lot or Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Community Association's rules and regulations;

(D) The right of the Community Association, by and through its Board of Directors, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility.

(E) The right of the Community Association, by and through its Board of Directors, to grant easements over, across or through the Common Areas;

(F) The right of the Community Association, by and through its Board of Directors, to open the Common Areas for use by non-members of the Community Association, or non-owners.

(G) The right of the Community Association, by and through its Board of Directors, with the prior assent of a two-thirds (2/3rds) of the voting interests, to borrow money for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas;

(H) The right of the Community Association, by and through its Board of Directors, to take such steps as are reasonably necessary to protect the Common Areas;

(I) The right of the Community Association, by and through its Board of Directors, to close or restrict access to the Common Areas for limited periods of time to conduct special events, including those intended primarily to benefit the Developer or its sales efforts;

(J) The right of the Community Association, by and through its Board of Directors, to regulate parking and traffic on the private roads within the Community, including without limitation the use of access gates or speed bumps;

(K) The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Community Association; and any rules and regulations governing use and enjoyment of the Common Areas adopted by the Community Association;

(L) The right of the Community Association to dedicate or transfer ownership or control of all or any part of the Common Areas to any other governmental agency, public authority, or utility.

So long as there is a Declarant member, any and all rights of members, and any and all restrictions, limitations, conditions and rules and regulations that a member shall be subject to, shall not be amended without the consent of the Declarant.

4.3 Delegation of Use Rights In Common Areas. Guests accompanied by a member shall have the right to use the Common Areas, but only to the extent provided in Section 2.6 of the Bylaws, or in the Community Association's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. The Community Association may issue guest passes to bona fide guests of owners when not personally accompanied by the member. If the Community Association permits a member to delegate his/her use rights in Common Areas to his/her guests, then a fee may be imposed, which fee may be charged in an amount which is not necessarily limited by or related to the cost of processing the delegation. Each member shall be financially and legally responsible to the Community Association for the actions and debts to the Community Association of any person to whom the member has delegated his right to use the Common Areas. The member may not delegate the obligation to pay Community Association assessments. Upon the lease of a Lot or Living unit to which a membership is appurtenant, the lessor may retain the right to use the membership, in which case the tenant shall have no such rights. If a member delegates his privileges to a tenant residing in his Living Unit, the member shall not be entitled to use of the facilities, except as a guest of another member, during the period of the delegation.

4.4 Separation of Ownership. The ownership of a Lot, and the ownership of the Living Unit constructed thereon, may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Lot, Living Unit, Tract or Parcel hold membership in the Community Association.

5. GENERAL COVENANTS AND USE RESTRICTIONS. The Community may be used for those purposes provided in the Zoning or Development Order. Declarant reserves the right and the power to assign and reassign various land uses within the Community in accordance with the Zoning or Development Order, or any amendments thereto, and where reasonably necessary and advisable, to inaugurate and implement variations from, modifications to, or amendments of the Zoning or Development Order and any other governmental plans, land development regulations, development orders and development permits applicable to the Community.

5.1 Subdivision and Regulation of Land. No Lot or Living Unit may be divided or subdivided without the express written consent of the Community Association. No owner shall initiate, undertake or attempt to inaugurate or implement any variation from, modification to, or amendment of the Zoning or Development Order or any other governmental plans, land

development regulation, development orders or development permits applicable to the Community, or to any Lot, Tract or Parcel, without the prior written approval of Declarant, which approval may be denied at the sole discretion of Declarant. Nothing herein is intended to prohibit judicial partition of a Lot or Living Unit owned by two or more persons.

5.2 Building Setback Lines, Size of Buildings, Site Restrictions and Building Height. All structures shall conform to the requirements of the County and the Governing Documents.

5.3 Leasing. An owner may lease his Living Unit without prior Association approval, subject to the following restrictions and conditions:

(A) The lease must be written, and a fully executed copy must be provided to the Association not less than three (3) days before the beginning of the lease term, together with such other information about the tenants as the Board may reasonably require.

(B) No Living Unit may be leased or rented for a term of less than sixty (60) consecutive days and no more than twice over twelve (12) consecutive months.

(C) No subleasing or assignment of lease rights is allowed. All of the provisions of the Palm Island Phase 2 Documents and the Use Restrictions of the Association pertaining to use and occupancy shall be applicable and enforceable against any person occupying a Living Unit as a lessee or guest to the same extent as against an owner, and a covenant on the part of each occupant to abide by the rules and regulations (Use Restrictions) of the Association and the provisions of the Documents, designating the Association as the owner's agent, with the authority to terminate any lease and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT HIS LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGES OF OWNERSHIP.

5.4 Nuisance. No noxious or offensive activity shall be carried on upon any Lot or in any Living Unit, nor shall anything be done that is or may become a reasonable source of annoyance or nuisance to other residents.

5.5 Temporary Structures. No structure of a temporary character, including trailer, tent or shack shall be used on any Lot, either temporarily or permanently, except for Declarant.

5.6 Appearance; Refuse Disposal. After closing of title, each owner shall keep his Lot free and clear of weeds, underbrush, unsightly growths, trash and debris and shall reasonably maintain his Living Unit. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers suitably screened from view from the street and adjacent Lots. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. No garbage incinerators shall be permitted.

5.7 Maintenance. The Declarant may, in its sole discretion, care for vacant or unimproved Lots within the Properties, and clear tall grass, undergrowth, weeds and rubbish therefrom, and do any other things and perform any labor necessary or desirable in the judgment of the Declarant to keep the Lot in good order. The Association shall have the right to repair any structure or improvement on any Lot which constitutes a danger or nuisance or is in unsightly disrepair, provided that the owner is given reasonable notice of the Association's intent to do so, which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner of said Lot, which charge shall be a lien on the Lot which may be foreclosed, and which shall secure Declarant's or the Association's attorneys fees and other costs in connection with said foreclosure.

5.8 Awnings and Windows. Awnings, hurricane shutters, solar film, and other window shading or decoration shall be subject to the prior approval and control of the Architectural Review Committee.

5.9 Lawn Maintenance. Association shall cut and edge the grass in the yard of each unit. The Association will fertilize, weed, and mulch the yard of each unit. In addition, the Association shall provide normal trimming all trees (up to fifteen (15) feet) and shrubs, and weeding and caring for any plant bed. Each Owner is responsible for replacing any trees, shrubs, grass, flowers, (whether annual or perennials) or landscaping that require replacement in the yard. Notwithstanding the foregoing, each Owner is specifically responsible for cutting, edging, fertilizing, and mulching all grass and other landscaping within any portion of a unit that is fenced. EACH OWNER ACKNOWLEDGES THAT SOME UNITS MAY NOT HAVE YARDS, OTHER UNITS MAY HAVE YARDS THAT ARE LARGER OR SMALLER THAN THE YARDS OF OTHER UNITS. The Board may change the lawn maintenance responsibilities of Association by Board action.

5.10 Garages, Carports and Accessory Buildings.

(A) No detached garage or other accessory building shall be erected. Each residence shall have an attached or built in garage which shall accommodate no less than one (1) automobiles. Repair of vehicles shall be permitted only inside the garage. When ingress and egress to the garage is not desired, the garage doors shall remain closed.

(B) Carports are not permitted.

(C) No garage shall ever be permanently enclosed or converted to other uses without substitution of another enclosed garage and approval of the Architectural Review Committee. All garages must have a minimum 16-foot wide overhead style garage door, or two (2) 8-foot wide overhead style garage doors.

5.11 Garage Sales. No garage sale shall be held more than one time in any 12 consecutive month period on any lot.

5.12 Mailboxes, Lamp Posts. Mailboxes, front yard lamp posts, and their supporting structures shall be substantially uniform in style, appearance and location, and are subject to regulation by the Architectural Review Committee. However, the care and maintenance of mailboxes, front yard lamp posts and associated structures are expressly the responsibility of the owner.

5.13 Swimming Pools. No above ground swimming pools are permitted. An owner may, if approved by the Architectural Review Committee, construct a swimming pool and screened enclosure on his Lot. In the event such construction requires entry of or access over an adjoining Lot, the entry or access shall be only with the consent of the owner of the adjoining Lot, which consent may not be withheld without good cause.

5.14 Lakes; Water Retention Ponds. No Lot, Tract or Parcel shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the ARC and the South Florida Water Management District. No person other than the Declarant or the Community Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

5.15 Water Supply; Wells; Water Rights. No irrigation wells may be drilled on any property with the exception of the Declarant who shall be empowered to draw water from underground sources, including wells, lakes, ponds or other water management areas so long as same are permitted by local government authority. Conveyance of any Lot or Living Unit by Declarant does not include the right by such owner to develop or utilize any ground water or subsurface water resources within such Lot or Living Unit. If a separate utility company is formed, the Declarant or its successors or assigns shall be deemed the exclusive provider of irrigated waters within Palm Island Phase 2 and by the act of purchasing, all owners within Palm Island Phase 2 are deemed to have irrevocably consented to irrigation of common areas and lots with either treated effluent emanating from an approved treatment plant or from water from wells, lakes, ponds or other sources.

5.16 Surface Water Management Systems, Lakes, and Wet Retention Ponds. The Community Association shall be responsible for maintenance of all surface water management

systems, ditches, canals, lakes, and water retention ponds in the Community. All surface water management systems within Palm Island Phase 2 which are accepted by or constructed by the Community Association, excluding those areas (if any) normally maintained by the county, will be the ultimate responsibility of the Community Association, which may enter any lot, tract or common area and make whatever alterations, improvements or repairs that are deemed necessary to provide or restore property water management. The cost shall be an expense of the Community Association. Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any storm management systems, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including the Community Association.

(A) No structure of any kind (including docks) shall be constructed or erected in or on, nor shall an owner in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in, any portion of any water management area including, but not limited to lakes, ponds, swales, drainage ways, or wet retention ponds or areas intended for the accumulation of runoff waters, without the specific written permission of the Community Association.

(B) No owner or other person shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by Declarant, the Community Association, or any appropriate governmental agency that may reasonably require access. Nonexclusive easements therefor are hereby specifically reserved and created.

(C) No Lot, Tract or Parcel shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert or change the established water retention and drainage areas that have been or may be created without the prior written consent of the Community Association. No person other than the Declarant or the Community Association may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

(D) All Stormwater Management Systems, excluding those areas (if any) maintained by the County, will be the ultimate responsibility of the Community Association. The Community Association may enter any Lot, Tract, Parcel or Common Area and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper surface water management. The cost shall be an expense of the Community Association.

(E) Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any Stormwater Management Systems,

without first obtaining the necessary permits from all governmental agencies having jurisdiction, including South Florida Water Management District, and the Developer, its successors and assigns.

5.17 Sidewalks. Declarant may construct sidewalks in various locations within the Community. Driveway cuts and the construction of the driveways must be done in accordance with plans and specifications approved by Declarant.

5.18 Litter. In order to preserve the beauty of the Community, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept within the Community except in closed containers, dumpsters or other garbage collection facilities deemed suitable by the Board, or in proper-sized, closed plastic bags for curbside pickup as required. All containers, dumpsters and other garbage collection facilities shall be screened from view, kept in a clean condition, and without noxious or offensive odors emanating.

5.19 Walls, Fences, Hedges, etc. Unless approved in writing by Declarant, no wall, fence, hedge, or other divider shall be constructed or maintained on any adjoining Lot, it being the express intent that no fences, walls or dividers shall be permitted on any Lot which abuts lakes, preserve areas, streets or roads unless the Declarant so approves. Hedges, constructed of shrubbery or other suitable vegetation, may be approved but only in those situations where back to back lots or homesites so request and are approved. Any dispute as to height, length, type, design, composition or material shall be resolved by the Community Association's Board of Directors, whose decision shall be final. Approval may not be given for the construction of any wall, fence or hedge which materially interferes with the water view of any Lot or Living Unit.

5.20 Driveways and Parking Areas. Driveways and parking areas must be paved with concrete, paver blocks, or another hard surface approved by Declarant. Maintenance and repair of all driveways, parking and other paved parking facilities (except driveways serving only one single family home) shall be the responsibility of the Community Association (if located in the Common Areas). Driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

5.21 Color. No exterior colors on any structure shall be permitted that, in the judgment of the Architectural Review Committee or Declarant, would be inharmonious, discordant or incongruous with the Community. The initial exterior color and design of structures shall be as approved by Declarant, and any later changes must be approved by the Architectural Review Committee.

