

PREPARED BY AND RETURN TO:
RICHARD E. LARSEN, ESQ.
LARSEN & ASSOCIATES, P.A.
55 E. Pine Street
Orlando, FL 32801
(407) 841-6555

FIRST AMENDMENT TO DECLARATION OF CONDOMINIUM
OF
LAKES AT VIERA EAST, A CONDOMINIUM

WHEREAS, The Declaration of Condominium of Lakes at Viera East, A Condominium ("Declaration") was recorded at Official Records Book 5410, Page 6290, Public Records of Brevard County, Florida; and

WHEREAS, said Declaration provides in Article 21, that the Declarant has the right to amend the Declaration.

Now, therefore, Declarant hereby amends the Declaration as follows:

1. Section 13 is amended to read as follows:

13. LEASING OF UNITS: In order to foster a stable residential community, no Unit shall be leased for a period of less than six (6) months. In addition, no Unit shall be leased during the Unit Owner's first one (1) year of ownership of the Condominium Unit, unless the Unit was originally purchased from Developer as a non-owner occupied Unit as set forth on the Purchase and Sale Agreement.

This Amendment is executed on the 10th day of February, 2005.

**BENCHMARK GREENS AT VIERA
ASSOCIATES LIMITED PARTNERSHIP**

WITNESSES

**By: Benchmark Viera Properties, Inc., a
Delaware Corporation, Its General Partner**

By: [Signature]
John F. Rehak, Jr., Vice President

Date: 2/10/05

[Signature]
Witness Signature
Print name: Kristen Burgess

[Signature]
Witness Signature
Print name: [Signature]

STATE OF NEW YORK
COUNTY OF ERIE

THE FOREGOING instrument was acknowledged before me this 10th day of February, 2005 by John F. Rehak, Jr., who is personally known to me or produced identification (type of identification produced) _____.

[Signature]
Notary Public-State of New York
Stamp or Seal:

DEBORAH M. SLISZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires July 7, 2007



CFN:2005018552 01-19-2005 10:54 am
OR Book/Page: 5410 / 6290

Instrument prepared by and return to:

Richard E. Larsen, Esq.
Larsen & Associates, P.A.
55 E. Pine Street
Orlando, FL 32801
(407) 841-6555

Scott Ellis

Clerk Of Courts, Brevard County

#Pgs: 104 #Names: 2
Trust: 52.50 Rec: 833.00 Serv: 0.00
Deed: 0.00 Excise: 0.00
Mtg: 0.00 Int Tax: 0.00

**DECLARATION OF CONDOMINIUM
OF
LAKES AT VIERA EAST, A CONDOMINIUM**

1. **SUBMISSION TO CONDOMINIUM OWNERSHIP:** This Declaration of Condominium is made by Lakes at Viera East, LLC, a Florida Limited Liability Company, hereinafter referred to as "Developer," as Owner of the property designated as Lakes at Viera East, A Condominium, hereby declares the purpose of the Declaration to submit the lands described in this instrument and improvements on those lands to the Condominium form of ownership and use in the manner provided by Chapter 718, Florida Statutes, as may be amended. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future Owners of Condominium parcels. The acquisition of title to a Unit or any other interest in the Condominium property, or the lease, occupancy, or use of any portion of a Unit or the Condominium property, constitutes an acceptance and ratification of all provisions of this Declaration, as amended from time to time, and an agreement to be bound by its terms.

2. **NAME:** The name of this Condominium is **LAKES AT VIERA EAST, A CONDOMINIUM**.

3. **DESCRIPTION OF CONDOMINIUM PROPERTY:** The land submitted to the Condominium form of ownership by this Declaration (hereinafter "Land") is legally described in Exhibit "A" attached to this Declaration, which Exhibit is hereby incorporated by reference.

4. **DEFINITIONS:** The terms used in this Declaration and its Exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, (The "Florida Condominium Act" unless the context otherwise requires).

4.1 **"Apartment"** has the same meaning as the term "Unit" as defined in the Florida Condominium Act.

4.2 "Apartment Owner" or "Owner" has the same meaning as the term "Unit Owner" as defined in the Florida Condominium Act, except that for purposes of interpreting use and occupancy restrictions related to Units, in cases where a primary occupant has been designated for a Unit because of its ownership, the word "Owner" refers to the primary occupant and not the record Owner.

4.3 "Assessment" means a share of the funds required for the payment of common expenses which from time to time is assessed against the Units.

