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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
CLASSICS PLANTATION ESTATES AT LELY RESORT**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR CLASSICS PLANTATION ESTATES AT LELY RESORT (hereinafter referred to as "Classics Plantation Estates") is made this 14th day of December, 2001, by **Commercial Properties Southwest, Inc.**, a Florida corporation, and **Lely Development Corporation**, a Texas corporation (hereinafter referred to collectively as "Developer");

WHEREAS, Developer and/or the other parties signing this instrument are the owners or mortgagees of the real property more particularly described on Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Land"), and

WHEREAS, Developer intends to develop or has developed or has caused to be developed on portions of said Land a planned residential community known as "Classics Plantation Estates at Lely Resort" all in accordance with the applicable zoning ordinances and as set forth on the Plat thereof; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities of the Land and subject the Land to the land use covenants, conditions, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

WHEREAS, Developer has deemed it desirable for the effective preservation of the values and amenities established as aforesaid to create a corporation known as Classics Plantation Estates Homeowners Association, Inc., a Florida not-for-profit corporation, hereinafter referred to as the "Association", to which there has been or will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair of the Land and improvements, the enforcement of the covenants, conditions, restrictions, easements, reservations, regulations, burdens and liens contained herein and the collection and distribution of the assessments and charges hereinafter more particularly set forth; and

WHEREAS, the Land is subject to that certain Declaration of General Covenants, Conditions and Restrictions for Lely Resort (as hereinafter defined) pursuant to which the Lely Resort Master Property Owners Association, Inc., has been established to enforce the provisions thereof; and

WHEREAS, the parties signing this instrument desire to join in and consent to this Declaration to acknowledge their consent and joinder in the same;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, Developer and the other parties signing this instrument hereby declare that the Land shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth.

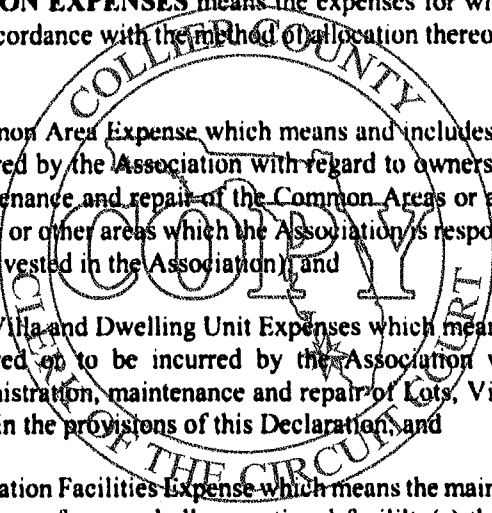
ARTICLE I
DEFINITIONS

The following words and phrases when used in this Declaration shall have the following meanings:

1.1 **ARTICLES** means the Articles of Incorporation of Classics Plantation Estates Homeowners Association, Inc.

1.2 **ASSOCIATION** means the Classics Plantation Estates Homeowners Association, Inc., a Florida corporation not-for-profit, which is hereby designated as a "Neighborhood Association" as such term is defined in the Master Declaration.

1.3 **ASSOCIATION EXPENSES** means the expenses for which the Owners are or may be liable to the Association in accordance with the method of allocation thereof described in Article V hereof and includes the following:

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- 1.3.1 **Common Area Expense** which means and includes all expenses incurred or to be incurred by the Association with regard to ownership, operation, administration, maintenance and repair of the Common Areas or any part thereof, including any berms or other areas which the Association is responsible to maintain (even if title is not vested in the Association), and
 - 1.3.2 **Lot, Villa and Dwelling Unit Expenses** which means and includes those expenses incurred or to be incurred by the Association with regard to the operation, administration, maintenance and repair of Lots, Villas and Dwelling Units as set forth in the provisions of this Declaration, and
 - 1.3.3 **Recreation Facilities Expense** which means the maintenance, repair or replacement expenses of any and all recreational facility(s) that may be owned, operated or utilized by the Association or any other Association which maintains, owns or operates recreational facilities for the benefit of owners of Lots, Villas and Dwelling Units subject to this Declaration, including Classics Plantation Estates Homeowners Association, Inc.

1.4 **CLASSICS PLANTATION ESTATES AT LELY RESORT ARB or ARB** means the architectural review board for Classics Plantation Estates established in accordance with Section 2.2 of this Declaration.

1.5 **DECLARATION** means this instrument and any amendments, supplements or modifications hereto.

1.6 **CLASSICS PLANTATION ESTATES AT LELY RESORT DOCUMENTS** means in

the aggregate this Declaration and any and all Supplemental Declarations or Amendments, the Articles, the By-Laws, the Master Declaration and all supplements or amendments thereto, the Articles of Incorporation and By-Laws of the Master Association, and the Rules and Regulations of the Association and the Master Association and all of the instruments and documents referred to or incorporated therein or attached thereto as the same may be amended from time to time.

1.7 **CLASSICS PLANTATION ESTATES AT LELY RESORT or CLASSICS PLANTATION ESTATES AT LELY RESORT NEIGHBORHOOD** means the residential community planned as a distinctive neighborhood within Lely Resort, which is to be developed upon the Land and all improvements now or hereafter located thereon and includes the Land and all improvements on any Land submitted to the provisions of this Declaration, and any lands added hereafter pursuant to the right to add additional lands.

1.8 **BOARD OF DIRECTORS** means the Board of Directors of the Association.

1.9 **BY-LAWS** means the By-Laws of the Association.

1.10 **COMMON AREAS** means the portions of the Land not included within the Lots nor dedicated to a party other than the Association unless the Association maintains such dedicated area pursuant to the terms hereof, and such additional Common Areas as may hereafter be declared as such. Common Areas will include the internal road system for Classics Plantation Estates at Lely Resort. Common Areas will also include any guard house(s), fountains(s), walls, entry features, community signage or buffer areas which serve the Land, any recreational facilities which may be deeded to the Association and any area or property which is to be maintained by the Association (such as berms) even if not owned by the Association.

1.11 **COUNTY** means Collier County, Florida.

1.12 **DEVELOPER** means Associated Real Estate Southwest, Inc., a Florida corporation, and Lely Development Corporation, a Texas corporation, their respective successors and assigns; provided, however, that an Owner shall not, solely by the purchase of a Dwelling Unit or Villa, be deemed a successor or assignee of Developer or of the rights of the Developer under this Declaration unless such Owner is specifically so designated as a successor assignee of such rights in the respective instrument of conveyance or any other instrument executed by the Developer. The Developer shall have the right to designate any other party or entity as a successor Developer, and if such a designation occurs, the designated party or entity shall succeed to all of the Developer's rights and powers as set forth in the documents.

1.13 **DWELLING UNIT or VILLA** means and refers to the improvements on the Lot or Parcel comprising the residential unit or villa and the amenities appurtenant thereto.

1.14 **INSTITUTIONAL MORTGAGEE** means any lending institution or real estate investment trust having a first mortgage lien upon a Lot or Dwelling Unit and includes any insurance company doing business in Florida and approved by the Commission of Insurance of the State of Florida; a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the State of Florida and approved by the office of the Comptroller, Division of Banking of the State of Florida; a mortgage banking company licensed in the State of Florida; and "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage

Corporation and such other secondary mortgage market institutions as the Board shall hereafter approve in writing; and any mortgagee which has loaned money to Developer secured by a mortgage encumbering any portion of the Land.

1.15 **LAND** means the land more particularly described on Exhibit "A", which is committed by this Declaration to the provisions hereof and any additional real estate which may hereafter be declared to be subject to this Declaration and all improvements made to such land including Dwelling Units.

1.16 **LELY COMMUNITY DEVELOPMENT DISTRICT** means the special development district described in the Notice of Establishment of the Lely Community Development District recorded in Official Records Book 2611, page 2125, Public Records of Collier County, Florida.

1.16 **LELY RESORT** means the real property described in Exhibit "A" of the Master Declaration.