5.22 Underground Utilities. No lines or wires for communication or the transmission of current shall be constructed, or placed, or permitted to be placed within the Common Areas unless the same shall be protected cables; all such lines or wires which are not located in buildings shall be constructed or placed and maintained underground, unless otherwise approved in writing by Declarant. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

5.23 Temporary Factory-Built or Existing Structures. No structure of any kind of what is commonly known as "factory-built", "modular", or "mobile home" type construction shall be erected without the prior written permission of Declarant. No tent, trailer or temporary structure other than those used by Declarant for construction and sales activities shall be permitted unless its size, appearance and temporary location on the Lot have first been approved by the Architectural Review Committee.

5.24 Antennas and Flagpoles. No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or Tract or upon any improvements thereon, unless expressly approved in writing by the Architectural Review Committee, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the federal Telecommunications Act of 1996, as amended from time to time. The Community Association shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Community Association may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the Residence and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag only, may be permitted if its design and location are first approved by the Community Association. An approved flagpole shall not be used to mount an antenna. This provision is intended to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment. This Section 5.30 shall not apply to the Declarant.

5.25 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles.

Motor Vehicles; Parking. No motor vehicle (which by definition includes "motorcycles") shall be parked anywhere on the property except on an individual driveway or within a garage. No overnight parking shall be permitted on any street, road or road right-of-way nor in any parking area designated to serve as parking for members at any community park or amenity center. No trucks, or vehicles which are primarily used for commercial purposes, other than service vehicles temporarily present on business, nor any trailers, may be parked on community property, unless fully enclosed within a garage. Boats, boat trailers, trailers, semitrailers, house trailers, campers, travel trailers, mobile homes, motor homes, recreational vehicles, and the like, and any vehicles not in operable condition or validly licensed, may not be kept within the community unless fully enclosed within a garage. For the purpose of the foregoing sentence, the term

"kept" shall mean present for either a period of six (6) consecutive hours or overnight, whichever is less.

(A) **"Commercial Vehicles"** means all vehicles of every kind whatsoever, which from viewing the exterior of the commercial markings, signs, displays, equipment, inventory, apparatus or otherwise indicates a commercial use.

(B) **"Trucks"** means any motor vehicle which is designed or used principally for the carriage of goods and includes a motor vehicle to which has been added a side mounted cabinet box, a bed, a platform, a rack, or other equipment for the purpose of carrying goods other than the personal effects of the passengers, whether or not said cabinet box, bed, platform or rack has been enclosed by a cap, "topper" or other enclosure. A truck which contains a top mounted cabinet box and which is not designed or used principally for the carriage of goods would be considered a permitted vehicle. This shall specifically include "pickup trucks" and like vehicles but shall not include passenger "custom" and like vans (provided same are not "commercial" vehicles, as defined above) currently marketed under the following manufacturers name plates: Dodge Caravan, Chrysler Town & Country, Chevrolet Suburbans, Ford Explorers and all other vehicles of similar design and custom passenger vans. The term truck shall not include "Jeeps" if same do not have a cabinet box, platform, box or rack, as described above and if same are not "non-passenger" vehicles, as described below) such as Ford Expeditions, Chevrolet Blazers, Jeep Wagoneers, Jeep Cherokees and the like. The term "truck" shall also not include "hybrid SUV/pickup trucks" which have front and rear passenger seats, with a pickup bed, but do not have a cabinet box, platform box or rack.

(C) **"Boats"** means anything manufactured, designed, marketed or used as a craft for water flotation, capable of carrying one or more persons , or personal property.

(D) **"Campers"** means all vehicles, vehicle attachments, vehicle toppers, trailers or other enclosures or devices of any kind whatsoever, manufactured, designed, marketed or used for the purpose of camping, recreation or temporary housing of people or their personal property.

(E) **"Trailers"** means any vehicles or devices of any kind whatsoever which are manufactured, designed, marketed or used to be coupled to or drawn by a motor vehicle.

(F) **"Mobile Homes"** means any structure or device of any kind whatsoever, which is not self-propelled but which is transportable as a whole or in sections, which is manufactured, designed, marketed or used as a permanent dwelling.

(G) **“Motorcycle”** means any motor vehicle on two or three wheels propelled by an engine of ½ horsepower or more and shall include “ATV’s”, motorscooters, motorcycles, and mopeds powered by engines of ½ horsepower or more.

(H) **“Motor Homes” or “Recreational Vehicle”** means any vehicles which are self-propelled, built on a motor vehicle chassis, and which are primarily manufactured, designed, marketed or used to provide temporary living quarters for camping, recreational or travel use. Vehicles satisfying the foregoing criteria and which contain shower facilities, restroom facilities, and full cooking facilities shall be considered motor homes.

(I) No vehicle which is not currently licensed or cannot operate on its own power shall remain on the premises for more than twenty-four (24) hours. As used in this section, the term licensed shall mean that the vehicle displays, at all times, a license plate or license tag to which is affixed a sticker indicating that the vehicle is currently registered with the State of Florida or other state as the case may be. Any member of the Board, or any of the Board’s agents, who has reasonable cause to believe that a vehicle is unable to operate on its own power shall affix a sticker thereto notifying the owner of the vehicle that it is considered to be in violation of the Association Rules and Regulations. The owner of such vehicle shall have twenty-four (24) hours from the date and time affixed to the sticker to respond to the Board or its agent and demonstrate that the vehicle can operate on its own power. If the owner cannot so demonstrate or if the owner does not contact the Board, the vehicle may be towed at the owner’s expense.

(J) A speed limit of twenty (20) miles per hour applies through the Association roadway. Unnecessary vehicle noises are to be avoided within the grounds.

(K) Vehicle maintenance is not permitted within the community except in garages. For purposes of this section, vehicle maintenance shall include, but not be limited to, changing of oil and other fluids, engine maintenance or repair, body maintenance or repair. Cleaning the exterior and interior of the vehicle, waxing and checking fluid levels is permissible. Emergency repairs to vehicles such as changing a flat tire is allowed.

5.26 Outdoor Equipment. No above ground swimming pools are permitted. All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool and spa equipment and housing and sprinkler pumps and other such outdoor equipment must be underground, or placed in areas not readily visible from adjacent streets, or adequate landscaping must be used as screening around these facilities and maintained by the owner.

5.27 Clothes Drying Area. No outdoor clothes drying area shall be allowed unless its location and design are approved in writing by the Community Association.

5.28 Lighting. All exterior lighting of structures or landscaping shall be accomplished in accordance with plans approved in writing by Declarant. Except as may be initially installed or approved by Declarant, no spotlights, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon, or upon any Common Areas or any part thereof, without the approval of the Community Association. Other types of low intensity lighting, including normal and customary Christmas or other holiday decorations, which do not unreasonably disturb other owners or occupants of the Community, shall be allowed.

5.29 Air Conditioners. Wall or window air conditioning or heating units are not permitted.

5.30 Solar Collectors; Roof Vents. Solar collectors, roof vents and other installations on the roofs of structures, shall be permitted only at locations approved in writing by Declarant or the ARC, and may be required to be screened from view by landscaping or other suitable visual barrier.

5.31 Signs. No signs, banners, billboards or advertisements of any kind, including without limitation, those of Realtors, politicians, contractors or subcontractors, shall be erected or displayed anywhere within the Community, including in windows and on motor vehicles. The Board of Directors and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. If any sign is erected in violation of this provision, the Declarant or the Community Association shall have the right to enter the property on which the sign is located and remove it, as well as levy a fine of \$100.00/day for each day's violation and suspend the violator's use privileges of the community common areas. Said action to enter one's property and remove the sign, if necessary, shall be deemed expressly permitted by the property owner.

The foregoing shall not apply to signs, banners, flags, billboards or advertisements used or erected by Declarant, nor to entry and directional signs installed by Declarant, and signs required by law. The Declarant shall further be empowered to exempt Builders so designated by the Declarant from the provisions of this restriction.

5.32 Living Units; Residential Use. Each Living Unit shall be used as a single family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Living Unit, nor may the address or location of the Unit be publicly advertised as the location of any business or commercial activity. Notwithstanding however, neither the listing on any occupational license or the listing within any telephone directory of the Living Unit serving as a business address shall be dispositive of the property being used as for commercial or business purposes. Any owner may use his/her residence for incidental commercial purposes, so long as (1) property is not used for manufacturing, construction or installation of materials sold or advertised to be sold, whether retail or wholesale customers; (2) the nature of the business activity does not invite or permit suppliers, customers or vendors to visit or frequent the Living Unit, even on isolated occasions; (3) the business activity within the Living Unit is limited to telephone calls and written correspondence in and from the Living Unit; and (4) no employees or

contractors, other than those who regularly reside within the Living Unit may perform any work or other services to the business at the Living Unit. This restriction shall further not be construed to prohibit any owner from maintaining a personal or professional library, from keeping personal, business or professional records in his Living Unit, or from handling personal, business or professional telephone calls and written correspondence in and from his Living Unit. Such uses are expressly declared customarily incident to residential use.

THE DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE FINANCIAL FEASIBILITY OF RENTING UNITS OR THE INCOME TO BE DERIVED THEREFROM. ANY OWNER WHO DESIRES OR INTENDS TO RENT A LIVING UNIT MUST INDEPENDENTLY DETERMINE AND ASSUME RESPONSIBILITY FOR THE FEASIBILITY OF RENTING, AND SHOULD CONSULT HIS OR HER OWN ADVISOR WITH RESPECT TO THE TAX CONSEQUENCES AND ECONOMIC ADVANTAGE OF OWNERSHIP.

5.33 Pets and Animals. Not more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds may be kept in a Living Unit, subject to other reasonable regulation by the Community Association. All animals shall be leashed (if outdoors), or kept within the Living Unit and shall not be permitted to roam free. The Community Association may restrict the walking of pets to certain areas. Owners who walk their pets on Community Association Common Areas must clean up after their pets. Commercial activities involving pets, including without limitation, boarding, breeding, grooming or training, are not allowed. The ability to keep a pet is a privilege, not a right. If in the opinion of the Board, any pet becomes the source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from the Community. Pets may not be left unattended or leashed in yards or garages or on porches or lanais.

5.34 Docks. Certain lots in the Community may have canal frontage that provides access to other waterways. No dock, boat lift or other structure may be constructed upon or adjacent to any canal frontage lot without first obtaining the consent of the Community Association. Furthermore, no such dock, boat lift or other structure shall be constructed upon or adjacent to any canal frontage lot without first obtaining all necessary government permits and approvals. Said government permits and approvals may or may not be obtainable, and the Declarant and the Developer do not make any representation towards the likelihood of obtaining said permits or approvals.

5.35 Nuisances. Nothing may or shall be done which is, or may become, a source of unreasonable annoyance or nuisance to residents of the community. Any question with regard to the interpretation of this Section shall be decided by the Declarant so long as it owns any property in the Community and thereafter by the Community Association whose decision shall be final.

5.36 Correction of Health and Safety Hazards. Any Conditions of the physical property which are reasonably deemed by the Board of Directors to be an immediate hazard to the public health or safety may be corrected as an emergency matter by the Community Association, and the cost thereof shall be charged to the responsible owner or Community Association.

5.37 Assignment of Approval Rights. At such time as neither Declarant nor any subsequent developer hold any Lots or Living Units in the Community for sale in the ordinary course of business, or at such earlier time as Declarant may determine, all rights of Declarant to approve or disapprove any construction, alteration or other aspect of the appearance of the physical property in the Community shall automatically devolve upon and be deemed assigned to the ARC. At that same time all other approval powers of the Declarant shall automatically devolve upon and be assigned to the Board of Directors of the Community Association.

5.38 Central Irrigation System. The Developer may install a central irrigation system for which, if created, the owner of each lot shall be required to tap into the Association's irrigation system, the cost of each tap shall be an expense of the lot owner payable to the Declarant or its assigns. The Association shall have the right, in its sole discretion, to adopt a schedule of irrigation times and the duration of irrigation, subject to intervention by the South Florida Water Management District, or any other governmental authority whose regulatory authority may affect irrigation schedules. The components of the irrigation system serving each lot, including but not limited to, the tap into the main line, timers, and the switching devices shall be the responsibility of the Association.

5.39 Declarant's Exculpation. The Declarant or any builder may grant, withhold or deny its permission or approval in any instance where its permission or approval is permitted or required, without any liability of any nature or kind to any owner or Community Association or any other person for any reason whatsoever, and any permission or approval granted shall be binding upon all persons. The use restrictions of this Section 5 shall not apply to any property owned by a Developer prior to its conveyance to an owner other than a Developer.

6. ARCHITECTURAL AND AESTHETIC CONTROL

6.1 General. Except for the initial construction of Living Units, Common Area facilities, and related improvements by the Developer, no building, structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Living Unit be performed without the prior written approval of the ARC. In obtaining said written approval, an owner or any other person applying shall comply with all applicable requirements and procedures.