4.4 "Association" means Lakes at Viera East Condominium Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.5 "Association Property" means all property, real or personal, owned or leased by the Association for the use and benefit of the Unit Owners.

4.6 "Board of Directors" or "Board" means the representative body which is responsible for the administration of the Association's affairs, and is the same body referred to in the Florida Condominium Act as the "Board of Administration."

4.7 "Condominium Documents" means and includes this Declaration and all recorded Exhibits hereto, as amended from time to time.

4.8 "Developer" means Lakes at Viera East, LLC, a Florida Limited Liability Company, or its successors and assigns.

4.9 "Family" or "Single Family" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping Unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.10 "Fixtures" means those items of tangible personal property which by being physically annexed or constructively affixed to the Unit have become accessory to it and part and parcel of it, including but not limited to, interior partitions, walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.11 "Guest" means any person who is not the Unit Owner or a lessee or a Member of the Owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant,





without the payment of consideration.

4.12 "Institutional Mortgagee" means the mortgagee (or its assignee) of a mortgage against a Condominium parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a Condominium parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

4.13 "Lease" means the grant by a Unit Owner of a temporary right of use of the Owner's Unit for valuable consideration.

4.14 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain Unit or Units to the exclusion of other Units.

4.15 "Occupy," when used in connection with a Unit, means the act of staying overnight in a Unit. "**Occupant**" is a person who occupies a Unit.

4.16 "Primary Institutional Mortgagee" means that institutional mortgagee which, at the time a determination is made, holds first mortgages on more Units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of Units encumbered, and not by the dollar amount of such mortgages.

4.17 "Primary Occupant" means the natural person approved for occupancy when title to a Unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

4.18 "Rules and Regulations" means those Rules and Regulations promulgated by the Board of Directors, governing the use of the common elements, Units and the operation of the Association.

4.19 "Unit" means that portion of the Condominium property subject to individual ownership as defined in the Florida Condominium Act.

4.20 "Voting Interest" means and refers to the arrangement established in the Condominium documents by which the Owners of each Unit collectively are entitled to one vote in Association matters. There are 200 Units, so the total number of voting interests is 200 votes.



5. **DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS:**

5.1 **Survey and Plot Plans.** Attached to this Declaration as Exhibits "B", "C", and "D" and incorporated by reference herein, are a survey of the land, plot plans, and floor plans which graphically describe the improvements in which Units are located, and which show all the Units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements. Together with this Declaration, the Exhibit is in sufficient detail to identify each Unit, the common elements and limited common elements, and their relative locations and dimension.

5.2 **Unit Boundaries.** Each Unit shall include that part of the building that lies within the following boundaries:

(A) **Horizontal Boundaries.** The upper and lower boundaries of the Unit shall be the following boundaries extended to an intersection with the vertical boundaries:

1. Upper Boundary:

(a) The horizontal plane of the unfinished surface of the ceiling located in the Unit.

2. Lower Boundary:

(a) The horizontal plane of the upper surface of the unfinished floor slab of the Unit.

(B) **Vertical Boundaries.** The vertical boundaries of the Unit shall be:

1. The vertical planes of the exterior surface of the interior walls bounding the Unit to their intersection with the horizontal boundaries.

6. **CONDOMINIUM PARCELS; APPURTENANCES AND USE:**

6.1 **Shares of Ownership.** The Condominium contains 200 Units. All Units are for residential use only. The undivided share of ownership of the common elements and the percentage share of liability for Assessments of each Unit type is as follows:

Unit Type	Square Footage	Number of Total Units	% Common Elements/Assessments Per Individual Unit
A-1	679	72	0.0035
B-1	1020	48	0.00532
B-2	1088	20	0.00566
B-3	1139	20	0.00593
C-1	1218	20	0.00634
C-2	1278	20	0.00665



CFN:2005018552

OR Book/Page: 5410 / 6294

6.2 Appurtenances to Each Unit. The Owner of each Unit shall have certain rights and own a certain interest in the Condominium property, including, without limitation the following:

(A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1 above.

(B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "E" and "F", respectively.

(C) The exclusive right to the use of the limited common elements reserved for the Unit, and the right to use the common elements.

(D) An exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.

(E) Other appurtenances as may be provided in this Declaration and its Exhibits. Each Unit and its appurtenances constitute a "Condominium parcel."