1.17 **LOT** means a portion of the Land upon which is or will be located a Dwelling Unit or Villa, the legal description of which is set forth in the deed of conveyance of the Dwelling Unit or Villa.

1.18 **MASTER ASSOCIATION** means Lely Resort Master Property Owners Association, Inc. as defined in the Master Declaration.

1.19 **MASTER DECLARATION** means the Declaration of General Covenants, Conditions and Restrictions for Lely Resort recorded at Official Records Book 1513, Page 823 et. seq., of the Public Records of Collier County and any amendments, supplements and modifications thereto.

1.20 **OWNER** means the owner or owners of the fee title to a Lot, Dwelling Unit or Villa located within the property identified as the Land.

1.21 **SINGLE FAMILY OCCUPANCY** shall mean and refer to occupancy by a single family unit.

1.22 **SUPPLEMENTAL DECLARATION** means a Supplemental Declaration of Covenants, Restrictions and Easements recorded amongst the Public Records of Collier County, Florida by Developer submitting all or a portion of additional land to the terms and provisions of this Declaration.

1.23 **TURNOVER EVENT** means an event as specified in Section 2.6 hereof.

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

ARTICLE II
COVENANTS, CONDITIONS AND RESTRICTIONS;
CONVEYANCE TO ASSOCIATION OF COMMON AREAS

Developer does hereby declare that the Land shall be used, transferred, demised, sold, conveyed and/or occupied subject to and in accordance with the following:

2.1 LAND USE COVENANTS.

- 2.1.1 Lots. All Lots shall be used only for single family residential purposes as set forth in the Master Declaration and this Article II.
- 2.1.2 Common Areas. The portions of the Land not included within the Lots nor dedicated to a party other than the Association shall be used and conveyed solely in accordance with this Declaration.
- 2.1.3 Land Use. Except for the road right-of-way and other improvements located within Exhibit "A", the Common Areas shall be grassed and planted and kept grassed or planted as green open space, or planted with such other form of ground cover or landscaping as Developer or the Board of Directors considers consistent with the plan for development for beautification of Classics Plantation Estates at Lely Resort Neighborhood.
- 2.1.4 Private Use. The Common Areas hereinafter described are not for the use and enjoyment of the public but are expressly reserved for the private use and enjoyment of Developer, the Association, Owners and their lessees and their family members, guests and invitees in accordance with this Declaration.

2.2 RESTRICTIONS ON OCCUPANCY AND USE OF THE LAND.

In consideration of the benefits hereinafter contained and the payment of the Association Expenses referred to herein, Developer does hereby declare the Land, including but not limited to the Lots and Dwelling Units, shall at all times be used, constructed, occupied and held subject to the following:

- 2.2.1 Plans and Specifications and Architectural Review Board. For the purpose of ensuring the development of Classics Plantation Estates at Lely Resort Neighborhood as an area of high standards, an architectural review board ("Classics Plantation Estates at Lely Resort ARB") shall be established as follows:
- (A) The Classics Plantation Estates at Lely Resort ARB. Initially, the ARB shall consist of at least three (3) persons designated by Developer, and Developer shall also retain the power to replace such designees. At such time as Developer no longer owns any property within Classics Plantation Estates at Lely Resort, or when Developer voluntarily so elects, Developer shall assign to the Association Developer's rights, powers, duties and obligations as to the ARB, whereupon the Board of Directors of the Association shall appoint the members of the ARB. In the event of the death or resignation of any member of the ARB, the Developer or its assignee shall have the full authority to designate a successor. Neither the members of the ARB nor its designated representative shall be entitled to any compensation for any services pursuant to this Declaration.

- (B) **Classics Plantation Estates at Lely Resort ARB Action.** A majority of the ARB may designate a member of the ARB to act on its behalf. Approval or disapproval by a majority of the members of the ARB (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the ARB.
- (C) **Requirement of Classics Plantation Estates at Lely Resort ARB Approval.** No improvement, exterior change or structure of any kind, including without limitation, any building, wall, fence, swimming pool, screened enclosure, hurricane shutters, additional landscaping or change in paint colors or roof colors shall be erected, placed or maintained and no addition, alteration, modification or change to any such improvement or structure shall be made without the prior written approval of the ARB.
- (D) **Method of Obtaining Architectural Review Board Approval.** In order to obtain the approval of the ARB, a complete set of plans and specifications for proposed construction, alterations, additions and any and all other reasonably requested information and materials related thereto ("Plans") shall be submitted to the ARB for its review. The Plans shall include, but not necessarily be limited to, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, landscaping plans, approximate costs and nature, type and color of materials to be used. The lot grading plan shall be in conformance with the approved construction plans for Classics Plantation Estates at Lely Resort. The ARB may also require the submission of additional information and materials as may be reasonably necessary for the ARB to evaluate the proposed construction or alteration. The ARB shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality and materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding topography and structures. Any improvements on the Lots described on Exhibit A that are existing on the date of recordation of this Declaration ("Existing Improvements") shall be exempted from the approval required hereby, but any modification, alteration, or replacement of Existing Improvements shall be subject to the provisions hereof if such Lot is within the Land. All work shall be properly permitted and performed by properly licensed contractors and verification of this request shall solely be the responsibility of the Owner. The Owner shall further hold the Association harmless for any claims or damages arising from action of the Owner, of the Owner's agents, contractors or employees of same.
- (E) **Approval or disapproval by the Architectural Review Board.** The ARB shall have the right to refuse to approve any Plans which, in its sole discretion, are not suitable or desirable. Any and all approvals or disapprovals of the ARB shall be in writing and shall be sent to the Owner. In the event the ARB fails to approve or to disapprove in writing any proposed Plans within thirty (30) days after their submission to the ARB,

then said Plans shall be deemed to have been approved by the ARB and the appropriate written approval delivered forthwith.

- (F) **Indemnification.** Each and every member of the ARB, specifically including but not limited to, Developer's designated members, shall be indemnified by the Association and the Owners against all costs, expenses and liabilities, including counsel fees at all trial and appellate levels, reasonably incurred or imposed upon him or her in connection with any proceeding, litigation or settlement in which he or she becomes involved by reason of being or having been a member of the ARB. The foregoing provisions for indemnification shall apply whether or not he or she is a member of the ARB at the time such expenses are incurred. Notwithstanding the above, in instances where a member of the ARB admits or is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties, the indemnification provisions of this Declaration shall not apply; otherwise the foregoing rights to indemnification shall be in addition to and not exclusive of any and all rights of indemnification to which a member of the ARB may be entitled whether by statute or common law.
- (G) **Enforcement.** There is specifically reserved unto the Classics Plantation Estates at Lely Resort ARB the right of entry and inspection upon any Lot or other portion of the Land for the purpose of determining by the ARB whether there exists any construction of any improvement which violates the terms of any approval by the ARB, or the terms of this Declaration or of any other covenants, conditions and restrictions to which this deed or other instrument of conveyance make reference. This ARB is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed improvement, or to remove any unapproved improvements, the prevailing party in such litigation shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the ARB from all costs, expenses and liabilities, including attorneys' fees incurred by virtue of any member of the ARB's service as a member of the ARB.
- (H) **Development Standards.** The Classics Plantation Estates at Lely Resort ARB is empowered to publish or modify from time to time, design and development standards ("Standards") for the Classics Plantation Estates at Lely Resort Neighborhood, including, but not necessarily limited to, standards for the following: (i) architectural design of improvements; (ii) fences, walls and similar structures; (iii) exterior building materials and colors, including hurricane shutters; (iv) exterior landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building setbacks, pools and pool decks, side yards and related height bulk and design criteria; (viii)

pedestrian and bicycle ways, sidewalks and pathways; (ix) all buildings, landscaping and improvements on land owned or controlled by the Association; and (x) exterior colors and materials. The Standards shall be reasonable and in conformance with the plan of development of Classics Plantation Estates at Lely Resort Neighborhood and Lely Resort. A copy of any Standards promulgated and any modification or amendment thereof shall be available to owners and mortgagees.