6.2 Architectural Review Committee. The architectural and aesthetic review and control functions of the Community Association shall be administered and performed by the ARC. The ARC shall consist of not less than three (3) individuals, who need not be members of the

Community Association. The term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as provided in Section 6 of the Bylaws.

6.3 Powers. The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits of South Florida Water Management District (Permit No. 36-00753-SS1), the County, and the Development Order, to:

(A) Propose the adoption, modification or amendment by the Board of Directors, of written Design Review Guidelines which shall set forth such things as design requirements, landscape materials, construction standards and colors and materials which the ARC finds acceptable. Said Guidelines shall be consistent with provisions of this Declaration, and shall not be effective until adopted by at least a majority of the whole Board of Directors at a meeting duly called and noticed. Notice of any adoption, modification or amendment of Design Review Guidelines, including a verbatim copy of the proposed modification or amendment thereof, shall be mailed to each owner at least thirty (30) days prior to the Board meeting at which such action is to occur;

(B) Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered, or any proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any structure, Lot or Common Area. The ARC may also require submission of samples of building materials or colors proposed for use on any Lot, and may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work;

(C) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any structure, Lot or Common Area. All decisions of the ARC shall be forwarded in writing to the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed;

(D) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Community Association, in cash or check, at the time the request is submitted to the ARC; or

(E) Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

6.4 Enforcement. Any decisions of the ARC shall be enforced by the Community Association.

6.5 Declarant's Rights. Notwithstanding the foregoing, the Declarant shall have the right, so long as any Developer is offering any property in Palm Island Phase 2 for sale in the ordinary course of business, to appoint all of the members of the Architectural Review Committee, or such lesser number as it may choose. During this time, the Declarant shall also have the power, in its sole discretion, to establish, amend, or revoke any and all Design Review Guidelines.

7. EASEMENTS. In addition to the easements created elsewhere herein, and those already of public record at the time this Declaration is recorded, easements are hereby provided for:

7.1 Utilities, Services and Support. Each Lot, Unit, Tract and Parcel and the Common Areas is and are hereby subjected to easements for public services, communications and telecommunications, and utilities purposes including, but not limited to, fire, police protection, and emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, electric and irrigation, lake maintenance, and cable television purposes. The utilities and governmental agencies having jurisdiction, and their employees and agents, shall have the right of access to any Lot, Unit, Tract, or Parcel or the Common Areas in furtherance of such easements. The easement areas on any Lot, whether or not shown on any plat, shall at all times be properly maintained by the owner, whether or not the utility or service company property maintains the easement area.

(A) There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Community, those easements described herein and those shown upon the recorded plat of the Community, and there are also reserved such easements and rights-of-way for any other purposes as Declarant in its sole discretion may in the future grant.

(B) Declarant hereby reserves the right, and the power, during a period of twenty-five (25) years from the date of recording this Declaration, to declare, grant, modify, create, vacate and record easements for pedestrian, vehicular (including construction traffic) easements for ingress and egress, drainage facilities, sanitary sewer lines, potable and irrigation water lines, storm sewers, gas and electric lines, telephone and other telecommunication lines, cable television lines, and such other service facilities as Declarant may deem necessary or desirable, along the various utility service routes, through, in, over and under all Lots, Tracts, Parcels and Common Areas, including over and across roads, streets and road rights-of-way, whether public or private, for the benefit of others, including, but not limited to, persons and lands adjoining, abutting or adjacent to this subdivision, regardless whether or not those lands or persons are formally annexed into this subdivision.

PAGE 3696
BOOK 03750

The purpose, duration and scope of any such easement shall be set forth in an instrument of public record. Said easements and the rights granted shall not be inconsistent with the then existing improvements on the applicable portions of the Lot, Parcel, Tract or Common Area, or materially change the rights of the owners. If any agreement is entered into by the Community Association for the exclusive provision of System services or other services to the Community, as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Community Association to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such agreement, to provide subsequent or alternate easements so as to insure the continuous accessibility and availability to the Community, of those services.

7.2 Cable T.V. and Broadband Telecommunications System. The Declarant hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to construct or install over, through, under, across and upon any portion of the Community for the use and benefit of the owner and that committed or authorized guests, invitees, tenants and family members, one (1) or more cable and/or internet access telecommunications receiving and distribution systems and electronic surveillance systems, internet access, emergency, medical and surveillance monitoring, or alarm systems (all or any part of which shall be referred herein collectively as the "System"), the exact description, location and nature of which may have not yet been fixed or determined. Declarant shall have and hereby reserves to itself and its designees, successors, assignees and licensees, a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent, size and location of which over, across, upon and through the Community shall be determined solely by Declarant, its successors, designees and assigns) together with a perpetual and exclusive right and privilege of:

- (A) Unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute services of the System including, without limitation, television and radio signals, electronic banking, surveillance, fire, police and emergency medical protection.
- (B) Transmitting the facilities and equipment of which, shall be owned and exclusively controlled by Declarant, its successors and assigns or its designees.
- (C) Each Lot and Living Unit is subject to a permanent easement in favor of adjoining or adjacent Lots and Living Units for lateral and subjacent support.

(D) Each Lot and Living Unit is subject to a permanent easement in favor of the Community Association to remove and/or destroy invasive exotic vegetation species.

7.3 Contracts With Service Providers. Declarant, or the Community Association, or both, shall have the right to enter into Contracts for the exclusive provision of the System, as Declarant and the Community Association shall deem, in their sole respective discretion, to be in the best interest of the Community. The Declarant or its designee may receive valuable consideration and compensation from the service provider for the grant of the exclusive right to provide System services. As used herein, the term "contractual designee" means the service provider with which Declarant or the Community Association contracts for the furnishing of System services. Should Declarant enter into a contract or contracts pursuant to this Section 7.3, the Community Association shall, to the extent the Declarant assigns its rights and obligations under such contract or contracts, accept such assignment, and is bound by all the terms and provisions of the contract or contracts. Any such contract for cable television or other similar services shall provide, and if it does not, shall be deemed to provide, that during any period of occupancy of a living unit by a hearing impaired or legally blind unit owner who does not occupy the living unit with a non-hearing impaired or sighted person, said owner may refuse or discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such living units, the owners shall not be required to pay any charge related to such service.

7.4 Collection of "System" Assessments by Community Association. Every lot or living unit to which the service System is available for many contractual designee(s) shall be subject to a System service assessment, payable per lot or living unit for System services, including, without limitation, cable television services. The Community Association shall bill the appropriate System service assessment to each lot or living unit along with other assessments for common expenses, which may be due and payable at the same time, and shall collect same and remit payment to the contractual designee(s) providing the System services.

7.5 Construction and Maintenance. Declarant (including its designees and contractors) shall have the right to enter any part of the Community and take any action reasonably necessary or convenient for the purpose of completing the construction or sales thereof, and for maintenance purposes and the completion of warranty work, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the Living Units or Lots by owners.

8. COMMON AREAS; CONVEYANCE, USE AND MAINTENANCE.

8.1 Designation. Except for the Stormwater Management System, Declarant shall have the right, and the power, in its sole discretion, to determine which parts of the Community shall be Common Areas, and to convey, lease or grant a license or other right to use real property within the Community, to Palm Island Phase 2 or to the Association as Common Areas.

(A) Any such conveyance, lease or grant of license or use right to the Community Association may be exclusive or non-exclusive, so that persons or entities other than the Community Association may or may not have a right, power, duty, or privilege with respect to all or any part of any real property so conveyed, leased, licensed or the use of which has been granted. The Community Association must accept from Declarant, any such conveyance, lease, grant of license or grant of use right. The Community Association shall not accept, from any person other than Declarant, a conveyance, lease, grant or license or grant of use right except upon the prior written approval of the Declarant.

(B) Prior to the conveyance of Common Areas by Declarant to the Community Association, the Community Association shall have the right to charge reasonable fees, rents, or other charges for the use of the property; however, rents, fees and other charges required to be paid to Declarant under leases, grants, licenses or contracts creating use rights to third parties shall continue to be paid.

8.2 Conveyance and Use. Declarant will initially hold the legal title to the Common Areas, but agrees to convey the Common Areas to the Community Association. Not later than sixty (60) days after the date when members first elect a majority of the Board of Directors, the Declarant shall convey the Common Areas to the Community Association by special warranty deed, and the Community Association shall accept such conveyance, subject to taxes for the year of conveyance (if any) and to mortgages, restrictions, limitation, conditions, reservation and easements of record. The Declarant may, however, convey title at any earlier time the Declarant chooses. Declarant shall have the right from time to time to enter upon the Common Areas during periods of construction upon adjacent property and for the purpose of construction of any facilities on the Common Areas that Declarant elects to build.

(A) Any real property conveyed, leased, or the use of which has been granted by Declarant or any third party to the Community Association as Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of members and their guests, tenants and invitees.

(B) Declarant may convey property to the Community Association in either an improved or an unimproved condition, with or without any specific restrictions on its use, and the Community Association must accept such property. The Community Association shall not accept conveyance of real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any property in Palm Island Phase 2.

THE COMMUNITY ASSOCIATION AND THE NON-DECLARANT MEMBERS ARE OBLIGATED TO ACCEPT THE COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE COMMUNITY ASSOCIATION BY THE DECLARANT. THE DECLARANT AND ANY DEVELOPER MAKE NO REPRESENTATIONS, AND TO THE FULLEST EXTENT PERMITTED BY LAW DISCLAIM ALL WARRANTIES EXPRESS OR IMPLIED, IN LAW OR IN FACT, WITH RESPECT THERETO, INCLUDING WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND REPRESENTATIONS OR WARRANTIES REGARDING THE CONSTRUCTION, DESIGN, ADEQUACY OF SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, FURNITURE OR EQUIPMENT WHICH WILL BE USED IN, THE COMMON AREAS AND FACILITIES. AT THE TIME OF CONVEYANCE, DECLARANT SHALL TRANSFER OR ASSIGN TO THE COMMUNITY ASSOCIATION, WITHOUT RECOURSE, ALL EXISTING WARRANTIES IT RECEIVED FROM MANUFACTURERS AND SUPPLIERS RELATING TO ANY OF THE FACILITIES WHICH ARE ASSIGNABLE.

8.3 Maintenance and Alteration. The Community Association is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas is responsible for, in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times. After control of the Community Association has been turned over to the members, there shall be no material alterations of or substantial additions to the Community Common Areas costing more than \$15,000, in the aggregate during any fiscal year unless first approved by a majority of the voting interests of the members of the Community Association. However, if work that is reasonably necessary to meet the Community Association's obligations under the first sentence of this Section 8.4 also constitutes a material alteration or substantial addition, no prior membership approval is required.

8.4 Partition, Subdivision and Encumbrance. Except as hereinafter provided, after legal title to the Common Areas, or any portion thereof, becomes vested in the Community Association, the Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than two-thirds (2/3rds) of the voting interests. The foregoing shall not be construed to limit the authority of the Declarant or the Community Association through its Board of Directors to grant such easements over, across and through the Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the members; nor is it intended to interfere with the transfer of title to the Common Areas as contemplated in Section 8.7. Nothing herein shall be construed to prohibit judicial partition of any Lot, Unit, Tract or Parcel owned in co-tenancy.

8.5 Community Association's Rights and Powers. No Common Areas shall be used in violation of any rule or regulation or other requirement of the Community Association established pursuant to the provisions of this Declaration or the Bylaws.

8.6 Expansion or Modification of Common Areas. Additions or modifications to the Common Area as may be made if not inconsistent with the Development Order and any amendments thereto. Neither the Declarant nor any Developer shall be obligated, however, to make any additions or modifications. The Declarant further reserves the right to change the configuration or legal description of the Common Areas due to changes in development plans.

9. ASSESSMENTS.

9.1 Creation of Lien. Each owner, by acceptance of a deed to a Lot or Living Unit, covenants and agrees to pay to the Community Association:

(A) Annual Assessments.

(B) Special Assessments.

(C) Service Assessments and other fees or charges (including fines) imposed against one or more Lots, Living Units, Tracts or Parcels, as provided for elsewhere in this Declaration, and in the Bylaws of the Community Association.

(D) System Assessments (e.g. Broadband Telecommunications, internet access, security, Bulk Service Cable Television).

(E) Irrigation, water utility and lawn maintenance assessments, if any.

(F) Initial Capital Assessments, Resale Capital Assessments and Community Irrigation Fees.

(G) Except as otherwise provided in Section 13.2 below as to certain mortgagees, and except as provided in Section 9.2 below as to the Declarant and Developers, no owner may avoid or escape liability for the assessments or charges provided for herein by non-use or abandonment of his Lot, Living Unit, Tract, Parcel, or the Common Areas, or otherwise.

(H) Assessments shall be fixed, levied, established and collected as provided herein, and in Section 7 of the Bylaws.