6.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his Unit. He is entitled to use the common elements in accordance with the purpose for which they are intended, but no use of the Unit or of the common elements may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the Condominium property. No Unit may be subdivided. The use of the Units, common elements and limited common elements shall be governed by the Condominium documents and by the Rules and Regulations adopted by the Board of Directors, as provided in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS:

7.1 Definition. The term "common elements" means all of the property submitted to Condominium ownership that is not within the Unit boundaries set forth in Section 5 above. The common elements include without limitation the following:



CFN:2005018552

OR Book/Page: 5410 / 6295

- (A) The Land.
- (B) All portions of the buildings and other improvements outside the Units, including all limited common elements.
- (C) Easements through each Unit for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to other Units or the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The fixtures and installations required for access and utility services to more than one Unit or to the common elements.
- (F) Common elements shall specifically not include windows and doors lying within the upper or lower boundaries of a Unit. Such windows and doors serving a Unit exclusively shall be considered a part of the Unit.
- (G) Tract 7, Parking Area.

7.2 Easements. Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of these easements may be encumbered by any leasehold or lien other than those on the Condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

(A) Utility and Other Easements. The Association has the power, without the joinder of any Unit Owner, to grant, modify or move easements such as electric, cable television, or other utility, service or access easements, or relocate any existing easements, in any portion of the common elements or Association property, and to grant easements or relocate any existing easements in any portion of the common elements or Association property, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the Units. 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 Unit Owner or the Association, any Unit encroaches upon any of the common elements or upon any other Unit, or any common element encroaches upon any Unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.



(C) Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and occupant, their respective guests, tenants, licensees and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a Unit cannot be conveyed or encumbered separately from the Unit and shall pass with the title to the Unit, whether or not separately described. As long as the Condominium exists, the common elements cannot be partitioned. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred except as an appurtenance to the Units.

8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been reserved for the use of a particular Unit or Units to the exclusion of the other Units. The limited common elements and the Units to which their exclusive use is appurtenant are as described in this Declaration and its recorded Exhibits. The following common elements are hereby designated as limited common elements:

(A) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a Unit, which furnish air conditioning or heating exclusively to that Unit, shall be limited common elements, and shall be maintained, repaired and replaced by, and solely at the expense of, the Owner of the Unit, except as otherwise provided in Section 11 below.

(B) Assigned Garages, Carports and Storage Units. Certain garages, carports and storage units have been initially assigned by recorded instrument to the exclusive use of Units by the Developer. Once assigned, they become a Unit appurtenance pursuant to 8.2, below and cannot be reassigned. Those garages, carports and storage units not assigned by Developer, if any, shall be common elements and their use shall be governed by the Board of Directors of the Association. Repair, replacement and maintenance of garages shall be the responsibility of the Association, except that the Unit Owner shall be responsible for the maintenance, repair and replacement of the garage door opener, remote opener and door springs.

(C) Stairwells. Those "private" stairwells that serve only one single Unit. All other stairwells are common element.

(D) Patios. Certain ground floor Units, have appurtenant patios which are Limited Common Elements. Said Unit Owner shall be responsible to maintain, repair and replace the patio slabs. All other components of the patio area will be the responsibility of the



CFN:2005018552

OR Book/Page: 5410 / 6297

Association.

(E) Others. Any part of the common elements that is connected to or exclusively serves a single Unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by or at the expense of the Unit Owner, shall be deemed a limited common element appurtenant to that Unit, whether specifically described above or not. This provision includes windows, screens and doors, including all hardware and framing therefore and all electrical service and plumbing components located outside of a Unit and serving that Unit exclusively.

8.2 Exclusive Use; Transfer of Use Rights. The exclusive use of a limited common element is an appurtenance to the Unit or Units to which it is designated or assigned. If after all of the Units have been sold the exclusive use of any assignable limited common element was not, for any reason, assigned to the use of a specific Unit or Units by the Developer, the Association may do so. The right of exclusive use of each limited common element passes with the Unit to which it is assigned, whether or not separately described, and cannot be separated from it.

9. ASSOCIATION: The operation of the Condominium is by Lakes at Viera East Condominium Association, Inc., a Florida corporation not for profit, which shall perform its function pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "E".

9.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "F", as they may be amended from time to time.

9.3 Delegation of Management. The Association may contract for the management and maintenance of the Condominium property and employ a licensed manager or management company to assist the Association in carrying out its power and duties by performing such functions as the submission of proposals, collection of Assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common elements 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 the Florida Condominium Act.

9.4 Membership. The Membership of the Association shall be the record Owners of legal title to the Units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the Unit Owners is specifically made necessary by some provision of the Florida Condominium Act or these Condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The Officers and Directors of the Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the



Association by reason of being a Unit Owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Florida Condominium Act and Condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association property. The Association may impose fees for the use of common elements or Association property. The Association has the power to enter into agreements, to acquire leaseholds, Memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the lands of the Condominium.