(I) **Scope of Review.** The Classics Plantation Estates at Lely Resort ARB shall review and approve or disapprove all plans submitted to it for any proposed improvement, alteration or addition, solely on the basis of the aesthetic consideration and overall benefit or detriment which would result to the immediate vicinity and to Lely Resort and the Land as a whole. The ARB shall take into consideration the aesthetic aspects of the architectural design, placement of buildings, landscaping, color schemes, exterior finishes and materials and similar features, and shall not be responsible for reviewing, nor shall its approval of any plans or design be deemed approval of, any design or plan from the standpoint of structural safety or conformance with building or other codes. Such approval is limited solely to aesthetics.

(J) **Variance from Standards.** The Classics Plantation Estates at Lely Resort ARB may authorize, in a reasonable manner so as not to destroy the general scheme or plans of the development of Classics Plantation Estates at Lely Resort Neighborhood, Lely Resort, variances from compliance with the Standards, as the same may be modified or amended by the Classics Plantation Estates at Lely Resort ARB from time to time, when circumstances such as topography, natural obstructions, hardship, aesthetics or environmental considerations may require. If any such variances are granted by the Classics Plantation Estates at Lely Resort ARB, no violation of the restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to that particular property and particular provision hereof or standards promulgated hereby which are covered by the variance. Such variance shall be evidenced in writing and executed by a member of the ARB and be approved by the Master Association. Site drainage may not be altered. The Owner is further responsible for meeting all federal, state and local codes or other regulatory requirements.

(K) **Developer Exempt.** The Developer, its successors and assigns, shall be exempt from ARB approval for so long as the Developer, its successor or assigns, hold any property for sale and/or property in the Classics Plantation Estates at Lely Resort Neighborhood in the normal course of business or is in the process of completing construction of improvements sold by the Developer or is actually involved in marketing or development

of the Classics Plantation Estates at Lely Resort Neighborhood.

2.2.2 Other provisions as to Use of the Land. The following occupancy and use restrictions shall apply to each Owner and his lessees and family members, guests and invitees:

- (A) **Residential Use.** All Lots shall be used only for single family residential purposes. No business may be conducted on any Lot nor shall any building nor portion thereof be used or maintained as a professional office. Notwithstanding the above provisions, Developer may, in its sole discretion, permit one or more dwelling units to be used for the development of the Land and/or conduct of Developer's business or for such other purposes as are deemed necessary by the Developer.
- (B) **Completion of Construction Remedies.** If, for any reason, work is discontinued and there is no substantial progress toward completion continuously for a one (1) month period, then the Board of Directors shall have the right to notify the owner of record of the Lot of its intentions herein, invade the premises and take such steps as might be required to correct an undesirable appearance, specifically including the right to demolish a partially completed structure and remove the debris from the Lot. The reason for such correction shall be solely at the discretion of the Board of Directors and may include, but not be necessarily limited to, purely aesthetic grounds. The Owner of such Lot shall be liable for all costs incurred in any such action and the total cost thereof will be a lien on the Owner's Lot which may be foreclosed in the manner provided for in Article VII hereof. The Association may also take action to force completion and to take down partially completed improvements through court order or otherwise and charge the Owner for same.
- (C) **Fences and Walls.** The establishment and placement of all fences, walls or hedges and/or aesthetic plantings creating a barrier or screen shall require the prior written approval of the ARB which may set guidelines for the placement thereof.
- (D) **Hurricane Protection / Shutters.** All Dwelling Units shall be required to have adequate hurricane protection in accordance with applicable building code and/or statutory requirements. Hurricane shutters installed on any Dwelling Unit shall require the prior written approval of the ARB, which may set guidelines for the style, material, color, and characteristics thereof.
- (E) **Garages.** Operable doors shall be provided for all garages. Garage doors shall be closed except when vehicles are entering or exiting.
- (F) **Parking.** Parking at individual residences, other than in enclosed garages, either on a Lot or an adjoining right-of-way shall be limited to guests and authorized service vehicles. Residents' vehicles shall be garaged at all

times. Except during construction of a single family residence, there shall be no parking on any unpaved area within the Classics Plantation Estates at Lely Resort Neighborhood and the Owner of any Lot in the Classics Plantation Estates at Lely Resort Neighborhood, by accepting a deed to such Lot, grants the Association an easement to remove any car parked on an unpaved area within the Classics Plantation Estates at Lely Resort Neighborhood.

- (G) **Garbage.** During construction of a Dwelling Unit or other improvement, each Lot shall be maintained in a clean condition. Once construction is completed, all Owners shall be required to have mandatory trash pick-up.
- (H) **Utilities.** Any transformer box placed on any Lot shall be concealed by landscaping, at Owner's expense. Pumping station control panels located on any Lot shall be landscaped at the Owner's expense to reduce the aesthetic impact thereof, while, at the same time, not impeding the use thereof by maintenance personnel. The Developer may install the foregoing landscaping and charge the Owner. Any landscaping installed by the Developer shall be maintained as installed until the Turnover Event unless the Developer approves alteration and after the Turnover Event may be altered only with approval of the Association.
- (I) **Landscaping.** The landscape design for any Lot shall promote and preserve the appearance, character and value of the surrounding areas. Upon development of any Lot, underground landscape irrigation systems which are designed to irrigate the entire landscape portion, including the right-of-way adjacent to any portion of the Lot, shall be installed. Where landscaping has been installed by the Developer or the Association, or in any event where landscaping has been installed prior to the transfer of a Dwelling Unit to the Owner, the Owner shall not remove or add to the existing landscaping without the prior written approval of the ARB. Once landscaping is installed, it shall be maintained by the Association at the Owner's expense, including right-of-way areas. It is understood that the Owner will pay for and supply water. Furthermore, the Owner will supply the Association with access to the power source for sprinkling system(s) located on the Owner's property at all times, and if access is blocked, the Association may gain access (even by using force) as the Association deems appropriate.
- (J) **Sidewalks.** It shall be the Owner's responsibility to repair and replace any damage occurring to the sidewalks as a result of any construction on the Owner's Lot.
- (K) **Mailboxes and Irrigation Meters/Water.** All mailboxes shall be purchased from the Master Association or from such suppliers as are designated by the Master Association. All mailboxes shall be constructed of uniform style, design and color as determined by the Developer. All irrigation

meters and irrigation water shall be purchased from the Lely Community Development District. No deviation from this requirement shall be permitted.

- (L) Nuisance. No noxious or offensive activity shall be carried on upon the above-described property or any part, portion or tract thereof, nor shall anything be done thereon which may be or may become a nuisance or annoyance to other Owners or persons lawfully residing or present within the Classics Plantation Estates at Lely Resort Neighborhood.
- (M) Outside Storage. No outside storage or outbuilding of any kind will be permitted without the prior written approval of the ARB. Temporary construction trailers during the actual construction of any Dwelling Unit shall be permitted. There shall be no outside storage or permanent placement of recreational vehicles or equipment of any kind including motor homes, campers, motorcycles, boats, canoes, kayaks, waverunners, jet skis, wind surfers, volleyball nets, basketball goals, swing sets, lawn care equipment, toys or play equipment. Play equipment may be approved on an individual basis by the ARB. Storage or permanent placement shall exist if an item or vehicle remains outside for a period of more than twenty-four (24) consecutive hours.
- (N) Roofs. Roofs shall have a minimum of 5:12 slope and shall be constructed of cement tile and color to be in conformance with the community. In the event that some new, attractive material for roofing surfaces is discovered or invented, the ARB may allow its use. Flat decks may be incorporated into a Dwelling Unit upon approval of the ARB, on an individual basis.
- (O) Signage. Any signage placed on any Lot by the Developer is allowed and an easement is reserved to Developer to enter upon any Lot for the purposes of replacing, improving, altering and maintaining any signage thereon. The aforesaid reservation of easement right shall be freely assignable by Developer (either in whole or in part to any entity or entities at Developer's sole and absolute discretion and without further Association approval thereof. Except for the aforesaid Developer's reservation of easement right together with Developer's right of assignment thereof, no sign shall be placed on or allowed to be placed on or adjacent to a Lot or improvements by an Owner without the prior written approval of the ARB and the Master Association. For so long as the Developer owns a Lot or is actually selling Villa homes located or to be built on the Land, no sign may be placed on the Land or improvements thereon without the Developer's consent.
- (P) Irrigation and Sprinklers. All Lots, and any unpaved street rights-of-way adjacent thereto, shall contain adequate automatic electric irrigation systems, provided by the Owner. Each Owner may be charged an initial service connect fee and water meter fee due at closing by the Developer or

