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This instrument was prepared by:
Tamela Eady Wiseman, Esquire
DeBoest, Knudsen, Stockman, Wiseman, Decker & Dryden, P.A.
600 Fifth Avenue South, Suite 301
Naples, Florida 34102

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
BOCA BAY AT BRIDGEWATER BAY NEIGHBORHOOD**

THIS DECLARATION is made this 9th day of AUGUST, 2000, by LB/P-Groeway, LLC, a Delaware limited liability company, hereinafter called the "Developer" for itself and its successors, grantees and assigns.

WITNESSETH:

WHEREAS, Developer is the owner of certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" to this Declaration, and desires to create thereon a neighborhood of single family residences; and

WHEREAS, Developer desires to provide for the preservation of the values and amenities in the Neighborhood, and to create a corporate entity to which should be delegated and assigned the powers of administering and enforcing this Declaration of Covenants, Conditions, and Restrictions, and collecting and disbursing the assessments and charges hereafter created; and

WHEREAS, Developer has created a Florida corporation not for profit, known as Boca Bay at Bridgewater Bay Neighborhood Association, Inc. for the purpose of exercising the functions aforesaid;

NOW, THEREFORE, the Developer declares that the real property described in Exhibit "A" to this Declaration, as that Exhibit may be amended from time to time, and all improvements thereon, shall be held, transferred, sold, conveyed and occupied subject to the Governing Documents and to the covenants, restrictions, easements, charges and liens hereinafter set forth, which shall run with the land and be binding upon and inure to the benefit of all present and future owners of Lots and Living Units. The acquisition of fee simple interest in any Lot, or the lease, occupancy, or use of any portion of a Living Unit, shall constitute an acceptance and ratification of all provisions of this Declaration and an agreement to be bound by its terms.

1. **DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the definitions, if any, specified in the Declaration of Covenants, Conditions, Restrictions and Easements for Bridgewater Bay, as originally recorded in O.R. Book 2690, Pages 896 through 977, Official Records of Collier County, Florida, (the "Community Declaration"), as it may be amended from time to time, or, if different, the meanings stated below, unless the context clearly requires otherwise.

**BOCA BAY AT BRIDGEWATER BAY NEIGHBORHOOD
DECLARATION**

1.1 "Association" or "Neighborhood Association" means Boca Bay at Bridgewater Bay Neighborhood Association, Inc. a Florida corporation not for profit.

1.2 "Board" means the Board of Directors of the Association.

1.3 "Bridgewater Bay" means the name given to the master planned community being developed on the Properties by Declarant in Collier County in accordance with the Community Documents.

1.4 "Community Association" means Bridgewater Bay Community Association, Inc., a Florida corporation not for profit.

1.5 "Community Declaration" means the Declaration of Covenants, Conditions, Restrictions and Easements for Bridgewater Bay, as recorded in O.R. Book 2690, Pages 896 through 977, Official Records of Collier County, Florida, (the "Community Declaration") as it may be amended from time to time.

1.6 "Community Documents" means the Community Declaration and all recorded exhibits to it, including the Articles of Incorporation and Bylaws of the Community, all as amended from time to time.

1.7 "Community" or "Properties" means the real property described as such in to the Community Declaration, together with any additional property subjected to the Community Declaration from time to time.

1.8 "Declaration" means this Declaration of Covenants, Conditions and Restrictions for Boca Bay at Bridgewater Bay Neighborhood, as amended from time to time.

1.9 "Developer" means LB/P-Groeway, LLC, its grantees, successors and assigns. Developer shall have the right to assign any and all of the rights and privileges reserved for Developer under this Declaration. A Lot owner, solely by the purchase of a Lot, shall not be deemed a successor or assign of Developer or of the rights of Developer under the Governing Documents or by law unless such owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer.

1.10 "Governing Documents" means the Community Documents, as well as this Declaration and all recorded exhibits to it, all as amended from time to time. If there is an irreconcilable conflict between the provisions of any two of these documents, the first document to appear in the foregoing list shall prevail.

1.11 "Guest" means a person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.12 "Institutional Mortgagee" shall refer to any one of the following:

- (A) A lending institution holding a mortgage encumbering a Lot, including without limitation any of the following types of institutions or entities: 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 doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida.

- (B) A governmental, quasi-governmental or private company that is engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration and the Department of Urban Development.
- (C) Developer and any investors and lenders, or the successors and assigns of such investors and lenders, who have loaned money to Developer to acquire land comprising the Neighborhood or to construct improvements, and who have a first mortgage lien on all or a portion of the Neighborhood securing such loan.