9.7 Official Records. The Association shall maintain its Official Records as required by law. The records shall be open to inspection by Members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the Member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase one or more Units in the Condominium, and to own, lease, mortgage, or convey them, such power to be exercised by the Board of Directors only upon the consent of 2/3 of the Unit Owners present at a duly called meeting of the Membership.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 9.8 above, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Sections 9.8 and 9.9 above.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of Unit Owners, based upon information supplied by the Unit Owners. A copy of the roster shall be made available to any Member upon request.

9.12 Limitation on Liability. Notwithstanding its duty to maintain and repair Condominium or Association property, the Association shall not be liable to individual Unit Owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Unit Owners or other persons.

9.13 Developer Control. When Unit Owners other than the Developer own fifteen percent (15%) or more of the Units in the Condominium that will be operated ultimately by the Association, the Unit Owners other than the Developer shall be entitled to elect one-



third (1/3) of the Members of the Board of Directors of the Association. Unit Owners other than the Developer are entitled to elect not less than a majority of the Members of the Board of Directors of the Association:

(A) Three (3) years after fifty percent (50%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

(B) Three (3) months after ninety percent (90%) of the Units that will be operated ultimately by the Association have been conveyed to purchasers;

(C) When all the Units that will be operated ultimately by the Association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the Developer in the ordinary course of business;

(D) When some of the Units have been conveyed to purchasers, and none of the others are being constructed or offered for sale by the Developer in the ordinary course of business;

(E) Seven (7) years after recordation of the Declaration of Condominium. The Developer is entitled to elect at least one (1) Member of the Board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business, at least five percent (5%) of the Units in the Condominium operated by the Association.

Within seventy-five (75) days after the Unit Owners, other than the Developer, are entitled to elect a Member or Members of the Board of Directors of the Association, the Association shall call and give not less than sixty (60) days' notice of a meeting of the Unit Owners to elect Members of the Board of Directors. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

If the Developer holds Units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the Developer:

1. Assessment of the Developer as a Unit Owner for capital improvements.
2. Any action by the Association that would be detrimental to the sales of Units by the Developer; however, an increase in Assessments for common expenses without discrimination against the Developer shall not be deemed to be detrimental to the sales of the Units.

At the time that Unit Owners, other than the Developer, elect a majority of the Members of the Board of Directors of the Association, the Developer shall relinquish control of the Association, and the Unit Owners shall accept control. Simultaneously, the Developer shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by the Developer, including, but not limited to, items, if



applicable, enumerated in F.S. 718.301(4)(a).

9.14 Qualifications of Directors. Directors must be Members of the Association, except that Directors appointed by the Developer need not be Members of the Association.

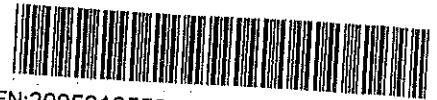
9.15 Developer's Sales Rights. Specifically, and not by way of limitation, the Developer shall have the right to transact any business necessary to consummate sales of Condominium parcels, including, but not limited to, the right to maintain models, have signs identifying the Condominium property and advertising the sale of Condominium parcels, have employees in the offices, models, and other Common Property, and use the common elements, and to show Units. Sales office furnishings, the furniture and furnishings in the model apartment, signs, and items pertaining to sales shall not be considered common elements and shall remain the property of the Developer. Further, the Developer and its employees shall have the right to exclusive possession of the model apartment and Sales Office, and Developer shall further have the right for any such apartment to remain as a model until such time as all Condominium parcels have been sold. In addition, the Developer reserves an easement over the roadways and all other Common Property in the Condominium, to enjoy the rights and privileges enumerated herein, as well as for ingress and egress for construction, sales, parking, and any other related purposes.

10. ASSESSMENTS AND LIENS: The Association has the power to levy and collect Assessments against each Unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association. This power includes both "Regular" and "Special" Assessments for each Unit's share of the common expenses. The Association may also levy special charges against any individual Unit for any amounts, other than for common expenses, which are properly chargeable against such Unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforcement as provided in the Bylaws, and as follows:

10.1 Common Expenses. Common expenses include the expenses of operation, maintenance, repair, replacement or insurance of the common elements and Association property, the expenses of operating the Association, and any other expenses properly incurred by the Association for the Condominium, including amounts budgeted for the purpose of funding reserve accounts. If the Board of Directors contracts for pest control within Units or basic cable television programming services, alarm or security monitoring in bulk for the entire Condominium, the costs of such services shall be a common expense.