the Association. Sprinkler controls must be accessible from the exterior of all Dwelling Units constructed in the Classics Plantation Estates at Lely Resort Neighborhood. Power source and breakers for sprinkler systems must also be accessible to the Association. Each Owner shall also supply and maintain an irrigation timer and will provide the Association with access to same. An Owner shall water the aforesaid lawn and landscaping sufficiently to maintain it in a healthy condition and, upon failure of any Owner to do so, the Association shall have the right to enter upon his Lot and water the lawn and landscaping and charge the Owner a reasonable fee and costs for same. Such charges, until paid, shall be a lien against the Lot. The Owner of any Lot, by accepting a deed to a Lot in the Classics Plantation Estates at Lely Resort Neighborhood, grants an easement to the Association to enter upon the Lot for the purposes of watering the lawn and landscaping if necessary. Each Owner covenants that he shall at all times maintain the exterior portions of his Lot and any residence thereon in a neat, aesthetically pleasing and proper condition.

- (Q) Exterior Lamp Posts. There shall be no exterior lighting lamp posts unless such exterior fixture is approved by the ARB, on an individual basis.
- (R) Firearms. The discharge of firearms is prohibited.
- (S) Antennas and Solar Water Panels. No antennas, satellite disks, solar water panels, aeriats or other appurtenant structures are allowed, without the approval of the ARB.
- (T) Storm Precautions. Although the Association is not required to promulgate storm precautions, each Owner shall be required to conform with any storm precautions promulgated by the Association.
- (U) Time Shares and Rentals. No time shares program shall be permitted on any Lot. Dwelling Units may be leased or rented by Owners no more than once during any calendar year, and may only be rented or leased for terms of not less than one year.

2.2.3 Reconstruction. Any repair, rebuilding or reconstruction of damaged Dwelling Units shall be substantially in accordance with the architectural plans and specifications for: (i) the originally constructed Dwelling Unit; (ii) a previously reconstructed Dwelling Unit; or (iii) new plans and specifications approved by the Association.

2.2.4 Owner Liability. An Owner shall be liable for the expense of any maintenance, repair or replacement of any real or personal property in the Classics Plantation Estates at Lely Resort Neighborhood rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, invitees, agents or lessees, but only to the extent that such expense is not covered by the proceeds of insurance which may be carried by the Association.

Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Dwelling Unit or the Common Areas. An Owner shall also be liable for any personal injuries caused by his negligent acts or those of any member of his family, or his or their guests, employees, invitees, agents or lessees. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

2.2.5 Rules and Regulations. Each Owner shall be subject to such rules and regulations with respect to the Classics Plantation Estates at Lely Resort Neighborhood as the Association determines from time to time to be in the best interest of the Classics Plantation Estates at Lely Resort Neighborhood and the Owners, provided that no rules and regulations promulgated by the Association shall conflict with the provision of the Declaration.

2.2.6 Because of the importance of keeping vehicles within garaged areas, no Owner may convert any garage area for any other use. This restriction shall not apply to original construction by the Developer, nor shall it prevent the Developer from using a garage as a sales office.

2.2.7 Normal household pets shall be permitted, subject to rules and regulations established by the Association. No other animals shall be permitted upon the Lot.

2.2.8 Minimum Dwelling Unit Size. No Dwelling Unit shall contain less than 2,600 square feet of air conditioned enclosed living area. The method of determining the square footage of the enclosed living areas of a Dwelling Unit, structure or addition thereto, shall be to multiply together the horizontal dimensions of the walls forming the outer boundaries of the Dwelling Unit, structure or addition for each floor level. Open porches, atriums, screened-in patios, courtyards, garages and other similar type space shall not be taken into account in calculating the minimum air conditioned enclosed living area square footage as required herein.

2.3 **NON-SEVERABLE INTERESTS OF OWNERS.** The ownership of a Lot, the Dwelling Unit constructed thereon, all easement rights appurtenant thereto as provided in this Declaration or any Supplemental Declaration including, but not necessarily limited to, utility and governmental services easements, easements for encroachments and maintenance, and structural cross easements with respect to common structural easements; membership in the Association; and all other appurtenances thereto under the Classics Plantation Estates at Lely Resort Documents (hereinafter collectively referred to as the "Interests"); shall not be severable and an Owner shall not and may not sell, convey, demise, lease, assign, pledge or otherwise transfer or encumber any of his right, title or interest in and to his respective Interests or any of such Interests unless such sale, conveyance, demise, lease, assignment, pledge or other form of transfer or encumbrance includes all of his right, title and interest in and to the Interests including, but not limited to, the Dwelling Unit and the Lot upon which it is constructed.

2.4 **RIGHTS OF DEVELOPER.** Notwithstanding any provision in this Declaration as to use or otherwise to the contrary, Developer reserves the right to carry on construction, development and sale activities; place equipment, machinery, supplies and signs; construct and maintain models or other structures; and park vehicles of prospective or actual purchasers, lessees or employees and personnel of Developer on

any part of the Land owned by the Developer or the Association; and exercise the easement rights and all other rights granted Developer under the Classics Plantation Estates at Lely Resort Documents.

2.5 DISPUTES AS TO USE. In the event there is any dispute as to whether the use of the Land or any portion or portions thereof complies with the covenants, conditions, restrictions, easements or other provisions contained in this Declaration, such dispute shall be referred to the Classics Plantation Estates at Lely Resort Board of Directors, and a determination rendered by the Board of Directors with respect to such dispute shall be final and binding on all parties concerned therewith. Provided, however, any use by Developer of the Land or any part thereof determined by Developer, in its sole discretion, to be in accordance with Section 2.4 above, regarding rights of Developer, shall be deemed a use of the Land which complies with this Declaration and such determination by Developer shall not be subject to any further determination or review to the contrary by the Board of Directors.

2.6 CONVEYANCE TO ASSOCIATION. Developer agrees that it shall convey to the Association fee simple title in and to the Common Areas together with the improvements located thereon on or before the "Conveyance Date" which shall be on or before sixty (60) days after the earlier of the following ("Turnover Event"):

- 2.6.1 The conveyance by Developer of a total of one hundred percent (100%) of the Lots within Classics Plantation Estates at Lely Resort; or
- 2.6.2 Ten (10) years from the date of recordation of this Declaration by Developer in the Public Records of Collier County; or
- 2.6.3 When Developer shall determine that the development of the Classics Plantation Estates at Lely Resort Neighborhood has been completed; or
- 2.6.4 At such earlier time as Developer, at its sole discretion, may elect.

All such conveyances to the Association described herein shall be by Special Warranty Deed subject to (1) taxes and taxing districts for the year of conveyance and subsequent years; (2) such facts as an accurate survey would show; (3) the terms and provisions of the Classics Plantation Estates at Lely Resort Documents; (4) easements, restrictions, reservations, conditions, and limitations of records; and (5) applicable zoning ordinances and regulations. The Association shall be obligated to accept all conveyances of any property within the Land from the Developer. The Association shall have the right and power to convey Association property and/or easements therein to any grantee for consideration or for no consideration.