1.13 "Lease" means the grant by an owner of a temporary right to occupy the owner's Living Unit for valuable consideration.

1.14 "Living Unit," "Unit" or "Residence" means any or all the residential dwellings which will be constructed on the Lots, each intended for use and occupancy as a residence for a single family.

1.15 "Lot" means any one or more of the up to sixty-six (66) platted parcels of land into which the Neighborhood has been or will be subdivided as shown in Exhibit "B," upon each of which a Living Unit has been or will be constructed. Wherever it appears, "Lot" shall be interpreted as if it is followed by the words "and Living Unit constructed thereon," except where the context clearly requires a different interpretation.

1.16 "Neighborhood" means all the real property which is subject to this Declaration.

1.17 "Neighborhood Common Areas" means that real property dedicated to, owned by, or held by the Association or intended by Developer to be devoted to the common use and enjoyment of the owners in the Neighborhood. It is not presently contemplated that the Neighborhood will contain any Neighborhood Common Areas, but as provided in Section 13.3 hereof, Developer reserves the right to add Neighborhood Commons Areas. The term "Neighborhood Common Areas" shall be deemed to include the words "if any," unless the context clearly indicates otherwise.

1.18 "Occupant" when used in connection with a Living Unit, means any person who is physically present in the Living Unit on two or more consecutive days, including staying overnight. "Occupy" means the act of being an occupant.

1.19 "Owner" or "Member" means a record owner of legal title to a Lot.

1.20 "**Rules and Regulations**" means the administrative rules and regulations governing procedures for administering the Association and the Neighborhood, as adopted amended or rescinded by resolution of the Board of Directors.

1.21 "**Service Charge**" means a charge against the owners of one or more Lots for any service, material or combination thereof which may be provided by the Neighborhood Association for the use and benefit of those owners, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Association on behalf of the owners accepting or receiving the repairs, services, materials or maintenance shall be passed on in the form of a service charge against the Lots so benefitted. The owner(s) are deemed to agree to such assessment by subscribing, requesting, or accepting the material or service.

1.22 "**Temporary**" or "**Temporarily**" means not more than sixty (60) days in any calendar year.

2. **CONTINUATION OF DEVELOPMENT.** The Neighborhood is being developed by the Developer into Lots intended for the construction of single family residences, and are located within the Bridgewater Bay development. Other areas of Bridgewater Bay may be developed as other forms of residential housing or commercial development, and may be under construction for an extended time. Incidental to that development, the quiet enjoyment of the Neighborhood may be unavoidably interfered with to some extent by construction and sales operations. From time to time, Developer and others may make public certain renderings, plans, or models showing possible future development of Bridgewater Bay. Developer does not warrant in any way the accuracy of these renderings, plans or models. They are primarily thematic in nature, and do not necessarily represent a guaranteed final development plan for the Bridgewater Bay.

3. **ASSOCIATION; MEMBERSHIP VOTING RIGHTS.** The administration and management of this Neighborhood shall be by Boca Bay at Bridgewater Bay Neighborhood Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

3.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

3.2 **Bylaws.** The initial Bylaws of the Association shall be the Bylaws as attached as Exhibit "D" to this Declaration, as they are amended from time to time.

3.3 **Delegation of Management.** The Association may contract with a management agent to assist the Association in carrying out its powers and duties by performing such functions as submission of proposals, collection of assessments, keeping of records, and enforcement of covenants and rules, with funds made available by the Association for such purposes. The Association and its officers, however, shall retain at all times the powers and duties provided in Sections 720.301- 720.312, Florida Statutes (2000) as amended from time to time, and in the Governing Documents.

3.4 **Members.** Every person or entity who is a record owner of a fee simple interest in any Lot shall be a member of the Association. Membership is appurtenant to, runs with, and shall not be separated from, the real property interest upon which membership is based. The burden of notifying the Association of a change of membership shall be borne by the new member; and the Association shall not

be required to recognize a change of membership until the new member furnishes satisfactory proof of ownership.

3.5 Voting Interests. The members of the Association are entitled to one (1) vote in Association affairs for each Lot owned by them. Votes shall be cast as provided in the Bylaws.

3.6 Termination of Membership. Termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

3.7 Association As Owner of Lots. The Association has the power to purchase Lots and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors. However, if at any time the Association owns two (2) or more Lots, it may not purchase any more Lots without the prior approval of a majority of the voting interests.