10.2 Share of Common Expenses. The Owner of each Unit shall be liable for a share of the common expenses equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

10.3 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no Unit Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Unit. No Owner can withdraw or receive distribution of his share of the common surplus, except as



otherwise provided herein or by law.

10.4 Liability for Assessments. The Owner of each Unit, regardless of how title was acquired, is liable for all Assessments or installments thereon coming due while he is the Owner. Multiple Owners are jointly and severally liable. Except as provided in Section 20.3 below as to certain first mortgagees, whenever title to a Condominium parcel is transferred for any reason, the new Owner becomes jointly and severally liable with the previous Owner for all Assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new Owner may have to recover from the previous Owner any amounts paid by the new Owner.

10.5 No Waiver or Excuse From Payment. The liability for Assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the Unit on which the Assessments are made, or by interruption in the availability of the Unit or the common elements for any reason whatsoever. No Unit Owner may be excused from payment of his share of the common expenses unless all Unit Owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

10.6 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before thirty (30) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the Unit Owner shall become liable for said Assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorneys' fees, and finally to delinquent Assessments. No payment by check is deemed received until the check has cleared.

10.7 Acceleration. If any Special Assessment or installment of a regular Assessment as to a Unit is unpaid thirty (30) days after the due date, and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's Assessment for that fiscal year. The due date for all accelerated amounts shall be the date the Claim of Lien was recorded in the public records. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose, as required by Section 718.116 of the Florida Condominium Act, or may be sent separately.

10.8 Liens. The Association has a lien on each Condominium parcel securing payment of past due Assessments, including interest and attorneys' fees and costs incurred by the Association incident to the collection of the Assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Brevard County, Florida, stating the description of the Condominium parcel, the name of the record Owner, the name and address of the Association, the Assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid Assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.9 Priority of Lien. The Association's lien for unpaid Assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Florida Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Florida Condominium Act, as amended from time to time. Any lease of a Unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

10.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid Assessments in the manner provided in the Florida Condominium Act, and may also bring an action to recover a money judgment for the unpaid Assessments without waiving any lien rights.

10.11 Certificate As to Assessments. Within fifteen (15) days after request by a Unit Owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all Assessments and other monies owed to the Association by the Unit Owner with respect to the Condominium parcel have been paid. Any person other than the Owner who relies upon such certificate shall be protected thereby.

10.12 Developer Assessments.

(A) The Developer shall be excused from the payment of the share of the common expenses and Assessments related to those Units owned by the Developer for a period running subsequent to the recording of this Declaration and ending on the first day of the fourth calendar month following the month in which the closing of the sale of the first Unit occurs. During said period the Developer is required to pay the portion of common expenses incurred which exceed the amount assessed against other Unit Owners.

(B) Developer is excused from the payment of its share of the common expenses which would have been assessed against its Units beginning with the expiration date of 10.12(a), above, and until the turnover of control of the Association to the Unit Owners; and during said period of time the Developer hereby guarantees that the





Assessment for common expenses of the Condominium assessed against the individual Unit Owners and their respective Units shall not increase over the following total monthly amount for each Unit Type:

Unit Type	Monthly Assessments Per Individual Unit
A-1	\$ 118.01
B-1	\$ 177.28
B-2	\$ 189.10
B-3	\$ 197.96
C-1	\$ 211.69
C-2	\$ 222.12

Developer agrees to pay any amount of common expenses incurred during that period and not produced by the Assessments at said guaranteed level receivable from other Unit Owners.

11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS:

Responsibility for the protection, maintenance, repair and replacement of the Condominium property, and restrictions on its alteration and improvement shall be as follows:

11.1 Association Maintenance. The Association is responsible for the protection, maintenance, repair and replacement of all common elements and Association property (other than the limited common elements that are required elsewhere herein to be maintained by the Unit Owner). The cost is a common expense. The Association's responsibilities include, without limitation, the following:

- (A) All installations, fixtures and equipment located within one Unit but serving another Unit, or located outside the Unit, for the furnishing of utilities to more than one Unit or the common elements.
- (B) All exterior building walls;
- (C) All driveways, parking areas, garages, carports, garage doors, storage units and landscaping located on the Common Elements or Limited Common Elements.
- (D) The stairwells that serve more than one Unit.
- (E) Pool, Pool Restrooms, Pool Cabana and Putting Green
- (F) All maintenance, repair, and replacement of roofs forming part of the common elements as further defined herein.