(I) The owner of each Lot or Living Unit regardless of how title was acquired, is liable for all assessments coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 13.2 below, whenever title to a Lot or Living Unit is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments unpaid at the time of the transfer, regardless of when incurred, without prejudice to any right the new

owner may have to recover from the previous owner any amounts paid by the new owner.

(J) No land shall be subject to assessment by the Community Association if it is a Common Area, or it is owned by or dedicated to the County or other governmental agency, and used for a public purpose. Only Lots and Living Units shall be subject to assessment.

9.2 Declarant's Assessments. The assessment and lien provisions of this Section 9 shall not apply to any Lot, Living Unit, Tract or Parcel owned by Declarant or by any Developer succeeding to all or a portion of Declarant's rights herein, whether by assignment, in reorganization, or by other arrangement. Should Declarant's lender, its successors or assignees, acquire title to any lot, living unit tract, or parcel owned by Declarant, as a result of a foreclosure or deed in lieu of foreclosure, the assessment and lien provisions of this Section 9 shall not apply. Exception: the obligation and covenant to pay assessments as provided in this Section 9 shall apply to a Living Unit or Lot owned by the Declarant or a Developer upon the occurrence of any one of the following events:

- (A) Conveyance of the Lot or Living Unit to an owner other than a Developer; or
- (B) Construction of a Living Unit has been completed, a certificate of occupancy or the equivalent approval by an appropriate local governmental agency has been issued, and the Living Unit is occupied and used as a residence; or
- (C) Declarant or a builder executes and records a written instrument subjecting a Lot, Living Unit, Tract or Parcel to the assessment and lien provisions of this Section 9.

During the period that Declarant membership exists, the Declarant covenants to subsidize the general operating expenses of the Community Association, by contributing the difference, if any, between net operating expenses and all income of the Community Association including but not limited to assessment income from members other than the Declarant. Declarant, however, shall not be obligated to contribute to or pay for funding any reserves for capital expenditures or deferred maintenance, capital improvement fund, or special assessment. Declarant's rights and obligations hereunder may be assigned in whole or in part to any builder.

9.3 Purposes of Assessments:

- (A) To promote the recreation, health, safety, and welfare of the owners and residents of the Community;
- (B) To provide maintenance of individual owner lots as set forth in Article V of this Declaration.

(C) For the improvement, maintenance, protection and operation of the Community Association and Community Common Areas, the Community Association equipment and facilities, and the Stormwater Management System; and to establish and maintain adequate repair and replacement reserves;

(D) To provide utility, cable television, and other systems of telecommunications services by bulk contract with third parties;

(E) Where deemed desirable by the Board of Directors, to provide services of general benefit to the owners and residents either on a community-wide basis or otherwise, including without limitation, cable television, transportation, security or other services;

(F) To pay the operating expenses of the Community Association; and

(G) For such other purposes and uses as are authorized by the Governing Documents as amended from time to time.

9.4 Imposition of Assessments. Upon the closing of the initial sale of each Lot or Living Unit to a purchaser other than Declarant or a developer, and on the first day of each fiscal year thereafter, the assessment shall be assessed against each Lot or Living Unit. The assessment for the year (which may be payable annually or in quarterly installments at the discretion of the Board) in which the initial sale occurred shall be prorated to the actual date of closing.

9.5 Amount of Assessments. The amount of the assessment based on the annual budget shall be the same for each Lot or Living Unit subject to assessment.

9.6 Special Assessments. Any special assessments levied by the Community Association's Board of Directors shall be assessed equally against all Lots and Living Units, unless the assessment or portion thereof is intended specifically for the direct benefit of one or more classes of members, in which case it shall be assessed against only the classes of members directly benefitted, in accordance with the apportionment described in Section 9.5 above for the apportionment of annual assessments. Under no circumstances will the Declarant or any Developer have any obligation to pay special assessments.

9.7 Charges. Any charge by the Community Association authorized by law or by the Governing Documents to be imposed on less than all of the Lots or Living Units shall not be deemed an assessment. Payment may be enforced as provided in Section 9.9 and 9.10 below.

9.8 System Service Assessment. Assessment for System services, as described under Section 7.3 and 7.4 above, may be levied by the Board of Directors. Given their nature and purpose, such assessments may be levied on a non-uniform basis, notwithstanding the provisions of Section 9.5 above, and shall still be deemed "assessments". For example, if the Community Association

enters into a Community wide bulk contract for cable television services to be provided to all living units, but one (1) or more living units is owned or occupied by a vision impaired person who, by law, cannot be required to pay for such cable television services, the cost of the cable television service shall be shared equally by all other living units, and the amount each living unit pays shall be deemed an "assessment" for all purposes hereunder.

9.9 Lien. The Community Association has a lien on each Lot and Living Unit for any unpaid past due assessments and charges, together with interest, late payment penalties and reasonable attorney's fees incurred by the Community Association in enforcing this lien. The lien relates back to the date of recording this Declaration in the Public Records of Lee, Florida; and is perfected by recording a Claim of Lien in the public records of the County, which Claim of Lien shall state the legal description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Community Association. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments and charges, interest, costs and attorneys fees which are due and which may accrue or come due after the recording of the Claim of Lien and up to the issuance of a clerk's deed. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

9.10 Foreclosure of Lien. Unless a different method is required by Florida law, as amended from time to time, the Community Association's lien may be foreclosed by the procedures and in the manner provided in Section 718.116 of the Florida Condominium Act, as it may be amended from time to time, for the foreclosure of a lien upon a condominium parcel for unpaid assessments. The Community Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, it shall include interest on the assessments as above provided and a reasonable attorneys fee to be fixed by the Court, together with the costs of the action, and the prevailing party shall be entitled to recover reasonable attorneys fees in connection with any appeal of such action.

9.11 Priority of Lien. Unless otherwise provided by Florida law as amended from time to time, the Community Association's lien for unpaid assessments and charges shall have the same priority with respect to first mortgagees holding mortgages on Lots and Living Units the lien of a condominium association for unpaid assessments under Section 718.116, Florida Statutes, as amended from time to time, has with respect to first mortgagees or other acquirers of title through the first mortgage. The Community Association's lien shall be superior to, and take priority over, all other mortgages regardless of when recorded. Any lease of a Living Unit shall be subordinate and inferior to any Claim of Lien of the Community Association, regardless of when the lease was executed.

9.12 Initial Capital Assessment. The Community Association has established an Initial Capital Assessment Fund. The purpose of the Initial Capital Assessment Fund is to assure that the

Community Association will have cash available to meet its obligations, unforeseen expenditures, or to acquire additional property, equipment or services deemed necessary or desirable. Amounts paid into the Initial Capital Assessment Fund are not to be considered an advanced payment of assessments. The Initial Capital Assessment may be used by the Developer to reduce or pay for Community Association expenses. There shall be collected from each Owner that purchases a Living Unit from the Developer at the time of conveyance of each Living Unit an amount equal to \$750 (or such greater amount as determined by the Developer from time to time). In addition, there shall be collected from each Builder that purchases a Parcel from the Developer, at the time of conveyance of each Parcel an amount as determined by the Developer for each Living Unit which Developer determines can be built on such Parcel. At the time such Builder conveys a Living Unit to an Owner, such Owner shall pay such Builder an amount equal to \$750 for such Living Unit in order to compensate the Builder for the amount advanced by the Builder to the Developer, as well as Builder's carrying cost and opportunity cost of capital on the amount so advanced by the Builder to the Developer. Notwithstanding anything herein to the contrary, Developer shall have the option to waive the Initial Capital Assessment.

9.13 Resale Capital Assessment Fund. In addition to the Working Capital Fund, the Association may levy a Resale Capital Assessment upon the transferee in any conveyance of a Living Unit by a member. The amount of the Resale Capital Assessment shall be initially established as Five Hundred and no/100 Dollars (\$500.00). The amount and the manner of payment of the Resale Capital Assessment may be amended by resolution of the Board from time to time; provided, however, all Lots or Living Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Assessment shall be the legal obligation of the transferee. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Lot or Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a Trustee or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. Resale Capital Assessments shall be considered an assessment and can be collected as such in accordance with the provisions under this Article 9. The purpose of this Resale Capital Assessment is to assure that the Association will have cash available to meet its obligations, unforeseen expenditures, or to acquire additional property, equipment or services deemed necessary or desirable. The Resale Capital Assessment may be used in any way and at any time whatsoever in the same manner as upon which other assessments are used as a revenue to meet any operating or capital expenditures whether known or unknown at any time in the Association's operation, including any period during which the Developer controls a majority of the seats on the Board of Directors for the Association. Amounts paid into the Resale Capital Assessment Fund are not to be considered an advanced payment of assessments. The Resale Capital Assessment Fund may be used by the Developer to reduce the Community Common Assessment. Notwithstanding

anything herein to the contrary, Developer shall have the option to waive assessments to the Resale Capital Assessment Fund.

9.14 Community Irrigation Fee. There shall be collected from each Owner and from each Builder that purchases a Lot or Living Unit from the Developer at the time of conveyance of each Living Unit, a Community Irrigation Fee as determined by the Developer from time to time. The purpose of the Community Irrigation Fee is to compensate the Developer for the capital costs expended by the Developer and the carrying costs and opportunity cost of capital on the amounts so advanced by the Developer in providing irrigation to the Living Unit.

9.15 Ownership. Assessments and charges collected by or on behalf of the Community Association become Community Association property; no owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Lot or Living Unit. No owner has the right to withdraw or receive distribution of his share of the common surplus (including reserves), except as otherwise provided by law.

10. COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION. The Community Association has the power to enforce all covenants, conditions, restrictions, rules and agreements applicable to any real property within Palm Island Phase 2, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Common Areas.

10.1 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Community Association, shall apply to all owners, as well as to any other person occupying any Living Unit. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Declarant, a Developer, or the Community Association of the power to enforce these provisions. Each owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

10.2 Litigation. Each member and the member's tenants, guests, and invitees, and the Community Association, are governed by and must comply with Chapter 617 and 720, Florida Statutes, the Governing Documents and rules of the Community Association. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and Community Association rules may be brought by the Declarant, any owner, or the Community Association against:

(A) the Community Association;

(B) a member;

(C) any occupant of a Living Unit;

(D) any Director or officer of the Community Association who willfully and knowingly fails to comply with these provisions; and.

(E) any tenants, guests, or invitees occupying a parcel or using the common areas.

10.3 Damages and Attorney's Fees. Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents or the rules. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of the Governing Documents or rules, or to enjoin violation or breach of any provision hereof, or recover damages on account of such breach, against any person shall be entitled to recover reasonable attorney's fees and court costs (including those resulting from appellate proceedings).

10.4 Non-Liability of Declarant. The Declarant shall not be liable or responsible for any violation of the Governing Documents or rules by any person other than itself, and its officers, agents and employees.

10.5 Fines.

(A) In addition to the means of enforcement provided elsewhere herein, the Community Association shall have the right to assess fines against a unit, a unit owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, these Bylaws, and Rules and Regulations of the Community Association regarding the use of units, common elements, or Community Association property. Each such violator and the unit owner shall be given written notice of the alleged violation and the opportunity for a hearing before the Board of Directors with at least fourteen (14) days notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules which have been allegedly violated; and a short and plain statement of the matters asserted by the Community Association. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Community Association. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which such violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which fines have been

levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

(B) Collection of fines. A fine shall be treated as a special charge due to the Community Association ten (10) days after written notice from the Community Association to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the subject of a late payment fee.

(C) Application. All monies received from fines shall become part of the common surplus.

(D) Nonexclusive remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Community Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Community Association may otherwise be entitled to recover at law from such owner.

10.6 Suspension of Use Rights. To the extent lawful, the Board of Directors may suspend the right of any unit owner, or his guests, tenants, or family members, to use Common Areas during any period of time the owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of Community Association rules and regulations by the owner, his family, guests or tenants. No such suspension shall affect the unit owner's right of access to his unit.

(A) A suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Community Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, which may be by secret ballot, does not approve a proposed suspension, it may not be imposed.

(B) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the Governing Documents.

(C) Suspension of common area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

10.7 Stormwater Management System. The beneficiaries of the Stormwater Management System shall have the right to enforce the provisions of the Governing Documents so that the drainage system, easements and rights-of-way will be continuously maintained.

11. INSURANCE: RECONSTRUCTION AFTER CASUALTY.

11.1 Duty to Insure, and to Reconstruct or Clean Up. Each owner shall at all times maintain adequate property insurance on the Living Units and structures containing Living Units, and all other insurable improvements, in amounts equal to the replacement cost thereof. If any Living Unit or other improvements located on any Lot, Tract or Parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner shall:

(A) Cause repair or replacement to be commenced within six (6) months after the date such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must be approved in writing by the Architectural Review Committee. Unless changes are approved by the Architectural Review Committee, the owner must restore the damaged property to substantially the same configuration as existed before the casualty, and structurally and architecturally compatible with any adjoining improvements which share a party wall; or

(B) Promptly cause all debris, damaged improvements, and other unsightly materials to be removed from the site.