3.8 Membership Roster. The Association shall maintain a current roster of names and mailing addresses of owners. A copy of the up-to-date roster shall be available to any owner upon request.

3.9 Board of Directors. Except as otherwise specifically provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members.

3.10 Powers and Duties. The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws, and those provided in Chapter 720, Florida Statutes, to the extent not inconsistent with the foregoing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. The Association has the power to enter into agreements and to acquire leaseholds, memberships and ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Neighborhood. If the Association has the authority to maintain a class action suit as plaintiff, the Association may also be joined as a defendant in an action as the representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

3.11 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 three-fourths (3/4ths) of the voting interests of the Association prior to the payment of, or contracting for the payment of, legal or other fees or expenses to any person engaged by the Association in contemplation of a lawsuit or for the purposes of making, preparing or investigating any lawsuit, or commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;

- (C) the enforcement of the Governing Documents;
- (D) the enforcement of the rules and regulations of the 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, but in such event, the aforesaid vote shall be taken with respect to the continuation of the action at the earliest practical date (the eminent expiration of a statute of limitations shall not be deemed an emergency obviating the need for the requisite vote of three-fourths (3/4th) of the voting interests); or
- (F) filing a compulsory counterclaim.

This Section 3.11 shall not be amended without the approval of at least three-fourth (3/4ths) of all voting interests.

3.12 Official Records. The official records shall be maintained within the state 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 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 Neighborhood. The Association may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspections, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The 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 only its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

3.13 Indemnification. The Association covenants and agrees that it will indemnify and hold harmless Developer and the members of the Board 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 Neighborhood, from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein. Included in the foregoing provisions of indemnification are any expenses that Developer may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.

4. ASSESSMENTS. The Association has the authority to levy assessments to pay common expenses. Common expenses include the expenses of the operation, maintenance, repair, replacement, or protection of the Neighborhood Common Areas and association property, the expenses of insurance for the Association and/or directors and officers; the costs of carrying out the powers and duties of the Association, and any other expense, whether or not included in the foregoing, designated as a common expense by this Declaration or the Bylaws. If the Board enters into such a contract, the costs of a duly franchised cable or satellite television service obtained pursuant to a bulk contract shall be a common expense. Alternatively, the Community Association has the authority to enter into such an agreement for the entire Community.

4.1 Covenant to Pay Assessments. Developer, for each Lot within the Neighborhood, hereby covenants, and each subsequent owner of any Lot (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- (A) the Lot's prorata share of annual assessments based on the annual budget adopted by the Association;
- (B) the Lot's prorata share of any special assessments levied for expenses not provided for by the annual budget; and
- (C) any service assessments or charges against less than all of the Lots specifically authorized in this Declaration or the Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws. The assessments and charges, together with interest, costs, and reasonable attorneys' fees shall bind each Lot in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance of title, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor any amounts paid by the transferee therefor. Except as provided elsewhere in this Declaration as to the Developer and Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

4.2 Share of Assessments. Except as otherwise provided below, each Lot and the owner thereof shall be liable for an equal share of all annual and special assessments, such share being a fraction of the whole, the numerator of which is the number "one" and the denominator of which is the total number of Lots then included within the Neighborhood. Until the development of the Neighborhood is completed, and all Lots have been sold to purchasers other than a developer, the denominator shall be conclusively presumed to be the number sixty-two (66).

4.3 Developer's Guarantee of Assessments and Share for Lots Owned By It. The Developer guarantees that until December 31, 2001 annual and special assessments against each Lot for all Association purposes will not exceed \$2,643.00 per year. During this period, Developer shall be excused from the payment of assessments for Lots owned by it, and instead shall pay that portion of all Association expenses actually incurred which exceeds Association revenues receivable from all other sources. After December 31, 2001, the Developer reserves the right to extend this guarantee period and to change the amount guaranteed. The guarantee period shall not under any circumstances extend beyond the period of Developer control. After this guarantee period, the Developer shall have the same responsibility for assessments as to Living Units for which a certificate of occupancy has been issued as any other owner; provided however, that under no circumstances shall the Developer ever have an obligation to pay assessments for any Lot owned by the Developer as long as the Lot remains unimproved. The guarantee amount does not include any Community Association assessments or charges which the Neighborhood may be responsible to collect pursuant to the Community Documents.