All incidental damage caused to a Unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the costs shall be a common expense, except the Association shall not be responsible for the damage to any alteration or addition made by a Unit Owner without prior Association approval as required elsewhere herein, nor shall the Association be responsible for repair or restoration costs if the need for the work was caused by the negligence of the Owner.

11.2 Unit Owner Maintenance. Each Unit Owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own Unit and certain limited common elements. The Owner's responsibilities include, without limitation, the following:

- (A) Maintenance, repair and replacement of screens, windows and window glass.
- (B) The entrance doors to the Unit and its interior surface.
- (C) All other doors within or affording access to the Unit, including sliding glass doors and their mechanisms.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) serving only the Unit.
- (E) Appliances, water heaters, smoke alarms and vent fans.
- (F) All air conditioning, and heating equipment, thermostats, ducts and installations serving the Unit exclusively.
- (G) Carpeting and other floor coverings.
- (H) Door and window hardware and locks.
- (I) Shower pans.
- (J) Other facilities or fixtures which are located or contained entirely within the Unit and serve only the Unit.
- (K) Interior drywall.
- (L) All interior, partition walls which do not form part of the boundary of the Unit.
- (M) The limited common element stairwells that serve only one Unit.
- (N) Repair and maintain or replacement of security system within the Unit.



CFN:2005018552

OR Book/Page: 5410 / 6305

11.3 Other Unit Owner Responsibilities:

(A) Interior Decorating. Each Unit Owner is responsible for all decorating within his own Unit, including painting, wallpapering, paneling, floor covering, draperies, window shades, curtains, lamps and other light fixtures, and other furnishings and interior decorating.

(B) Window Coverings. The covering and appearance of windows and doors, whether by draperies, shades, reflective film or other items, whether installed within or outside of the Unit, visible from the exterior of the Unit, shall be subject to the Rules and Regulations of the Association.

(C) Modifications and Alterations. If a Unit Owner makes any modifications, installations or additions to his Unit or the common elements, the Unit Owner, and his successors in title, shall be financially responsible for the insurance, maintenance, repair and replacement of the modifications, installations or additions, as well as the costs of repairing any damage to the common elements, limited common elements, or other Units resulting from the existence of such modifications, installations or additions, and the costs of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace, or protect any other part of the Condominium property.

(D) Use of Licensed and Insured Contractors. Whenever a Unit Owner contracts for maintenance, repair, replacement, alteration, addition or improvement of any portion of the Unit or common elements, whether with or without Association approval, such Owner shall be deemed to have warranted to the Association and its Members that his contractor(s) are properly licensed and fully insured, and that the Owner will be financially responsible for any resulting damage to person or property not paid by the contractor's insurance.

11.4 Alteration of Units or Common Elements by Unit Owners. No Owner shall make or permit the making of any material alterations or substantial additions to his Unit or the common elements, or in any manner change the exterior appearance of any portion of the Condominium, without first obtaining the written approval of the Board of Directors, which approval may be denied if the Board of Directors determines that the proposed modifications or alterations would adversely affect, or in any manner be detrimental to, the Condominium in part or in whole. Any glass, screen, curtain, blind, shutter, awning, or other modifications, additions or installations which may be installed where visible from outside the Unit, are subject to regulation by the Board of Directors. No Owner may alter the landscaping of the common elements in any way without prior Board approval. The Board of Directors may revoke or rescind any approval of an alteration or modification previously given, if it appears that the installation has had unanticipated adverse effects on the Condominium.

11.5 Alterations and Additions to Common Elements and Association Property. The protection, maintenance, repair, insurance and replacement of the common

elements and Association property is the responsibility of the Association and the costs are a common expense. Beyond this function, the Association shall make no material alteration of, nor substantial additions to, the common elements or the real property owned by the Association costing more than \$7500.00 in the aggregate in any calendar year without prior approval of a majority of the voting interests. Alterations or additions costing less than this amount may be made with Board approval. If work reasonably necessary to protect, maintain, repair, replace or insure the common elements or Association property also constitutes a material alteration or substantial addition to the common elements, no prior Unit Owner approval is required.