11.2 Failure to Comply. If any owner fails to comply with Section 11.1 above within the time periods provided, the Community Association shall be deemed to have been granted the right by the owner as his or its attorney-in-fact, to either commence and complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements; or to remove the damaged improvements completely. If the Community Association exercises the rights afforded to it by this Section, the owner shall be deemed to have assigned to the Community Association any right he or it may have to insurance proceeds that may be available because of the damage or destruction. The Community Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the Lot or Living Unit to secure payment.

11.3 Flood Insurance. The Community Association may, in the discretion of the Board, maintain flood insurance to cover buildings and any other property in designated hazard areas, if any, up to the full insurable value or maximum coverage available.

11.4 Property Insurance. The Community Association shall maintain replacement cost property insurance coverage on all structures, improvements, and fixtures which are part of the Common Areas.

11.5 Liability Insurance. The Community Association shall maintain adequate public liability insurance coverage for all Common Areas.

11.6 Bonding. The Community Association shall maintain adequate fidelity bond coverage for all individuals having control of or access to Community Association funds.

11.7 Community Association's Right of Entry. For the purpose of performing the duties authorized by this Section 11, the Community Association, through its duly authorized agents and employees, shall have the right to enter upon any Living Unit or Lot at reasonable hours and perform such duties.

12. RIGHTS OF DECLARANT AND DEVELOPERS. In addition to those provided elsewhere in the Governing Documents, the Declarant and each Developer shall have the following rights and privileges:

12.1 Sales Activity. While one or more Lots or Living Units are for sale in the ordinary course of business, the Declarant and each Developer shall have the right to use those Lots or Living Units and the Common Areas (including, but not limited to, all recreational facilities) to establish, modify, maintain and utilize, as it and they deem appropriate, model Living Units, sales offices, or other offices for use in selling or providing warranty services to any part of the Community including temporary trailers or other structures used for sales marketing, or construction purposes. No owner may interfere with, or do anything detrimental to, the Declarant's sales efforts. Without limiting the generality of the foregoing, the Declarant and its designees may show model Living Units or the Common Areas to prospective purchasers or tenants, advertise, erect signs, flags or banners, conduct promotional activities and special events, and take all other action helpful for sales, leases and promotion of Palm Island Phase 2.

12.2 Assignment of Rights to Successor Developer and to Builders so Designated by the Declarant. Except as otherwise specifically provided herein, Declarant reserves the right and the power to delegate or assign, either exclusively or non-exclusively, partially or completely, to any person or entity, any or all of its development rights, powers, duties, privileges created in or provided for by this Declaration. Such assignment shall not in any way lessen the Declarant's rights with respect to property not subject to such assignment.

12.3 Security; Non-Liability of Declarant and Community Association. The Declarant reserves the right as long as it owns any Lot or Living Unit within the Community for sale in the ordinary course of business, to determine the level (if any) of security services to be provided, or to engage or discontinue any such services. The Declarant and the Community Association shall not be liable if security services are not provided.

ALL PERSONS USING OR OCCUPYING ANY PORTION OF THE COMMUNITY ARE RESPONSIBLE FOR THEIR OWN SECURITY AND THE SECURITY OF THEIR OWN PROPERTY.

NEITHER THE COMMUNITY ASSOCIATION, THE DECLARANT OR ANY BUILDER ARE INSURERS OR GUARANTORS OF SECURITY FOR PERSONS OR PROPERTY WITHIN THE COMMUNITY.

NEITHER THE COMMUNITY ASSOCIATION, THE DECLARANT NOR THE DEVELOPER, SHALL BE LIABLE IN ANY WAY ON ACCOUNT OF LOSS, DAMAGE OR INJURY RESULTING FROM LACK OF SECURITY, OR THE LACK OF EFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN. THE DECLARANT AND DEVELOPER MAKE NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLY, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE PROTECTION SYSTEM AND/OR BURGLAR ALARM SYSTEMS, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED, OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY.

12.4 Miscellaneous.

(A) Declarant shall have the right and the power to regulate and control the external design and appearance of all Common Areas in such a manner as to:

(1) Promote a quality environment which will preserve the value of the Lots and Living Units; and

(2) Foster the attractiveness and functional utility of the Community as a place to live and play, including a harmonious relationship among structure, vegetation and topography.

(B) Any use of Common Areas other than the uses intended pursuant to this Declaration shall be subject to the prior written approval of the Declarant so long as it owns any land in Palm Island Phase 2 which it holds for the purpose of development.

(C) The Declarant has the right to replat unsold portions of the Properties without the joinder or consent of any owner.

(D) The Developer has the right to receive a refund of any and all deposits or other payments made to utility companies or governmental authorities which are refunded in the course of development, even if such refunds occur after the sale of the last Lot or Living Unit in Palm Island Phase 2 to an owner other than the Developer.

12.5 Additions or Withdrawals of Property. The Declarant has the right and the power, but neither the duty nor the obligation, to record instruments bringing additional lands within the Community and subjecting those lands to the protective covenants, conditions, restrictions or provisions provided for in this Declaration. If additional lands are annexed and made a part of Palm Island Phase 2, such additional lands to be annexed may or may not be adjacent to Palm Island Phase 2. Except for applicable government approvals, if any, no consent to such annexation shall be required from any party, including, but not limited to, the Community Association, the owners or members of the Community Association. Such lands, if any, may be brought within the provisions and the applicability of this Declaration by recording an Amendment to the Declaration in the public records. The Declarant also reserves the right in its sole discretion to withdraw property from submission to this Declaration, except that the Declarant shall not be permitted to withdraw any property after it has been conveyed to an owner other than the Declarant, without the joinder of the owner.

12.6 Management Contract. Declarant shall have the right and the power to enter into professional management contracts on behalf of the Community Association before turnover of control of the Community Association as described in Section 8 of the Bylaws.

12.7 Appointment of Directors. As further provided in the Bylaws, the Developer shall have the right to appoint all of the Directors of the Community Association until the Turnover Meeting, and shall have the right to appoint at least one Director until the time specified in Section 4.2 of the Bylaws.

12.8 Declarant's Inaction. Neither the execution and recordation of this Declaration, nor the creation of any Community Association or other entity, nor the recordation of any other instrument subjecting any land in Palm Island Phase 2 to protective covenants, conditions or restrictions or other provisions, shall obligate or require:

(A) Declarant to grant any right, power, duty or privilege of any nature or kind to the Community Association or to any other entity; or

(B) Declarant, the Community Association or any other entity, to perform any act permitted by this Declaration or by any other recorded instrument, or to enforce any covenant, condition, restriction or other provision hereof or thereof, or to do anything which it does not, in its sole discretion, elect to do.

13. RIGHTS OF MORTGAGEES.

13.1 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice.

13.2 Mortgage Foreclosure. Except as otherwise provided by Florida law as amended from time to time, if an Institutional Mortgagee acquires title to a Lot, Living Unit, Tract or Parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, such mortgagee shall not be liable for the Community Association assessments or charges attributable to the Lot, Living Unit, Tract or Parcel, or chargeable to the former owner, which came due prior to the mortgagee's acquisition of title. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all owners, including such acquirer and his successors and assigns. No owner or acquirer of title to a Lot, Living Unit, Tract or Parcel by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

13.3 Right to Inspect Documents and Books. The Community Association shall make available to Institutional Mortgagees requesting same the current Governing Documents and Rules and Regulations of the Community Association and financial statements of the Community Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the mortgagee requesting same.

13.4 Financial Statement. Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Community Association for the immediately preceding fiscal year.

13.5 Lender's Notices. Upon written request to the Community Association, any Institutional Mortgagee shall be entitled to timely written notice of:

(A) Any delinquency of more than sixty (60) days in the payment of assessments or charges owed by the owner of any Lot, Living Unit, Tract or Parcel on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Community Association. An increase in coverage, or a change of insurer does not require notice under this Paragraph.

(C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

14. DURATION OF COVENANTS; AMENDMENT.

14.1 Duration of Covenants. The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the County, the Community Association, the Declarant and any owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Declaration in the Public Records of Lee County, Florida. Upon the expiration of said initial period, this

Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

14.2 Termination. This Declaration may be terminated at any time after the initial period if not less than eighty percent (80 %) of the voting interests of all classes of the members of the Community Association vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the members vote to terminate this Declaration, the President and Secretary of the Community Association shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Community Association at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

14.3 Amendments. This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4th) of the voting interests.

14.4 Procedure. Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

14.5 Vote Required. Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least sixty-six and two-thirds (66-2/3rds) of the voting members present, in person or by proxy and voting, provided that notice of the text of each proposed amendment was sent to the members with notice of the meeting.

14.6 Certificate; Recording. A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Community Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The certificate must set forth the location in the public records of the County where this Declaration was originally recorded.

14.7 Proviso. Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Community Association's responsibilities for the Stormwater

Management System, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management System must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit. If the surface water management system is administered by the Community Association, any such amendment shall likewise require the consent of the Community Association.

14.8 Exceptions. Wherever in this Declaration the consent, approval, or affirmative vote of two-thirds (2/3rds) or more of the voting interests of the members is required to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action. This provision does not apply to amendments by the Declarant or a Developer.

14.9 Amendment of Provision Relating to Developer. As long as a Developer holds any Lot or Living Unit for sale in the ordinary course of business, no amendment shall have the effect of changing any provision relating specifically to the Declarant or a Developer without their written consent.

14.10 Amendment by Declarant. In addition to any other right of amendment or modification provided for in this Declaration, in which case those provisions shall apply, Declarant, may, in its sole discretion, by an instrument filed of record, unilaterally modify, enlarge, amend, waive or add to the covenants, conditions, restrictions and other provisions of this Declaration, and any recorded exhibit hereto or annex additional property into this Declaration. This right shall expire at such time as no Developer holds any property for sale in the ordinary course of business within the Community.

14.11 Limitations. No amendment to any of the Governing Documents shall be effective to change any member's voting rights as set forth in Section 2.1 of the Bylaws, or the provisions of Sections 9.5 or 9.6 above, unless all members affected first consent in writing to said amendment.

15. GENERAL AND PROCEDURAL PROVISIONS.

15.1 Other Documents. Declarant and the Community Association shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents; this Declaration and its provisions shall prevail in all events of conflict.

15.2 Severability. If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

15.3 Merger or Consolidation of Community Associations. Upon a merger or consolidation of the Community Association with another corporation as provided by law, the Community Association's rights, obligations and property may, by operation of law, be transferred to another surviving or consolidated association, alternatively, remain the rights, obligations and property of the Community Association as the surviving corporation. The surviving or consolidated corporation may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme.

15.4 Dissolution. If the Community Association is dissolved other than by a merger or consolidation as provided for above, each Lot, Living Unit, Tract and Parcel shall continue to be subject to the assessments provided for in Section 9, and each owner shall continue to be personally obligated to Declarant or the successor or assigns of the Community Association (as the case may be) for such assessment to the extent that such assessments are required to enable Declarant or any such successors or assigns acquiring any real property previously owned by the Community Association to properly maintain, operate and preserve it.

15.5 Gender; Number. Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

15.6 Notices.

(A) To Declarant. Notices to Declarant as may be required herein shall be in writing and delivered or mailed to Declarant at its principal place of business as shown by the records of the Secretary of State, or at any other location designated by Declarant.

(B) To the Community Association. Notices to the Community Association shall be in writing and delivered or mailed to the Community Association at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Community Association.

(C) To Owners. Notices to any owner as may be required herein shall be in writing and shall be delivered or mailed to the owner at his last known address, or at the address shown on the deed recorded in the public records of the County.

15.7 Construction. The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein, including the premises.

15.8 Captions, Headings and Titles. Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings or titles define, limit, or in any way affect the subject matter, content or interpretation of the terms and provisions of the Governing Documents.

15.9 Interpretation. The Board of Directors of the Community Association shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Community Association legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the validity of such interpretation.

15.10 Applicable Statutes. The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, as they exist on the date of recording this Declaration.

Rights Limited to Express Terms of Governing Documents. Every member of the Community Association acknowledges that his or her rights, duties or obligations are limited to the express terms of the Declaration, Articles of Incorporation, Bylaws and the Rules and Regulations (Governing Documents). Every prospective member should make his decision to purchase within Palm Island Phase 2 based upon these representations as set out in the Governing Documents which contain the entire understanding at the parties and no prior or present agreements or representation shall be binding upon the Declarant unless included in the Governing Documents.