4.4 Establishment of Liens to Secure Payment. All assessments and charges levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs of collection (including, but not limited

to costs and reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the Lot against which each such assessment or charge is made, and shall also be the personal obligation of the owner of each Lot assessed. This lien is superior to any homestead rights the owner may acquire. No owner may be exempt from personal liability for assessments and charges, or release any Lot from the liens and charges hereof, by a waiver of use rights, or by abandoning the Lot. The Association's lien is activated by recording a Claim of Lien by the Association in the public records of Collier County, setting forth the amount and due date of each unpaid assessment or charge as of the date the Claim of Lien is recorded. The Claim of Lien secures payment of all assessments and charges due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments and charges coming due subsequently, until the lien is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by a Claim of Lien, the party making payment is entitled to a satisfaction in recordable form.

4.5 Priority of Liens. Except as otherwise provided by law, the Association's lien for unpaid assessments and charges shall be subordinate and inferior to that of any recorded Institutional Mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage regardless of when recorded. A lease of a Living Unit is also subordinate and inferior to any Claim of Lien for the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under any of them, shall hold title subject to the liability and lien of any assessment or charge coming due after taking title. Any unpaid assessment or charge which cannot be collected by reason of this Section shall be treated as a common expense, collectible from all Lots, including the Lot as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

4.6 Collection of Assessments. If any owner fails to pay any assessment, charge, or installment thereof, within ten (10) days after the due date, the Association shall have any or all of the following remedies, to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

(A) To charge interest on such assessment or charge, from the due date until paid, at the highest rate allowed by law; and, in addition, to impose a late payment penalty which may not exceed the greater of twenty-five dollars (\$25.00), or such other maximum as may be provided for by law.

(B) To suspend the voting rights of the owner in the Association during the period of delinquency if regular annual assessments are delinquent in excess of ninety (90) days.

(C) To file an action in equity to foreclose its lien. Unless another procedure is required by law, the lien may be foreclosed by an action brought by the Association, in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.

4.7 Certificate. The Association shall, within fifteen (15) days of request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting

forth whether all assessments and charges against the owner's Lot have been paid. Any person, except the owner, who relies on the certificate shall be protected thereby.

4.8 Termination of the Association. If the Association no longer exists for any reason, and if no other Neighborhood Association has assumed its duties and functions, the Community Association shall have the power to perform all functions of the Association and shall be authorized to assess all owners for the cost of such services.

4.9 Collection of Community Association Assessments. If so directed by the Community Association, the Association shall be responsible for billing, collecting and remitting to the Community Association all amounts due from all Owners in the Neighborhood.

5. ARCHITECTURAL AND AESTHETIC CONTROL. The Developer is seeking to create a Neighborhood of architecturally harmonious homes. Among the techniques employed to accomplish this result is the use of certain carefully chosen colors for exterior paint and roof materials. In order to protect the integrity of the development plan and preserve the values of the Living Units, after the initial construction of the Living Units by the Developer, no owner shall make any material change whatsoever in the exterior color of any portion of his Residence or any appurtenant structure, nor in the color or style of roofing materials used on the Residence or appurtenant structure, without prior written approval as provided in the Community Declaration. Except for the initial construction of Living Units and related improvements by the Developer, no building, structure or other improvement shall be erected or altered on any Lot, nor shall any grading, excavation, landscaping, or other work which in any way materially alters the exterior appearance of any structure, Lot or Neighborhood Common Areas be performed without the prior written approval of the Board of Directors, as well as any approvals required by the Community Declaration. In obtaining the written approval, the owner, or any other person applying, shall comply with all applicable requirements and procedures of the Governing Documents. Refusal to approve proposed changes may be based on purely aesthetic reasons.

6. APPURTENANCES; PROPERTY RIGHTS; EASEMENTS.

6.1 Appurtenances to Each Lot. The owners of each Lot have certain rights and obligations appurtenant to such ownership, including without limitation the following:

(A) Membership in the Association, and the right to cast one (1) vote in Association affairs, which rights shall be acquired and exercised as provided herein, and in the Articles of Incorporation and the Bylaws of the Association.

(B) The non-exclusive right to use any Neighborhood Common Areas for the purposes intended, subject to the restrictions and limitations provided in the Governing Documents.

(C) Beneficial ownership of an undivided share of the assets and common surplus of the Association equal to the owner's share of liability for the assessments levied by the Association as set forth in Section 4.2 above. The ownership of an undivided share of the common surplus does not entitle the owner to a distribution of the common surplus.

(D) Membership and voting rights in the Community Association, and the non-exclusive right to use Community Common Areas, subject to the restrictions and limitations provided in the Governing Documents.