**ARTICLE III
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION;
BOARD OF DIRECTORS**

3.1 MEMBERSHIP AND VOTING RIGHTS. Membership in the Association shall be established and terminated as set forth in the Articles. Each Owner shall be entitled to the benefit of and is subject to, the provisions of the Classics Plantation Estates at Lely Resort Documents as same may be amended from time to time. The voting rights of the Members shall be as set forth in the Articles.

3.2 BOARD OF DIRECTORS. The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles.

3.3 INITIATION OF LEGAL ACTION. Notwithstanding anything contained herein to the contrary, the Association shall be required to obtain the approval of the Owners of three-quarters (3/4) of all Lots or Dwelling Units within the Land (at a duly called meeting of the Association at which a quorum is present) prior to the payment of legal or other fees to persons or entities engaged by the Association for the purpose of suing, or making, preparing or investigating any lawsuit, or commencing any lawsuit other than for the following purposes:

- 3.3.1 The collection of assessments and "Maintenance Fees"; or
- 3.3.2 The collection of other charges which Owners are obligated to pay pursuant to the Classics Plantation Estates at Lely Resort Documents; or
- 3.3.3 The enforcement of the use and occupancy restrictions contained in the Classics Plantation Estates at Lely Resort Documents; or
- 3.3.4 In an emergency where waiting to obtain the approval of the Owners creates a substantial risk of irreparable injury to the Land or to Owner(s).

3.4 DEVELOPER APPROVALS. If Developer is offering for sale homes built or to be built within Classics Plantation Estates at Lely Resort in the ordinary course of business, none of the following actions may be taken without approval in writing by Developer:

- 3.4.1 Assessment of Developer as an Owner for capital improvements;
- 3.4.2 Any action by the Association that would be detrimental to the sale of Lots or Dwelling Units by Developer. The determination as to what actions would be detrimental to sales shall be at the sole discretion of Developer; and
- 3.4.3 Initiation of any legal action, including civil action, arbitration or pursuit of action before a governmental body or agency by the Association.

**ARTICLE IV
USE AND MAINTENANCE OF THE LAND AND
MAINTENANCE OF COMMON AREAS**

4.1 COVENANTS FOR USE.

- 4.1.1 Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot within the Classics Plantation Estates at Lely Resort Neighborhood whether or not it shall be so expressed in such deed or instrument, covenants and agrees that the Dwelling Unit or Villa and the Lot shall be used, held, maintained and conveyed solely in accordance with the covenants, conditions, reservations, easements, restrictions and lien rights regarding same as are or may be set forth in the Classics

Plantation Estates at Lely Resort Documents including, but not limited to, this Declaration and all applicable Supplemental Declarations.

4.1.2 No Owner shall in any way damage, injure or impair the Common Areas.

4.2 MAINTENANCE AND REPAIR OF LAND. The maintenance and repair of the Land is either the responsibility of the Owners or the Association as hereinafter more particularly set forth:

4.2.1 Responsibility of Owners.

(A) Except as set forth in Section 4.2.2 regarding ordinary lot maintenance, each Owner shall maintain in good condition and repair at his own expense:

(i) All portions of his Lot and Dwelling Unit. This obligation includes, but is not necessarily limited to, the obligation to paint and maintain the exterior portions of an Owner's Dwelling Unit, including, but not limited to, roof cleaning, painting and repairs. However, before painting the exterior of a Dwelling Unit, the Owner must obtain Association approval.

(ii) All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under his Lot and which service only his Dwelling Unit.

(iii) All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association. Any window, screen or door treatment visible from the exterior must be approved by the Developer for so long as the Developer is actually selling Villas built or to be built on the Land, and thereafter by the Association. No solar or reflective materials may be used on or as window treatments or covers.

Each Owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to his failure to perform such maintenance and repairs. Furthermore, should the Owner neglect to perform such maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and the Owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a special assessment therefor.

(B) Each Owner shall promptly report to the Association any defect known to such Owner which requires repair of the property for which the Association or a party other than that Owner is responsible.

(C) Any repairs, alterations, improvements or maintenance must be completed by an Owner within thirty (30) days of commencement by an Owner.

4.2.2 Landscaping. In order to provide a means by which landscape maintenance of Lots may be fulfilled without jeopardizing the security of Classics Plantation Estates at Lely Resort Villas by the possibility of admission thereto of a large number of landscaping maintenance contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care of each and every Lot within the Classics Plantation Estates at Lely Resort Neighborhood and such maintenance shall be an Association expense. This shall also include fertilization and insect and disease treatment. Owners with additional landscaping shall be charged an extra maintenance assessment as determined by the Association at the Association's sole discretion to cover the cost of maintaining the additional landscaping. Such maintenance shall not extend to areas requiring unusual maintenance such as rose gardens or areas specifically designated by the Association as an "Area of High Maintenance". Areas of High Maintenance shall be maintained by the Owner of the Lot or by such special arrangement as may be approved by the Association. In the event the Owner makes special arrangements to have the Association perform maintenance on the Owner's Areas of High Maintenance, the cost of said maintenance shall be billed to the Owner as a "special assessment", for which the Owner shall be solely liable and for the payment of which the Association shall have a lien against the Owner's Dwelling Unit.

4.2.3 The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.

4.2.4 Maintenance and Repair of Common Areas. Maintenance and repair of Common Areas and any improvements located thereon is the responsibility of the Association including landscape maintenance and drainage maintenance. The Association shall also maintain all berms even where located on an Owner's Lot. The Association shall not waive or abandon the foregoing maintenance obligations without the prior written consent of all Institutional Mortgagees.

ARTICLE V
ASSOCIATION EXPENSES

In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the Common Areas for the use, safety, welfare and benefit of Owners, their families, invitees, guests and lessees there is hereby imposed upon each Lot and its Owners the affirmative covenant and obligation to pay to the Association (in the manner set forth in Article VI hereof), and upon the Association, the obligation to assess, collect and expend, the Association Expenses, for those Association expenses described in this Declaration, including the following:

5.1 COMMON AREA.

- 5.1.1 **Taxes.** Any and all taxes levied or assessed at any and all times upon the Common Areas by any and all taxing authorities, including all taxes, charges, assessments and impositions and liens for public improvements, special charges and assessments, and water drainage districts, and in general, all taxes and tax liens which may be assessed against the Common Areas and against any and all personal property and improvements which are now or which hereafter may be placed thereon, including any interest, penalties and other charges which may accrue on such taxes.
- 5.1.2 **Utility Charges.** All charges levied for utilities providing services for the Common Areas, whether supplied by a private or public firm including, without limitation, all charges for water, gas, electricity, irrigation, street lighting, telephone, sewer and any other type of utility or service charge.
- 5.1.3 **Insurance.** The premiums on any policy or policies of insurance obtained by the Association under this Declaration or the Classics Plantation Estates at Lely Resort Documents.
- 5.1.4 **Maintenance, Repair and Replacement.** Any and all expenses necessary to:
- (A) Maintain and preserve the Common Areas (including such expenses as grass cutting, tree trimming and other landscape maintenance, operating and maintaining sprinklers and the like), and
 - (B) To keep, maintain, repair and replace any and all improvements upon the Common Areas in a manner consistent with the development of the Classics Plantation Estates at Lely Resort Neighborhood, the covenants and restrictions contained herein, but not necessarily limited to, and all orders, ordinances, rulings and regulations of any and all federal, state and city governments having jurisdiction thereover as well as the statutes and laws of the State of Florida and the United States; and
 - (C) Provide any other maintenance or services for which the Association is responsible; and
 - (D) The Association shall not be responsible for replacement of any landscaping, even if replacement is due to negligence of the Association, its agents, employees or any other party. Owner shall be responsible for the cost of replacing any dead, damaged, diseased or unsightly landscaping which, at the Association's sole discretion, is ordered to be replaced by the Association.
- 5.1.5 **Administrative Expenses.** The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular Owners. In addition, the

Association may retain a managing company or contractors to assist in the operation of the Classics Plantation Estates at Lely Resort Neighborhood and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the Common Area Expenses.