Oral representations cannot be relied upon as correctly stating the representations of the Developer. For correct representations, reference should be made to Governing Documents.

IN WITNESS WHEREOF, U.S. Home Corporation, a Delaware corporation, hereby executes this Declaration. BOOK 03750 PAGE 3717

Witnesses:

U.S. HOME CORPORATION
a Delaware corporation

Barbara Atherton
Print name: BARBARA ATHERTON

Russell Smith
Print name: Russell Smith

By: _____
Printed: Darin McNursey
Title: Division President

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was executed before me this 3rd day of October, 2002, by Darin McNursey, Div. President of U.S. Home Corporation, on behalf of the corporation. He/She is personally known to me or did produce _____ as identification.

Barbara Kay Atherton
Signature of Notary Public

Print, Type, or Stamp Commissioned Name
of Notary Public

BARBARA KAY ATHERTON
Print name

F:\WPDATA\CM\CJS\US Homes\DECLARAT-Red.wpd



Barbara Kay Atherton
Commission # CC 977971
Expires Oct. 26, 2004
Bonded Thru
Atlantic Bonding Co., Inc.

EXHIBIT "A"

PALM ISLAND PHASE 2A, A SUBDIVISION RECORDED IN PLAT BOOK
00072, PAGES 0037 TO 0041, OF THE PUBLIC RECORDS OF LEE COUNTY,
FLORIDA.



NOTE



I certify the attached is a true and correct copy of the Articles of Incorporation of PALM ISLAND PHASE 2 COMMUNITY ASSOCIATION, INC., a Florida corporation, filed on September 13, 2002, as shown by the records of this office.

The document number of this corporation is N02000007045.



CR2EO22 (7-02)

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Second day of October, 2002


Jim Smith
Secretary of State

**ARTICLES OF INCORPORATION
OF
PALM ISLAND PHASE 2
COMMUNITY ASSOCIATION, INC.**

FILED
02 SEP 13 PM 1:39
SECRETARY OF STATE
TALLAHASSEE FLORIDA

The undersigned subscriber to these Articles of Incorporation, a natural person competent to contract, hereby forms a corporation not for profit under the laws of the State of Florida.

ARTICLE I

The name of this corporation is PALM ISLAND PHASE 2 COMMUNITY ASSOCIATION, INC., a not for profit corporation (the "Community Association").

ARTICLE II

The nature of the business to be transacted shall be to engage in any activity or business permitted under the laws of the United States and of this State, pursuant to Chapter 617 of the Florida Statutes. The Community Association is organized for the purpose of providing an entity for the operation of a residential planned development, located in Lee County, Florida.

The Community Association is organized and shall exist upon a non-stock basis as a non-profit corporation under the laws of the State of Florida, and no portion of any earnings of the Community Association shall be distributed or inure to the private benefit of any member, Director or officer of the Community Association. For the accomplishment of its purposes, the Community Association shall have all of the common law and statutory powers and duties of a Community Association not for profit under Florida law, except as limited or modified by these Articles, the Declaration of Covenants, Conditions and Restrictions or the By-Laws of this Community Association, and it shall have all of the powers and duties reasonably necessary to operate the Community pursuant to the Declaration as it may hereafter be amended including, but not limited to, the following:

(A) To levy and collect assessments against all Members of the Community Association to defray the costs, expenses and losses of the Community Association, and to use the proceeds of assessments in the exercise of its power and duties.

(B) To own, lease, maintain, repair, replace or operate the Common Areas.

(C) To purchase insurance upon the Common Areas for the protection of the Community Association and its members.

(D) To reconstruct improvements after casualty and to make further improvements of the Common Areas.

(E) To make, amend and enforce reasonable rules and regulations governing the use of the Common Areas and the operation of the Community Association.

(F) To sue and be sued, and to enforce the provisions of the Declaration, these Articles and the By-Laws of the Community Association.

(G) To contract for the management and maintenance of the Common Areas and to delegate any powers and duties of the Community Association in connection therewith except such as are specifically required by the Declaration to be exercised by the Board of Directors or the membership of the Community Association.

(H) To employ accountants, attorneys, architects or other professional personnel to perform the services required for proper operation of the Properties.

(I) To acquire, own and convey real property and to enter into agreements or acquire leaseholds, easements, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas and other recreational facilities. It has this power whether or not the lands or facilities are contiguous to the lands of the Community, if they are intended to provide enjoyment, recreation or other use or benefit to the members.

(J) To borrow or raise money for any purposes of the Community Association; to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidence of indebtedness; and to secure the payment of any thereof, and of the interest therein, by mortgage pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Corporation.

(K) To be responsible in perpetuity for maintenance of the conservation areas, i.e., all preserved, restored, or created wetlands areas and uplands buffer zones; and to take action against owners, if necessary, to enforce the conditions of the conservation easements and permit issued by the South Florida Water Management District for the Community.

(L) To be the responsible entity to operate and maintain the Surface Water Management System as permitted by the South Florida Water Management District, including but not limited to, all lakes, retention areas, culverts and related appurtenances.

Except as provided herein and in the Master Declaration, all funds and title to all property acquired by the Community Association shall be held for the benefit of the members in accordance with the provisions of the Declaration, these Articles of Incorporation, and the By-Laws.

ARTICLE III

The Community Association shall have perpetual existence.

ARTICLE IV

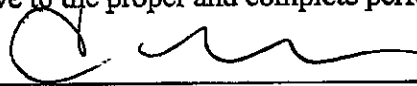
The qualifications required for membership, and the manner in which members shall be admitted to membership, shall be as stated in the Declaration and/or the By-Laws of the Community Association. Each and every owner of a lot or living unit in this subdivision shall be a member of this Association.

ARTICLE V

The street address of the initial principal office of this Community Association is 13891 Jetport Loop, Fort Myers, Florida 33913. The name of the initial registered agent of this Community Association is Christopher J. Shields, and the address of the initial registered office is 1833 Hendry Street, Fort Myers, Florida 33901.

Having been named to accept service of process for Palm Island Phase 2 Community Association, Inc., I hereby agree to act in this capacity and I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties.

ACCEPTED By: _____



Christopher J. Shields

ARTICLE VI

The number of Directors shall initially consist of three (3) but may be increased pursuant to the By-Laws, and in no event shall there be fewer than three (3) in number. Directors shall be elected, or appointed to fill a vacancy, in accordance with the By-Laws of the Community Association.

ARTICLE VII

The name and mailing address of the Directors, President, Vice President and Secretary/Treasurer, who, subject to the By-Laws of the Community Association shall hold office for the first year of existence of this Community Association or until his or her successor is elected and has qualified, are:

<u>NAME</u>	<u>ADDRESS</u>
John Debitetto, President	13891 Jetport Loop, Suites 9 & 10 Ft. Myers, FL 33913
Steven Leftwich, Vice President	13891 Jetport Loop, Suites 9 & 10 Ft. Myers, FL 33913
Kirk Knowles, Secretary/Treasurer	13891 Jetport Loop, Suites 9 & 10 Ft. Myers, FL 33913

ARTICLE VIII

The Community Association is empowered to do and perform all acts reasonably necessary to accomplish the purposes of the Community Association, which acts are not inconsistent with the powers provided for in Chapter 617, Florida Statutes.

ARTICLE IX

The name and address of the subscriber of these Articles of Incorporation is:

<u>NAME</u>	<u>ADDRESS</u>
Christopher J. Shields	1833 Hendry Street Fort Myers, Florida 33901

ARTICLE X

By-Laws of the Community Association may be adopted, made, altered or rescinded by the Directors at any regular meeting or any special meeting called for that purpose, so long as they are not inconsistent with the provision of these Articles.

ARTICLE XI

OR BOOK 03750 PAGE 3724

Amendment to the Articles of Incorporation may be proposed by any Director at any regular or special business meeting of the Board of Directors at which a majority is present and, if obtaining a two-thirds (2/3) vote of the Board of Directors present and voting at such meeting properly called and noticed as provided in the By-Laws, shall be submitted to a vote of the membership. If approved by a two-thirds (2/3) affirmative vote of the membership at a meeting of the members properly called and noticed as provided in the By-Laws, such Amendment shall be forwarded to the Secretary of State of the State of Florida and filed and shall become effective upon issuance, by said officer, of a certificate reflecting same.

ARTICLE XII

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

ARTICLE XIII

To the fullest extent permitted by Florida law, the Community Association shall indemnify and hold harmless every Director and every officer of the Corporation against all expenses and liabilities, including attorneys fees, actually and reasonably incurred by or imposed on him in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he may be a party because of his being or having been a Director or officer of the Community Association. The foregoing right of indemnification shall not be available if a judgment or other final adjudication established that his actions or omissions to act were material to the cause adjudicated and involved:

- (A) Willful misconduct or a conscious disregard for the best interest of the Community Association, in a proceeding by or in the right of the Community Association to procure a judgment in its favor.
- (B) A violation of criminal law, unless the Director or officer had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.
- (C) A transaction from which the Director or officer derived an improper personal benefit.

(D) Wrongfully conduct by Directors or officers appointed by the Developer, in a proceeding brought by or on behalf of the Community Association.

In the event of a settlement, the right to indemnification shall not apply unless the Board of Directors approved such settlement as being in the best interest of the Community Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director or officer may be entitled.

WHEREFORE the incorporator has caused these presents to be executed this 11 day of September, 2002.

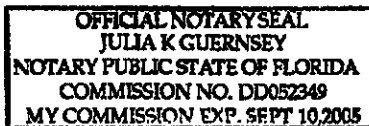
By: [Signature]
Christopher J. Shields

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11 day of September, 2002, by Christopher J. Shields. He is personally known to me or did produce _____ as identification.

[Signature]
Notary Public Signature

JULIA K. GUERNSEY
Print name



FILED
02 SEP 13 PM 1:39
SECRETARY OF STATE
TALLAHASSEE FLORIDA

**BYLAWS
OF
PALM ISLAND PHASE 2
COMMUNITY ASSOCIATION, INC.**

OR BOOK 03750 PAGE 3726

1. GENERAL These are the Bylaws of Palm Island Phase 2 Community Association, Inc., (hereinafter the "Community Association"), a Florida corporation not for profit organized for the purposes set forth in the Articles of Incorporation.

1.1 Principal Office. The principal office of this corporation shall initially be located at 13891 Jetport Loop, Fort Myers, Florida 33913, and subsequently at such other place as may be established by resolution of the Board of Directors.

1.2 Definitions. All terms defined in the Declaration of Covenants, Condition and Restrictions for Palm Island Phase 2 (the "Declaration of Covenants") to which these Bylaws were attached as an exhibit when it was originally recorded, shall be used with the same meanings as defined therein.

1.3 Seal. The seal of the Community Association shall be inscribed with the name of the Community Association, the year of its organization, and the words "Florida" and "corporation not for profit". The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

2. MEMBERSHIP AND VOTING RIGHTS. The classes of membership shall be as more fully set forth in Section 4.1 of the Declaration of Covenants.

2.1 Voting Rights; Voting Interests. The voting rights appurtenant to each class of membership shall be as follows:

(A) Regular Members - Each Lot or Living Unit shall have one (1) indivisible vote in all matters upon which the members are entitled to vote.

(B) Declarant - Until the turnover of control as described in Section 8 below, the Declarant shall have the number of votes in all matters equal to the total combined votes of all members, plus 100 votes.

The total number of voting interests of the Community Association shall be equal to the number of Lots and Living Units which exist in the Community, plus the number of Declarant votes (if any).

2.2 Method of Voting. All votes of the members pertaining to the Community Association, including the election of Directors, shall be cast by the individual members who shall have one (1) indivisible vote in all matters which members are entitled to vote. Nothing herein shall require the use of secret ballots unless such use is required by law. Votes of the Declarant member shall be cast by its designated representative.

2.3 Membership Records. Records shall be maintained by the Community Association showing the names of the members, their addresses, the number of Lots or Living Units owned by each member, the class of membership and such other information as the Board shall require. Members may be issued a certificate or other evidence of membership, which may be wallet-size. The certificate of membership may set forth the number of Lots or Living Units owned by the member and such other information as determined by the Board. Admission to any Common Area, facility, meeting or affair of the Community Association may be conditioned upon production of a current certificate of membership by the member.

2.4 Transfer of Membership. Except as provided in Section 2.7 below, no member may transfer his Community Association membership, except as an appurtenance to his Lot or Living Unit. The Community Association shall be entitled to charge an administrative transfer fee equal to \$100.00 for each transfer. When a member ceases to be an owner, his membership shall cease. The termination of membership in the Community Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Community Association during the period of his membership, nor does it impair any rights or remedies which the Community Association may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto. Interim membership is not transferrable.