(E) Other appurtenances as may be provided in the Governing Documents.

The appurtenances to a Lot automatically pass with the title, whether separately described or not, and cannot be separated from the title to the Lot. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Lots.

6.2 Use and Possession. An owner is entitled to exclusive use and possession of his Lot and Living Unit. He is entitled to non-exclusive use of the Neighborhood Common Areas, if any, in accordance with the purposes for which they are intended, but no use of any Lot or Neighborhood Common Areas may unreasonably interfere with the rights of other owners or residents. No Lot may be subdivided or any part separately sold, leased or otherwise transferred. Every owner, and his tenants, guests and invitees, shall have a perpetual non-exclusive easement for ingress, egress and access in, and over the walkways and private roads laid out on the Community Common Areas for use in common with all other owners, their tenants, guests and invitees. The portions of any Neighborhood Common Areas not used for walkways, private streets, sidewalks or driveways shall be for the common use and enjoyment of the owners, and each owner shall have a permanent and perpetual easement for the use and enjoyment of such lands as common open space, subject to recorded restrictions and regulation by the Association. These easements shall be appurtenant to and shall pass with the title to every Lot subject to the following:

(A) The right and duty of the Association to levy assessments against each Lot for the upkeep, maintenance, repair or betterment of any Neighborhood Common Areas and improvements thereon.

(B) The right of the Association to dedicate or transfer or grant an easement covering all or any part of the Neighborhood Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be determined by the Board. No such easement shall materially interfere with the rights of owners to use any Neighborhood Common Areas for the purposes intended.

(C) The right of an owner to the non-exclusive use and enjoyment of any Neighborhood Common Areas and facilities thereon shall extend to the members of this immediate family who reside with him, and to his tenants, guests and invitees, subject to regulation from time to time by the Association.

6.3 Title to Neighborhood Common Areas. On or before the date when owners other than the Developer first elect a majority of the Board of Directors, the Developer shall convey any Neighborhood Common Areas to the Association by quitclaim deed, and the Association shall accept such conveyance, subject to taxes for the year of conveyance and to restrictions, limitations, conditions, reservations and easements of record. From the date this Declaration is recorded, the Association shall be responsible for the maintenance and operation of any Neighborhood Common Areas, and any improvements and personal property thereon. The Developer shall have the right from time to time to enter upon the Neighborhood Common Areas during periods of construction upon adjacent properties and

for the purpose of construction of any facilities on the Neighborhood Common Areas that the Developer elects to build.

THE ASSOCIATION AND THE MEMBERS ARE OBLIGATED TO ACCEPT TITLE TO ANY NEIGHBORHOOD COMMON AREAS AND FACILITIES, IN THEIR "AS IS" CONDITION, WITHOUT RECOURSE, WHEN CONVEYED TO THE ASSOCIATION BY THE DEVELOPER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DEVELOPER DISCLAIMS ALL WARRANTIES EXPRESSED 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 NEIGHBORHOOD COMMON AREAS AND FACILITIES.

6.4 Partition: Separation of Interests. There shall be no judicial partition of the Neighborhood Common Areas, except as expressly provided elsewhere herein, nor shall the Developer, or any owner or any other person acquiring any interest in the Neighborhood, or any part thereof, seek judicial partition thereof. Nothing herein shall be construed to prevent judicial partition of any Lot and Living Unit owned in co-tenancy. The ownership of any Lot and the ownership of the Living Unit constructed thereon may not, however, be separated or separately conveyed, nor may any person who does not have an ownership interest in at least one Lot and Living Unit hold membership in the Association.

6.5 Easements. Each of the following easements and easement rights is reserved through the Neighborhood and is a covenant running with the land, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Neighborhood. Any lien encumbering these easements shall automatically be subordinate to the rights of the owners with respect to such easements. Each Lot shall be subject to an easement in favor of all other portions of the Neighborhood for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of party walls, and shared structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving the Neighborhood.

(A) Utility and other Easements. The Association has the power, without the joinder of any owner, to grant, modify or move easements such as electric, gas, cable television, or other utility, service or access easements, or relocate any existing easements, and to relocate any existing easements, in any portion of the Neighborhood, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Neighborhood. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Lots. The Association may also transfer title to utility-related equipment or installations, and take any other action reasonably necessary to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment or installations are to be so transferred.

(B) Encroachments. If for any reason other than the intentional act of the owner or the Association, any Living Unit or Lot encroaches upon any of the Neighborhood