11.6 Enforcement of Maintenance. If after reasonable notice the Owner of a Unit fails to maintain the Unit or its appurtenant limited common elements as required above, the Association may institute legal proceedings to enforce compliance, or may take any and all other lawful actions to remedy such violation, including, but not limited to, the irrevocable right to enter the Unit during reasonable hours, with or without notice to or consent of the tenant or Unit Owner, to repair, replace, or maintain any item which in the business judgment of the Board of Directors may constitute a health or safety hazard to other property or residents. Any expenses incurred by the Association in performing work within the Unit as authorized by this Declaration shall be charged to the Unit Owner, together with reasonable attorneys' fees and other expenses of collection, if any.

11.7 Negligence; Damage Caused by Condition in Unit. The Owner of each Unit shall be liable for the expenses of any maintenance, repair or replacement of common elements, other Units, or personal property made necessary by his act or negligence, or by that of any Member of his family or his guests, employees, agents, or tenants. Each Unit Owner has a duty to maintain his Unit, any limited common element appurtenant to the Unit (except those limited common elements required to be maintained by the Association, as provided in Section 8), and personal property therein, in such a manner as to prevent foreseeable and reasonably preventable damage to other Units, the common elements or the property of other Owners and residents. If any condition, defect or malfunction, resulting from the Owner's failure to perform this duty causes damage to other Units, the common elements, Association property or property within other Units, the Owner of the offending Unit shall be liable to the person or entity responsible for repairing the damaged property for all costs of repair or replacement not paid by insurance. If one or more of the Units involved is not occupied at the time the damage is discovered, the Association may enter the Unit without prior notice to the Owner and take reasonable action to mitigate damage or prevent its spread. The Association may, but is not obligated to, repair the damage with the prior consent of the Owner.

11.8 Association's Access to Units. The Association has an irrevocable right of access to the Units during reasonable hours for the purposes of protecting, maintaining, repairing and replacing the common elements or portions of a Unit to be maintained by the Association under this Declaration, and as necessary to prevent damage to one or more Units. The Association's right of access includes, without limitation, entry for purposes of pest control and preventive maintenance of safety equipment such as smoke alarms as well as the right, but not the duty, to enter under circumstances where the health or safety



of residents may be endangered. The exercise of the Association's rights of access to the Unit shall be accomplished with due respect for the rights of occupants to privacy and freedom from unreasonable annoyance, as well as with appropriate precautions to protect the personal property within the Unit. The Association may retain a pass-key to all Units. If it does, no Unit Owner shall alter any lock, nor install a new lock, which prevents access when the Unit is unoccupied, unless the Unit Owner provides a key to the Association. If the Association is not given a key, the Unit Owner shall pay all costs incurred by the Association in gaining entrance to the Unit, as well as all damage to his Unit caused by gaining entrance thereto, and all damage resulting from delay in gaining entrance to his Unit caused by the unavailability of a key.

11.9 Pest Control. The Association may supply pest control services for the inside of each Unit, with the costs thereof being part of the common expenses. An Owner has the option to decline such service unless the Association determines that such service is necessary for the protection of the balance of the Condominium, in which event the Owner thereof must either permit the Association's pest control company to enter his Unit or must employ a licensed pest control company to enter his Unit on a regular basis to perform pest control services and furnish written evidence thereof to the Association. Because the cost of pest control service provided by the Association is part of the common expenses, the election of an Owner not to use such service shall not reduce the Owner's Assessments.

12. USE RESTRICTIONS: The use of the Condominium property shall be in accordance with the following provisions:

12.1 Units. Each Unit shall be occupied by no more than the number of occupants authorized by local zoning codes or regulations. No business or commercial activity shall be conducted in or from any residential Unit. This restriction shall not be construed to prohibit any residential Owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his Unit, or from handling his personal, business or professional telephone calls or written correspondence in and from his Unit. Such uses are expressly declared customarily incident to residential use.

12.2 Nuisances. No Owner shall use his Unit, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the occupant of another Unit, or which would not be consistent with the maintenance of the highest standards for a first class residential Condominium, nor permit the premises to be used in a disorderly or unlawful way. The use of each Unit shall be consistent with existing laws and the Condominium documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner.

12.3 Use of Common Elements. Common hallways, stairways and other common elements shall not be obstructed, littered, defaced or misused in any manner.



12.4 Pets. Only the following pets are allowed to be kept on the Condominium property:

(A) A maximum of two (2) domestic dogs per Unit. Notwithstanding this allowance, the following specific breeds are prohibited: Pit Bull, Doberman Pincher, Akita, Rottweiler, Husky, Bull Mastiff and Chow;

(B) A maximum of two (2) domestic cats per Unit;

(C) Fish in an aquarium, not to exceed 30 gallons without prior Board approval.