2.5 Rights and Privileges of Members.

(A) Every member shall have the right to:

- (1) Have his vote cast by his voting representative at the meetings of the members;
- (2) Serve on the Board if elected;
- (3) Serve on committees; and
- (4) Attend membership meetings.

Each member is encouraged to take an active interest in Community Association affairs.

(B) Every member in good standing shall have the privilege of using and enjoying the Common Areas in accordance with the type of membership held by the member, subject to the rules of the Community Association and the right of the

Community Association to charge admission and other fees for the use of any facilities.

(C) A member is in good standing if he is current in the payment of all assessments and other financial obligations to the Community Association, and his membership is not suspended.

2.6 Delegation of Rights to use Common Areas.

(A) In accordance with Section 4.3 of the Declaration of Covenants, a member may delegate his privilege to use the Common Areas to:

- (1) A reasonable number of guests if accompanied by the member; or
- (2) Residential tenants who reside in the member's Living Unit

(B) In the case of residential tenants of the member's Living Unit, the delegating member must give prior written notice to the Community Association of such delegation. The written notification shall state the name, age, permanent address, intended length of time the delegation will be effective, and such other information about each residential tenant as the Board shall require.

(C) A member who has delegated his use privileges and is not in residence in Palm Island Phase 2 may not use Common Areas during the period of the delegation, except as a guest of another member. A member may not be the guest of his tenant.

(D) Members shall be responsible for keeping the Community Association informed as to the identity and relationship of any persons who normally reside with the member and intend to utilize the Community Association Common Areas.

(E) The Board of Directors may limit the number of guests or the frequency or duration of any member's delegation of use rights, and may impose fees for the delegation of such rights of use of the facilities by renters or guests, which fees may be different from fees charged to members for their use.

(F) The delegation of membership is subject to the one (1) family limitation described in the Declaration of Covenants.

2.7 Suspension of Membership. As further provided in Section 10 of the Declaration, the Board may suspend a member's membership in the Community Association:

(A) For the period of time during which an assessment against the member remains unpaid more than thirty (30) days after the date it was due and payable; or

(B) For a reasonable period during or after any infraction of the Community Association's rules and regulations by a member or by any person to whom he has expressly or impliedly delegated his use privileges; or

(C) For misuse, abuse, or intentional destruction of Community Association property, real or personal.

Membership shall not be suspended until the member has been sent reasonable notice of the intended suspension and been offered a reasonable opportunity to be heard. Suspension of any member's membership temporarily revokes the member's rights and privileges to use and enjoy Common Areas and facilities and to participate in Community Association affairs. A suspension shall in no way impair the enforceability of any assessment or lien therefor, or the authority of the Community Association to assess and collect any future assessment and lien, nor shall it impair the member's right of access to, and use of, his own property in a manner consistent with the Governing Documents. The right of the member to vote may not be suspended.

3. MEMBERS' MEETINGS.

3.1 Annual Meeting. The annual meeting shall be held in Lee County during either March or April of each year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors (after such time as the members become entitled to do so) and transacting any other business duly authorized to be transacted by the members. The annual meeting is a general meeting, and unless the law or the governing documents require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3.2 Special Members' Meetings. Special members' meetings must be held whenever called for by the President or by a majority of the Directors, and must be promptly called by the Board upon receipt of a written request signed by voting representatives of members entitled to cast at least ten percent (10%) of the members. Such requests shall be in writing and shall state the purpose or purposes of the meeting. Business at any special meeting shall be limited to the item specified in the request or contained in the notice of meeting.

3.3 Quorum. A quorum shall be attained at a members meeting by the presence in person or by proxy at least thirty percent (30%) of the total voting interests.

3.4 Vote Required to Transact Business. The acts or resolution approved by at least a majority of the votes cast at a duly called meeting at which a quorum has been attained shall be the act of the Members, unless a higher vote is specifically required by law or by the Governing Documents.

3.5 Notice of Meetings. Written notice of meetings shall be mailed or hand-delivered to the address last provided to the Association by the members. The notices must be mailed or delivered by the Community Association not less than fourteen (14) days prior to the date of the meeting.

3.6 Adjourned Meetings. Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 720.303(2), Florida Statutes (2000) as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617.0707, Florida Statutes (2000), as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

3.7 Order of Business. The order of business at Members' meetings shall be substantially as follows:

- (A) Determination that a quorum has been attained.
- (B) Reading or waiver of reading of minutes of last Members' meeting.
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (when appropriate)
- (F) Unfinished Business
- (G) New Business
- (H) Adjournment

3.8 Minutes. Minutes of all meetings of the members must be maintained in written form, or in another form that can be converted into written form within a reasonable time.

3.9 Parliamentary Rules. Roberts' Rules of Order (latest edition) shall govern the conduct of the Community Association meetings when not in conflict with the law, with the Declaration of Covenants, or with these Bylaws. The presiding officer may appoint a Parliamentarian, but the decision of the presiding officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

3.10 Action by Members without a Meeting. Except the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the Members may be taken by mail without a meeting if written instruments expressing approval of the action proposed to be taken are signed and returned by Members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are

received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved at a meeting of the Members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all Members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law.

4. BOARD OF DIRECTORS. The administration of the affairs of the Community Association shall be by a Board of Directors. All powers and duties granted to the Community Association by law, as modified and explained in the Declaration of Covenants, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to the approval or consent of the members only when such is expressly required.

4.1 Powers. The Board shall have the authority to:

- (A) Manage and control the affairs of the Community Association.
- (B) Appoint and remove at its pleasure all officers, agents and employees of the Community Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient. Nothing in these Bylaws shall be construed to prohibit the employment of any member, officer or Director of the Community Association in any capacity whatsoever.
- (C) Establish, levy assess, and collect any assessment or charge provided for in the Governing Documents.
- (D) Designate one or more financial institution(s) as depository for Community Association funds, and the officer(s) authorized to make withdrawals therefrom.
- (E) With the prior consent of at least a majority of the voting interests, borrow money for Community Association purposes, and assign, pledge, mortgage or encumber any Community or Community Association Common Areas or future revenues of the Community Association as security therefor;
- (F) Adopt, amend or revoke rules and regulations relating to the use of Common Areas, and such sanctions for noncompliance therewith, as it may deem necessary for the best interest of the Community Association and its Members. The Board may also establish and levy fees for the use of Common Areas or Community Association property;
- (G) Cause the Community Association to employ sufficient personnel to adequately perform the responsibilities of the Community Association;

(H) Negotiate and enter into contracts for the maintenance and operation of the Common Areas;

(I) Make improvements to the Common Areas.

(J) Establish committees of the Community Association and appoint the members thereof. It may assign to such committees responsibilities and duties not inconsistent with the provisions of these Bylaws as it may deem appropriate;

(K) Acquire property, real or personal, and enter into agreements with any persons, including Declarant relating to the orderly transfer of property from said person to the Community Association and such other matters as the Board may deem appropriate.

(L) Perform all other acts not inconsistent with law or the governing documents and necessary for the proper functioning of the Community Association.

4.2 Number; Qualifications. Initially the Board of Directors shall consist of three (3) Directors appointed by the Declarant Member, who are not subject to removal by the members, and who need not be members of the Community Association. Each Director elected by the regular members must be a member, or the spouse of a member.

(A) At the Turnover Meeting, all Directors then serving shall resign, and the size of the Board shall increase to five (5) Directors elected by the members. Any of the remaining five (5) seats will be filled at large by the vote of all non-Declarant Members. As long as at least five percent (5%) of the Lots remain unsold, the Declarant shall be entitled to appoint one additional Director.

4.3 Term of Office. In order to provide for a continuity of experience by establishing a system of staggered terms of office, at the Turnover Meeting three (3) Directors shall each be elected for a term that ends at the next annual meeting of the Community Association, and two (2) Directors shall be elected for a term which expires at the annual meeting after the next annual meeting. Thereafter, each Director shall be elected for a term of two (2) years, which will end upon final adjournment of the annual meeting in conjunction with which the Director's successor is to be elected. There is no limit on the number of consecutive terms to which a Director may be elected. A resignation must be in writing to be effective, and may not be revoked once received by the Community Association.

4.4 Nominations and Elections. The non-Declarant Members are entitled to vote in the election of the Directors.

(A) **Candidates.** The Board shall adopt and utilize procedures whereby any person eligible to serve as a Director may qualify as a candidate and have his name on the ballot, by notifying the Community Association in writing, at least

forty-five (45) days in advance of the election, of his desire to be a candidate for any vacancy which he is eligible to fill. All eligible persons giving timely written notice of desire to be a candidate shall be listed alphabetically by surname on any ballots distributed or used by the Community Association. Candidates may also be nominated in any other way permitted by law.

(B) Election and Voting Materials. Candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes at their own expense. Any written materials distributed to the Members by the Community Association regarding an election shall be non-partisan, and Community Association funds shall not be used in any Way to promote the election of any candidate over another. No ballot or other election materials used by the Community Association shall endorse, disparage, or comment on any Candidate or indicate whether a candidate is an incumbent, however the Community Association shall duplicate and distribute without editing brief resumes of background and qualifications provided by any candidates who would like it distributed. The ballots and all other election and voting materials shall be distributed by the Community Association with the notice of the annual meeting described in Section 3.5 above.

(C) Balloting. Elections shall be by written ballot. The candidate who receives a plurality of the votes cast shall be elected. Each member may cast as many votes as there are Directors to be elected, but not more than one vote for any candidate. Each member may also cast one vote for each Director to be elected, it being the intent hereof that cumulative voting is prohibited. Election ballots shall be cast by the Members directly with the Community Association, which shall count the ballots at a Community Association Annual Meeting which is properly noticed and open to all members. Any ballots received after the first vote is counted at the Community Association Annual Meeting shall be invalid.

(D) Vote Counting. On the day of the annual meeting, before the meeting begins, at a place and time which was stated in the notice of the meeting, the Board (or its designees) shall open the sealed envelopes and count the votes in such manner as it (or they) deem advisable. Any member shall be entitled to attend and observe. The results of the election shall be announced at the beginning of the annual meeting, and the new Directors shall take office at the final adjournment of the meeting. A tie vote shall be broken by agreement between the tied candidates, or, in the absence of agreement, by lot. Any dispute as to the validity of any ballots shall be resolved by the incumbent Board.

4.5 Vacancies on the Board. If the office of any Director or Directors, except those appointed by Declarant, becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors, who shall hold office for the entire remaining term. If for any reason there should arise circumstances in which no Directors

are serving and the entire Board is vacant, the Members shall elect successors at a special meeting by the same method as is provided for at the Turnover Meeting in Sections 4.2 through 4.4 above.

4.6 Removal. Any Director, except those appointed by the Declarant, may be removed from the Board with or without cause by vote of a majority of the voting interests. Directors may also be removed as provided in Section 4.8 below.

4.7 Organizational Meeting. An organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed by the new Directors at the meeting when they were elected.

4.8 Regular Meetings. After turnover of control, regular meetings of the Board shall be held at such time and place in Lee County, Florida, as shall be determined from time to time by the Directors. A regular meeting of the Board of Directors is any meeting held according to a regular weekly, monthly or other periodic schedule adopted from time to time by the Board. Notice of regular meetings shall be given to each Director, personally or by mail, telephone or telegram, at least ten (10) days before the day named for such meeting. At regular meetings any business of the Community Association may be transacted. If any Director elected by the Members shall be absent for any reason from three (3) consecutive regular meetings of the Board, the Board may, by vote of at least a majority of the whole Board taken at the next meeting, declare the office of said Director to be vacant, and may appoint a successor.

4.9 Special Meetings. Special meetings of the Board are all meetings other than the annual organizational meeting and regular meetings. Special meetings may be called by the President, the Secretary, or by a majority of the Directors. Not less than two (2) days notice of a special meeting shall be given to each Director, personally or by mail, facsimile, telephone or telegram, which notice shall state the time, place, and purposes of the meeting. Business conducted at a special meeting shall be limited to the items specified in the notice of the meeting.

4.10 Waiver of Notice by Directors. Any Director may waive notice of a Board meeting before or after the meeting, and such waiver shall be deemed equivalent to the receipt of notice. Attendance at a meeting by any Director constitutes waiver of notice, unless that Director objects to the lack of notice at the beginning of the meeting.

4.11 Board Meetings; Notice to Members. A meeting of the Board of Directors occurs whenever a quorum of the Board gathers and conducts Community Association business. All meetings of the Board shall be open to all members, except as otherwise provided by law. Notice of all Board meetings shall be posted in a conspicuous place on the Community Association Common Areas at least seventy-two (72) hours in advance of a meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of such assessments. Any owner may tape-record or videotape meetings of the Board and meetings of the members. The Board may adopt reasonable rules governing the taping of meetings of the Board and the membership.