- 5.1.6 **Indemnification.** The costs to the Association to indemnify and save harmless Developer from and against any and all claims, suits, actions, damages and/or causes of action arising from any personal injury, loss of life and/or damage to property sustained in or about the Common Areas or the appurtenances thereto; from and against all costs, counsel fees, expenses and liabilities incurred relating to any such claim or in settlement thereof, the investigation thereof or the defense at any levels of any actions or proceedings brought thereon, and from and against any order, judgments and/or decrees which may be entered therein. Included in the foregoing provisions for indemnification are any expenses that Developer may incur in bringing suit for the purpose of enforcing rights hereunder, or for the purpose of compelling the specific enforcement of the provisions, conditions, covenants and restrictions contained in this Declaration to be kept and performed by the Association and/or the Owners, including the payment of Association Expenses. Further, the costs to the Association of indemnifying its officers and members of the Board of Directors for all pursuance of their duties, obligations and functions hereunder and in any legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding, costs of investigation and discovery, etc. Nothing in the provisions of this Section 5.1.6 shall require an Institutional Mortgagee to pay any Association Expense or portion thereof attributable to costs to the Association of indemnifying and saving harmless Developer in accordance with such Section. Any such Association Expense shall be reallocated amongst the Owners other than the Institutional Mortgagees.
- 5.1.7 **Enforcement.** Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of this Declaration or in curing any default, violation or failure to perform to abide by such covenants, restrictions, terms and conditions.
- 5.1.8 **Reserve Funds.** The costs to establish, at the discretion of the Association, an adequate reserve fund for replacement and/or capital refurbishment of the Common Areas in amounts determined proper and sufficient by the Association. Each Owner acknowledges, understands and consents that such reserve funds are the exclusive property of the Association as a whole and that no Owner shall have any interest, claim or right to any reserve funds. The Association shall be responsible for maintaining the reserve funds in a separate reserve account and to use such funds only for capital costs and expenses as aforesaid.
- 5.1.9 **Miscellaneous Expenses.** The costs of all items of expense pertaining to or for the benefit of the Common Areas or any part thereof, or the Association of the Classics Plantation Estates at Lely Resort Neighborhood not herein specifically enumerated

and which is determined to be a Common Area Expense by the Association including, but not limited to, the cost of refuse collection if billed to the Association and the cost of providing security services including gate(s), any guard house(s) and fountain(s) for the Classics Plantation Estates at Lely Resort Neighborhood in the event the Board of Directors elects to provide such services. The cost of maintaining the lawns on Lots within the Classics Plantation Estates at Lely Resort Neighborhood shall also be an Association Expense, however, maintenance of Areas of High Maintenance is not an Association Expense even though such maintenance may be performed by the Association. The Association may include the planting and replacement of annuals or other decorative plants and shrubs as part of its expenses, if deemed appropriate at the discretion of its Board of Directors. Areas of High Maintenance within individual Lots will be billed separately to the individual Owners.

- 5.1.10 Recreation Expense. The cost of membership in any association or entity providing recreational facilities and the maintenance, repair and improvement of any recreational facilities of the Association shall be an Association Expense.

ARTICLE VI
METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES

6.1 **ASSESSMENTS.** It is hereby declared, and all Owners and the Association agree, that the Association Expenses shall be disbursed by the Association out of funds assessed and collected from all Owners in the Classics Plantation Estates at Lely Resort Neighborhood.

6.2 **DETERMINING INDIVIDUAL ASSESSMENTS.**

6.2.1 As provided in the By-Laws of the Association, the Board shall prepare an annual estimated Budget which shall reflect the annual common expense described in Article V. Thereupon the Board of Directors shall allocate to all Classics Plantation Estates at Lely Resort Neighborhood Lots for which a Certificate of Occupancy for a Dwelling Unit has been issued by the appropriate governmental authority an equal share of the said annual Common Expenses. The share of the annual Association Expenses allocated to a Dwelling Unit Owner is the "Individual Assessment" for each Dwelling Unit.

6.2.2 For purposes of assessments, the number of Dwelling Units located in the Classics Plantation Estates at Lely Resort Neighborhood shall include only Dwelling Units located upon Land for which a Certificate of Occupancy has been issued by an appropriate governmental agency.

6.2.3 The Individual Assessment shall be payable at such time as the Board of Directors determines.

6.3 **DETERMINATION OF INDIVIDUAL ASSESSMENTS DURING THE INTERIM PERIOD.**

- 6.3.1 The term "Interim Period" means that period of time commencing with the date of the recordation of this Declaration amongst the Public Records of the County and continuing for a period of one (1) year or until the Turnover Event, whichever is the sooner to occur.
- 6.3.2 It is declared and agreed by the Association and Developer that the Owners shall pay the "Guaranteed Assessments" (as hereinafter defined) to the Association as Individual Assessments during the Interim Period prorated as of the date of the conveyance of title to the Owner. The Guaranteed Assessment shall be One Hundred Seventy and 00/100 Dollars (\$170.00) per Dwelling Unit per month. The Guaranteed Assessment paid by non-developer Owners during the Interim Period shall be in addition to the assessment payable to the Master Association and to the assessment for maintenance of Areas of High Maintenance. Developer covenants and agrees with the Association and the Owners that, during the Interim Period, Developer will pay the difference, if any, between: (i) the Association Expenses, including that portion of the maintenance fee attributable to landscape maintenance but not including the portion of expense attributable to Areas of High Maintenance or any expenses incurred due to an Owner's negligence or willful misconduct; and (ii) the Guaranteed Assessments assessed against non-developer Owners. During the Interim Period, Developer shall not be required to make any payments of Individual Assessments for Dwelling Units owned by Developer.
- 6.3.3 Developer may extend the Interim Period for an unlimited number of additional six (6) month periods by providing the Association notice at least sixty (60) days prior to the then current date set forth as the end of the Interim Period of Developer's intention to extend the Guaranteed Assessments and such notice shall specify the new termination date of the Interim Period.

6.4 SPECIAL ASSESSMENTS. "Special Assessments" include, in addition to other assessments designated as Special Assessments in the Classics Plantation Estates at Lely Resort Documents and whether or not for a cost or expense which is included within the definition of "Association Expenses", those assessments which are levied for capital improvements which include the costs (whether in whole or in part) of constructing or acquiring improvements for, or on, the Common Areas or the cost (whether in whole or in part) of reconstructing or replacing such improvement or improvements on the Land and also any other assessments in addition to the Individual Assessments as shall be levied by the Board of Directors as a result of: (i) extraordinary items of expense under this Declaration; (ii) the failure or refusal of other Owners to pay assessments of Association Expenses; and (iii) such other reason or basis determined by the Board which is not inconsistent with the terms of any of the Classics Plantation Estates at Lely Resort Documents. Notwithstanding anything to the contrary herein contained, it is recognized and declared that Special Assessments shall be in addition to, and are not part of, the Guaranteed Assessment and any such Special Assessments assessed against Classics Plantation Estates at Lely Resort Neighborhood Owners shall be paid by such Owners in addition to any such Guaranteed Assessments. Special Assessments shall be assessed in the same manner as the Individual Assessment. Special Assessments shall be paid in such installments or in a lump sum as the Board of Directors shall from time to time determine.