4.12 Quorum of Directors. A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may not vote by proxy or secret ballots at Board meetings, except that secret ballots may be used in electing officers. Any Director has a right to participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person.

4.13 Vote Required. Except as otherwise required by law or the governing documents, the acts approved by a majority of the Directors present and voting at a duly called Board meeting at which a quorum exists shall constitute the acts of the Board of Directors.

4.14 Presumption of Assent. A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote of each Director on each matter considered, including abstention because of an asserted conflict of interest, must be recorded in the minutes of the meeting.

4.15 Adjourned Meetings. The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum exists, any business that might have been transacted at the meeting originally called may be transacted without further notice.

4.16 The Presiding Officer. The President of the Community Association, or in his absence, the Vice-President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

4.17 Compensation of Directors and Officers. Neither Directors nor officers shall receive compensation for their services as such. Directors may not also be employees of the Community Association. Directors and officers may be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

4.18 Emergency Powers. In the event of an "emergency" as defined in Paragraph 4.18(G) below, the Board of Directors of the Community Association may exercise the emergency powers as described in this Section, and any other emergency powers authorized by Sections 617.0207, and 617.0303, Florida Statutes (2000), as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers of whom they are assistant during the period of the emergency, to accommodate the incapacity of any officer of the Community Association.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practical manner, including publication or radio. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Community Association shall bind the Community Association; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, Director or employee of the Community Association acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) The provisions of these emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section, an "emergency" exists only during a period of time that the Neighborhood, or the immediate geographic area in which the Neighborhood is located, is subjected to:

- (1) a state of emergency declared by law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Neighborhood, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

4.19 Committee Meetings. The provisions of this Section 4 governing the calling and holding of Board meetings shall also apply to the meetings of all committees or other similar bodies specified in the Governing Documents, and to any committee or similar body appointed by the Board or any member thereof, or elected by the members, to which the Board has delegated its decision-making powers. The meetings of any committee, including any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the Community Association, must be conducted with the same formalities as required for meetings of the Board.

5. OFFICERS.

5.1 Officers and Elections. The executive officers of the Community Association shall be a President, and one or more Vice-Presidents, who must be Directors of the Community Association, as well as a Treasurer and a Secretary, all of whom shall be elected annually by majority vote of the Board of Directors. Any officer may be removed, with or without cause, by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Community Association. If the Board so determines, there may be more than one Vice-President. The officers may delegate their duties and responsibilities.

5.2 President. The President shall be the chief executive officer of the Community Association; he shall preside at all meetings of the Members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Community Association, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts or documents requiring the seal of the Community Association, except where such are permitted by law to be otherwise executed, and the power to execute is delegated by the Board of Directors to another officer or agent of the Community Association.

5.3 Vice-Presidents. The Vice-Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.

5.4 Secretary. The Secretary shall attend the meetings of the Board and meetings of the members, and shall record all votes and the minutes of all proceedings in a book or books to be kept for the purpose, and shall perform like duties for the standing committees when required. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Community Association and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the Governing Documents. Any of the foregoing duties may be performed by an Assistant Secretary, if any has been designated.

5.5 Treasurer. The Treasurer shall have responsibility for the collection, safe-keeping, and disbursement of funds and securities of the Community Association, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Community Association, and shall deposit all monies and other valuable effects in the name and to the credit of the Community Association in such depositories as may be designated by the Board of Directors, and prepare the budget for the Community Association. He shall disburse the funds of the Community Association, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it,

an account of all transactions and of the financial condition of the Community Association. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

6. ARCHITECTURAL REVIEW COMMITTEE. The ARC provided for in Section 6 of the Declaration of Covenants shall be selected, and conduct its affairs as provided in this Section.

6.1 Members; Qualification. The Architectural Review Committee, hereinafter the "ARC," shall initially be composed of three (3) persons, all appointed by the Declarant, who may also be Directors of the Community Association. Except for those appointed by the Declarant, and as otherwise provided in Section 6.5 below, no member of the ARC shall be a Director. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design.

6.2 Selection; Terms. The members of the ARC shall be appointed by the President of the Community Association to serve terms of one year beginning on January 1 of each year. If a mid-term vacancy occurs for any reason, the President shall appoint a successor to fill the unexpired term. Members of the ARC, once appointed, may be removed only by vote of a majority of all the voting interests, and not by the officers or Directors.

6.3 Compensation. If approved by the Board of Directors, any or all members of the ARC may be compensated for their services.

6.4 Meetings. The ARC shall meet at least once during each quarter, and otherwise at the call of the Chairman as necessary, to carry out its duties and functions. The ARC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Written notice of meetings shall be provided to each Neighborhood Association at least one week in advance, and any Owner wishing to appear before the ARC may do so. Special meetings may be called as needed by the Chairman.

6.5 Procedures, Voting. A majority of the members of the ARC present in person at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. Where a question involves proposed changes to a Lot or Living Unit owned by a member of the ARC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Community Association. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the ARC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any owner. Copies of the plans and specifications for all approved changes and construction shall be kept for at least five years.

6.6 Developer Control. During the period of Developer control of the Association, the Developer's project manager shall be the sole person responsible for making Architectural Review Committee decisions.

7. FISCAL MATTERS. The provisions for assessments and fiscal management of the Community Association set forth in the Declaration of Covenants shall be supplemented by the following provisions:

7.1 Depository. The Community Association shall maintain its accounts in federally insured accounts at financial institutions doing business in the State of Florida as may be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Community Association funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, provided they are federally insured, or backed by the full faith and credit of the United States.

7.2 Budget. The Board of Directors shall, at a November meeting each year, adopt a budget of general expenses for the next fiscal year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Community Association, the Developer, or another person. The Community Association shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

7.3 Reserves. The Board may establish in the budgets one or more reserve accounts for contingencies, operating expenses, repairs, improvements, capital expenditures or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual budgets each year. These funds may be spent only for purposes for which they were reserved, unless another use is approved by unanimous consent of the entire Board.

7.4 Fidelity Bonds. The Treasurer, and all other officers who are authorized to sign checks, and all Directors and employees of the Community Association handling or responsible for Community Association funds, shall be bonded in such amounts as determined by the Board of Directors. The premiums on such bonds shall be paid by the Community Association.

7.5 Accounts and Accounting Procedures. The financial and accounting records of the Community Association, must be kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

(A) Accurate, itemized, and detailed records of all receipts and expenditures.

(B) A current account and a period statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against

the member, the date and amount of each payment on the account, and the balance due.

(C) All tax returns, financial statements, and financial reports of the Community Association.

(D) Any other records that identify, measure, record or communicate financial information.

7.6 Financial Reporting. The Community Association shall prepare an annual financial report within sixty (60) days after the close of the fiscal year. The Community Association shall, within ten (10) business days after the report is prepared, provide each member with a copy of the report, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:

(A) Financial statements presented in conformity with generally accepted accounting principles; or

(B) A financial report of actual receipts and expenditures, cash basis, which report must show:

(1) The amount of receipts and expenditures by classification; and

(2) The beginning and ending cash balances of the Community Association.

7.6 Audits. A formal certified audit of the accounts of the Community Association, if required by law, or by a majority of the voting interests, or by a majority of the Board of Directors, shall be made by an independent certified public accountant, and a copy of the audit report shall be available on request to each member.

7.7 Application of Payments and Commingling of Funds. All monies collected by the Community Association may be commingled, for investment purposes only, in a single fund, or divided into two or more funds, as determined by the Board of Directors. The books and records of the Community Association shall be kept in conformity to generally accepted accounting principles, and the audit and accounting guide for Common Interest Realty Associations of the American Institute of Certified Public Accountants. All payments on account by an Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and annual or special assessments, in such manner and amounts as the Board of Directors may determine, or as may be required by law.

7.8 Fiscal Year. The fiscal year for the Community Association shall begin on the first day of January each year. The Board of Directors may change to a different fiscal year in accordance

with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States.

7.9 Payment of Assessments. Annual assessments based on the adopted budgets shall be payable annually (due on January 1 of each year or such other date as the Board of Directors may determine). Written notice of the annual assessment shall be sent to all owners at least thirty (30) days prior to the due date. Failure to send or receive such notice shall not, however, excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee.

7.10 Special Assessments. Special assessments may be imposed by the Board of Directors whenever necessary to meet unbudgeted, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Covenants or these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the Members in a manner consistent with law. The total of all special assessments payable by the Members generally shall not exceed \$200 per Lot or Living Unit in any fiscal year unless approved in advance by a majority of the voting interests.

7.11 Proof of Payment. Within fifteen (15) days after receipt of request from the Owner, mortgagee, or purchaser of a Lot or Living Unit, the Community Association shall furnish a written statement certifying that all assessments then due from any Lot or Living Unit have been paid, or indicating the amounts then due. Anyone other than the Owner who relies upon such statement shall be protected thereby.

7.12 Suspension. The Community Association shall not be required to transfer Memberships on its books or to allow the exercise of any rights or privileges of Membership on account thereof to any owner, or to any persons claiming under an owner, unless and until all assessments and charges to which said owner and his Lot or Living Unit is subject have been paid in full.

8. TURNOVER OF CONTROL OF COMMUNITY ASSOCIATION.

8.1 Time of Turnover. Turnover of control of the Community Association occurs when the members first elect a majority of the Directors of the Community Association. Owners other than the Developer shall be entitled to assume control of the Community Association by electing the entire Board of Directors not later than ninety (90) days after the conveyance of title, to owners other than Developer, of at least ninety percent (90%) of residential units within Palm Island Phase 2. At that time the Directors appointed by the Developer shall resign. The election shall occur at a meeting of the members (the Turnover Meeting).

8.2 Procedure for Calling Turnover Meeting. No less than sixty (60) days prior to the Turnover Meeting, the Community Association shall notify in writing all members of the date of

the Turnover Meeting. At the Turnover Meeting the Directors elected by the Members as further provided in Section 4.4 above, and all but one of the Directors previously appointed by the Declarant shall resign. PAGE 3742

8.3 Early Turnover. The Declarant may turn over control of the Community Association to the Members prior to the time for turnover set forth above, by causing all but one of its appointed Directors to resign, whereupon it shall be the affirmative obligation of the Members to elect the other Directors and assume control of the Community Association. If at least sixty (60) days notice of Declarant's decision to cause its appointees to resign is given as described in Section 8.2 above, neither the Declarant, nor such appointees shall be liable in any manner in connection with such resignations if the Members refuse or fail to assume control.

8.4 Developer Representative. The Developer is entitled to appoint at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Lots or units in the Community. After the Developer relinquishes control of the Community Association, the Developer may exercise the right to vote any Developer-owned interests in the same manner as any other member, except for purposes of reacquiring control of the Community Association or selecting a majority of the Directors.

9. AMENDMENT OF BYLAWS. Amendments to these Bylaws shall be proposed and adopted in the following manner:

9.1 Proposal. Amendments to these Bylaws may be proposed either by a resolution approved by a majority of the whole Board of Directors, or by a petition to the Board signed by the voting representatives of at least twenty-five percent (25%) of the voting interests of the Community Association. Once so proposed, the amendments shall be submitted to a vote of the Members at a meeting no later than the next annual meeting for which notice can still properly be given.

9.2 Vote Required. Except as otherwise provided by law, or by specific provision of the Governing Documents, these Bylaws may be amended by concurrence of at least two-thirds (2/3) of the voting interests present and voting at any annual or special meeting, provided that the text of any proposed amendment has been given to the Members with notice of the meeting.

9.3 Amendment by Board. As long as Declarant Membership exists, the Board of Directors, by majority vote, may unilaterally amend these Bylaws in any manner which it deems advisable, including but not limited to amendments to correct errors or conform the Bylaws to any applicable statute or local ordinance. Such amendments shall not require consent of the Members.

9.4 Certificate; Recording. A copy of each approved amendment shall be attached to a certificate reciting that the amendment was duly adopted, which certificate shall be executed by the President or Vice-President of the Community Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded

in the Public Records of the County. The certificate must identify the book and page of the Public Records where the Declaration of Covenants was originally recorded.

10. MISCELLANEOUS.

10.1. Gender Number. Whenever the masculine or singular form of the pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

10.2 Severability. Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

10.3 Conflict. If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants or the Articles of Incorporation of the Community Association, the provisions of the Declaration of Covenants or Articles of Incorporation shall prevail over the provisions of these Bylaws.

The foregoing constitute the first Bylaws of Palm Island Phase 2 Community Association, Inc., and were duly adopted at the first meeting of the Board of Directors held on the 7th day of October, 2002

Date: Oct 7, 2002

ATTEST:

Kirk W. Knowles
Secretary Signature
KIRK KNOWLES
Printed Name

John B. Desautels
President Signature
JOHN B. DESAUTELS
Printed Name