6.5 LIABILITY OF OWNERS FOR INDIVIDUAL ASSESSMENTS. By the acceptance of a deed or other instrument of conveyance of a Lot in the Classics Plantation Estates at Lely Resort

Neighborhood, each Owner thereof acknowledges that each Lot and the Owners thereof are jointly and severally liable for their own Individual Assessment and their applicable portion of any Special Assessments as well as for all assessments for which they are liable as provided for herein. Accordingly, subject to such specific limitations, it is recognized and agreed by each Owner for Owner and Owner's heirs, executors, successors and assigns, that in the event Owners fail or refuse to pay their Individual Assessment or any portion thereof or their respective portions of any Special Assessments, then the other Owners may be responsible for increased Individual Assessments or Special Assessments due to the nonpayment by such other Owners and such increased Individual Assessment or Special Assessment can and may be enforced by the Association and the Developer in the same manner as all other assessments hereunder as provided in this Declaration.

ARTICLE VII
ESTABLISHMENT AND ENFORCEMENT OF LIENS

7.1 **LIENS.** Any and all Individual Assessments for Fines, Association Expenses, and Special Assessments and all installments thereof (collectively the "Assessments") with interest thereon at the highest rate allowed by law and costs of collection, including attorneys' fees are hereby declared to be a charge and continuing lien upon the Lot and Dwelling Unit against which each such Assessment is made. Each Assessment against a Lot and Dwelling Unit, together with interest thereon at the highest non-usurious rate allowed by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) and costs of collection thereof, including attorneys' fees, shall be the personal obligation of the person, persons or entity owning the Lot and the Dwelling Unit assessed. As to the Institutional Mortgagees said lien shall be effective only from and after the time of recordation amongst the Public Records of the County, of a written, acknowledged, or sworn statement by the Association setting forth the amount due to the Association as of the date the statement is signed. Upon full payment of all sums secured by that lien, the party making payment shall be entitled to a recordable satisfaction of the statement of lien. Where an Institutional Mortgagee obtains title to a Lot or Dwelling Unit as a result of foreclosure of its mortgage or deed given in lieu of foreclosing, such acquirer of title, its successors and assigns, shall not be liable for the share of Assessments pertaining to such Lot and/or Dwelling Unit or chargeable to the former Owner which became due prior to the acquisition of title by the Institutional Mortgagee, unless such share is secured by a claim of lien of Assessments that is recorded prior to the recording of the foreclosed first mortgage. Such unpaid share of Assessments shall be added to the Assessments collectible from all other Lots and Dwelling Units in the Classics Plantation Estates at Lely Resort Neighborhood. The foregoing shall not exclude an Institutional Mortgagee from payment of Assessments pertaining to a Lot and/or Dwelling Unit which accrue during the period of ownership of such Lot and/or Dwelling Unit by such Institutional Mortgagee whether or not such Lot and/or Dwelling Unit is occupied. The lien for fines, assessments, installments, interest, attorneys' fees and cost of collection shall be deemed to be effective and shall relate back to the date of the recording of this Declaration in the Public Records of Collier County, Florida, as to all other lien holders.

7.2 **ENFORCEMENT.** In the event any Owner shall fail to pay Assessments or any installment thereof charged to his Lot within fifteen (15) days after the same becomes due ("Delinquent Owner"), then the Association, through its Board of Directors, shall have any of the following remedies to the extent permitted by law:

- 7.2.1 To accelerate the entire amount of any Assessments for the remainder of the calendar year notwithstanding any provisions for the payment thereof in installments.

- 7.2.2 To advance on behalf of the Delinquent Owner funds to accomplish the needs of the Association and the amount of or amounts of monies so advanced, including reasonable monies so advanced, including reasonable attorneys' fees and expenses which might have been reasonably incurred because of or in connection with such advance, including costs and expenses of the Association if it must borrow to pay expenses because of the Delinquent Owner, together with interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum), may thereupon be collected or enforced by the Association and such advance or loan by the Association shall not waive the default.
- 7.2.3 To place of record a claim of lien against the Dwelling Unit and/or Lot of the Delinquent Owner.
- 7.2.4 To file a court action to foreclose its lien at any time after the effective date thereof. The lien may be foreclosed by an action in the name of the Association in like manner as a foreclosure of a mortgage on real property.
- 7.2.5 To file an action at law to collect said Assessment plus interest at the highest non-usurious rate allowable by law (and if no such rate is specified by law, then at eighteen percent (18%) per annum) plus court costs and attorneys' fees without waiving any lien rights and/or rights of foreclosure in the Association.

7.3 COLLECTION BY DEVELOPER. In the event, for any reason, the Association fails to collect the Assessments, then in that event Developer, until the Developer no longer owns a Lot in the Classics Plantation Estates at Lely Resort Neighborhood, shall have the right to collect the same in the same manner as the Association.

7.4 COLLECTION BY ASSOCIATION. The Master Declaration provides that where land has been submitted to a Neighborhood Association, said Association shall have the duty and responsibility for collecting and timely remitting to the Master Association any and all Master Association assessments and other charges; provided, however, that the Master Association may, in its sole discretion, elect to collect due and unpaid Master Association assessments and other charges directly from any Owner for the payment of such assessments and charges which are due and payable. The Association or its members may also be liable for dues, maintenance and assessments of other associations established or for maintenance, repair and operation of recreational or other common property, which may be billed or collectable by the Association. The Association, through its Board of Directors, shall have the right to take such actions as are necessary to enforce such provisions and the Owners shall each pay to the Association such amounts as the Association is directed to charge and collect on behalf of the Master Association which shall be timely remitted to the Master Association or such other Association as may be appropriate.

ARTICLE VIII INSURANCE

8.1 COMMON AREAS INSURANCE. The Association shall purchase coverage for the Common Areas subject to the following provisions:

- 8.1.1 **Liability Insurance.** The Association shall purchase and pay the costs of the policy or policies of insurance in the form generally known as Public Liability and/or Owners policies insuring the Association against any and all claims and demands made by an person or persons whomsoever for injuries received in connection with the use, operation and maintenance of Common Areas and improvements and buildings located thereon, or for any other risk insured against by such policies which the Association, in its sole discretion, determines to insure against. Each policy purchased by the Association shall have reasonable limits as determined by the Board of Directors. The coverage of the liability insurance policies purchased by the Association shall include protection against liability for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas, legal liability arising out of law suits related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, liability of hazards related to usage and liability for property of others. All such policies will name the Association (and Developer for so long as Developer shall own any portion of the Common Areas as their respective interests may appear) as the insured under such policy or policies. The insurance purchased shall contain a "severability of interest endorsement", or equivalent coverage, which would preclude the insurer from denying the claim of an Owner because of the negligent acts of either the Association, the Developer or any other Owners or deny the claim of either the Developer or the Association because of the negligent acts of an Owner.
- 8.1.2 **Casualty Insurance.** The Association shall purchase and pay the costs of a policy or policies of insurance to allow the Association to insure any improvements now located or which may hereafter be located, built or placed upon the Common Areas against loss or damage caused by or resulting from at least the following: Fire and other hazards covered by the standard extended coverage endorsement, sprinkler leakage, windstorm, vandalism, malicious mischief, water damage, flood, debris removal and demolition, and such other risks as the Association shall determine are customarily covered with respect to developments similar to the Classics Plantation Estates at Lely Resort Neighborhood in construction, location and use.
- 8.1.3 **Fidelity Coverage.** The Association shall purchase adequate fidelity coverage to protect against dishonest acts of the officers and employees of the Association and the Directors and all others who handle and are responsible for handling funds of the Association, such coverage to be in the form of fidelity bonds which meet the following requirements unless one or more of such requirements are waived by the Board of Directors.
- (A) Such bonds shall name the Association as an obligee.
 - (B) Such amounts shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

8.2 **MISCELLANEOUS INSURANCE.** The Association may also obtain such other forms of insurance and such coverages as the Association shall determine for the protection and preservation of the Common Areas. Such insurance may include, without limitation, worker's compensation insurance and flood insurance.

8.3 **POLICY CANCELLATION.** All insurance policies and fidelity bonds obtained by the Association shall provide that they may not be cancelled or substantially modified without at least ten (10) days prior written notice to the Association. In the event of cancellation, the Association shall make its best effort to replace the policy and coverage without lapse.

8.4 **INSURANCE TRUSTEE.** The Board of Directors may, if it deems it to be in the best interest of the Classics Plantation Estates at Lely Resort Neighborhood or the Association, provide that insurance policies be deposited with an Insurance Trustee whose duty shall be to receive any and all proceeds from the insurance policies held by it and to pay such proceeds to the Association pursuant to the terms hereof.

ARTICLE IX
GRANT AND RESERVATION OF EASEMENTS

The signators hereby reserve and grant the following easements over and across the Land for the duration of the term of this Declaration (except as hereafter provided) and for the benefit of the parties or properties as hereinafter specified for the following purposes:

9.1 **UTILITY AND GOVERNMENTAL SERVICES EASEMENTS.** An easement or easements to provide utility services, including (but not necessarily limited to) power, electric transmission, television cable, light, telephone, gas, water, sewer and drainage and governmental services including police and fire protection, rights of access to maintain, repair, replace or install fixtures and appurtenances necessary for such utility and governmental services for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies, etc.

9.2 **RIGHTS-OF-WAY.** A perpetual non-exclusive easement is hereby declared, granted and reserved in favor of Developer, the Association, the Master Association, and Owners, their lessees and family members, guests and invitees over and through the walks, road rights-of-way and other rights-of-way within the Common Areas to provide ingress, egress and access to and from, through and between the land and publicly dedicated roads.

9.3 **EASEMENT FOR ENCROACHMENT.**

9.3.1 An easement for encroachment in favor of all Owners in the event any portion of any part of a Dwelling Unit now or hereafter encroaches upon any of the other Dwelling Unit or Units, Lot or Lots, or other portions of the Classics Plantation Estates at Lely Resort Neighborhood as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement.

9.3.2 An easement for encroachment in favor of Developer, Owners and the Association where any portion of the Common Areas encroaches upon any portion of the Land on any Lot therein.

- 9.3.3 An easement in favor of the Owner of each Dwelling Unit for encroachment of any portion of the Dwelling Unit upon the Common Areas.
- 9.3.4 Any encroaching improvements shall remain undisturbed for so long as the encroachment exists. The easements for encroachment include an easement for the maintenance and use of the encroaching improvements in favor of the Owner or Owners thereof and their designees.

9.4 MAINTENANCE EASEMENT. There shall be easements over and across any abutting Lot on the side lot lines for maintenance and repair of any Dwelling Unit or structure, constructed on the adjacent lot, provided the easement does not extend beyond five feet (5') from the property line and that maintenance and repair is conducted in a reasonable, timely manner, with reasonable notice to the Owner of the Servient Lot, and during reasonable hours, and further provided that the Owner of the Dominant Lot is responsible for all costs for all and any damage or other liability arising from such maintenance and repair activities. The Owner of the Dominant Lot shall also have the right to ingress and egress over the non-improved portions of the Servient Lot as necessary to obtain access to the maintenance easement for maintenance and repair activities. In the event the Developer or the Association shall exercise its rights to maintain or repair any structure or improvements benefitted by this easement, they shall possess and be entitled to exercise the same rights as the Owner of the Dominant Lot. This right of easement shall not effect the rights of the Owner of the Servient Estate to construct and maintain such principal or accessory structure upon the Servient Lot as are authorized by the Classics Plantation Estates at Lely Resort Documents and comply with the applicable setback requirements. Placement of landscape structure by the Developer, Association, or the Classics Plantation Estates at Lely Resort ARB shall accommodate access to this easement.

9.5 RIGHT OF ASSOCIATION TO ENTER UPON THE LAND. An easement or easements for ingress and egress in favor of the Association by its Board of Directors or the designees of the Association to enter upon each portion of the Land, including Lots, for the purpose of fulfilling its duties and responsibilities of ownership, administration, maintenance and repair in accordance with the Classics Plantation Estates at Lely Resort Documents.

9.6 USE AND ENJOYMENT OF COMMON AREAS. A nonexclusive easement for the use and enjoyment and for access over and to the Common Areas on behalf of Developer, the Association, and Owners, their lessees, family members, guests and invitees; provided, however, an Owner's easement to such use and enjoyment may be temporarily suspended by the Association upon written notice for a period not to exceed thirty (30) days for failure of an Owner, his lessee, or their family members, guests or invitees to conform to the rules and regulations promulgated by the Association in regard to use of the Common Areas.

9.7 EASEMENT FOR OWNERS WITHIN LELY RESORT. An easement in favor of the owners of any residential dwelling unit now or hereafter located upon any portion of Lely Resort for purposes of emergency ingress and egress across, over and upon the Land and the private roadways located or to be located thereon to and from publicly dedicated rights-of-way. This easement shall not prevent the Association from erecting a gate so as to maintain its private roads in non-emergency times.

9.8 ASSIGNMENT; ADDITIONAL EASEMENTS. The easements reserved hereunder may be assigned by Developer in whole or in part to the Association, any city, county or state government or agency thereof, or any duly licensed for franchised public utility, or any other designee of Developer. The

Owners, by the acceptance of a deed of conveyance of a Lot, authorize Developer and/or the Association to execute on their behalf and without further authorizations, such grants of easement or other instruments as may from time to time be necessary to grant easements over and upon the Land or any portion or portions thereof in accordance with or to implement the provisions of this Article. Notwithstanding the foregoing, no such easement shall be permitted or deemed to exist which causes any buildings, permanent structures or other permanent facilities within the Classics Plantation Estates at Lely Resort Neighborhood which have been constructed (i) in accordance with the Classics Plantation Estates at Lely Resort Documents; and (ii) prior to the use of such easements, to be materially altered or detrimentally affected thereby nor shall any such easement be granted or deemed to exist under any such structures or buildings so built in accordance with this Declaration and the Classics Plantation Estates at Lely Resort Documents prior to the actual use of such easement. The foregoing shall not preclude such easements under then existing improvements other than buildings or structures provided that the use and enjoyment of the easement and the installation of facilities in connection therewith would not result in other than minor, temporary alterations to such improvements other than a building or structure (such as, but not necessarily limited to, temporary alteration or removal of a fence or temporary excavation within a paved area) and provided that same is repaired and/or restored by the one making use of such easement at its expense and within a reasonable time thereafter.

ARTICLE X CONDEMNATION

10.1 TAKING OR PARTIAL TAKING. If at any time during the term of this Declaration the whole or any portion of the Common Areas shall be taken ("Taken Area") for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of eminent domain or by agreement between those authorized to exercise such right (hereinafter for the purpose of this Section called "Condemnation"), this Declaration and all obligations hereunder as to the then Taken Area shall terminate and expire on the date of such taking, and Expenses provided to be paid for such Taken Area shall be appointed and paid to the date of such taking. The Association shall represent the Owners in the condemnation proceedings or in negotiations, settlements and/or agreements with the condemning authority for acquisition of the Taken Area, or part thereof, by the condemning authority.

10.2 DIVISION OF AWARDS. The rights of Developer and other Owners in and to the net award or awards ("Taken Area Award") after any Condemnation (after reasonable fees and expenses of collection) shall be determined as follows:

10.2.1 To the extent that Developer owns any Classics Plantation Estates at Lely Resort Neighborhood Dwelling Units or Lots, Developer shall participate in any Taken Area Awards for its interest in the Common Areas along with and to no lesser degree than other Owners.

10.2.2 The Association shall have the right to attend and participate in all hearings relevant to the Condemnation and to receive notice from Developer of such hearings.

10.3 REPAIR AND REPLACEMENT. If any improvements upon the Common Areas not included in the Taken Area shall be damaged or partially destroyed by such Condemnation, then the Association shall proceed with reasonable diligence to demolish, if necessary, and to construct, repair, replace or rebuild such improvements so such improvements are complete and in good condition and repair. The Association shall hold that portion, if any, of the Taken Area Award which represents consequential