In no event, other than in the case of fish, shall there be more than a cumulative total of two (2) animals kept in a Unit at any time.

12.5 Window Treatments. Only white vertical or horizontal blinds shall be allowed as window treatments for windows that are visible from the street.


12.6 Vehicles And Repair.

(A) No inoperative or unlicensed cars, trucks, trailers or other such type of vehicles shall be parked, stored, kept or maintained on the common elements or limited common elements, including the streets, covered or uncovered parking spaces.

(B) There shall be no repairs performed on any motor vehicle on the common elements or limited common elements, including the streets or uncovered parking spaces.

(C) No Commercial vehicles, trucks, tow trucks, semi-trailers, buses, limousines, motor homes, campers, boats or boat trailers shall be parked, stored, kept or maintained on any portion of the Condominium property. The term "Commercial Vehicle" includes, but is not limited to, vehicles with signage or other commercial/business markings on or affixed to the vehicle, whether or not such vehicle is used for daily transportation by the Owner of such vehicle or the person(s) in possession and use of such vehicle. The term "trucks" shall not include small pick-up trucks, "mini vans" or "sport utility vehicles" such as a 2004 Ford Explorer or a 2004 Jeep Cherokee, or similar vehicles of a type which are commonly used for daily transportation (provided that such vehicles contain no commercial markings). The Board of Directors shall have full authority to determine whether a vehicle qualifies as an allowed vehicle pursuant to this Section.

(D) A separately fenced common area for storage of vehicles shall be used and governed according to the Rules and Regulations adopted by the Board.

13. LEASING OF UNITS: In order to foster a stable residential community, no Unit shall be leased for a period of less than six (6) months. 

14. TRANSFER OF OWNERSHIP OF UNITS. Owners shall have the right to transfer ownership interest in their Unit without approval of the Association.



15. INSURANCE. In order to adequately protect the Association and its Members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

15.1 By the Unit Owner. Each Unit Owner is responsible for insuring his own Unit, and the personal property therein; all floor, wall and ceiling coverings; all built-in cabinets, appliances, water heaters, air conditioning and heating equipment, and electrical fixtures that are located within the Unit and required to be repaired or replaced by the Owner; and all alterations, additions and improvements made to the Unit or the common elements by the Owner or his predecessors in title. Each Unit Owner is expected to carry homeowner's insurance, with endorsements for leakage, seepage and wind-driven rain, additions and alterations, and loss Assessment protection, or recognize that he bears financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

15.2 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under the Condominium documents, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the Unit Owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

15.3 Required Coverage. The Association shall maintain adequate insurance covering all of the buildings and the common elements as well as all Association property, in amounts determined annually by the Board of Directors, such insurance to afford the following protection:

(A) Property. Loss or damage by fire, extended coverage (including windstorm), vandalism and malicious mischief, and other hazards covered by what is commonly known as an "All Risk" property contract.

(B) Flood. If in a flood zone, in amounts deemed adequate by the Board of Directors.

(C) Liability. Premises and operations liability for bodily injury and property damage in such limits of protection and with such coverage as are determined by the Board of Directors, with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner.

(D) Statutory Fidelity Bond.

15.4 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and Unit Owners.

15.5 Description of Coverage. A detailed summary of the coverages included in



the master policies, and copies of the master policies, shall be available for inspection by Unit Owners or their authorized representatives upon request.

15.6 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association Unit Owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

15.7 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the Unit Owners and their mortgagees as their interests may appear. The duty of the Association shall be to receive such proceeds as are paid, and to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the Unit Owners and their respective mortgagees in the following shares:

(A) Common Elements. Proceeds on account of damage to common elements shall be held in as many undivided shares as there are Units, the shares of each Unit Owner being the same as his share in the common elements.

(B) Units. Proceeds on account of damage within the Units shall be held in prorated shares, based on the amount of damage within each damaged Unit as a percentage of the total damage within all Units, less the deductible.

(C) Mortgagee. If a mortgagee endorsement has been issued as to a Unit, the shares of the mortgagee and the Unit Owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against Unit or Units, except when the funds are not used for repairs or to the extent that insurance proceeds exceed the actual costs of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

15.8 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Unit Owners in the following manner:

(A) Costs of Protecting and Preserving the Property. If a person other than the person responsible for repair and reconstruction has advanced funds to preserve and protect the property to prevent further damage or deterioration, the funds so advanced shall first be repaid, with interest if required.

(B) Cost of Reconstruction or Repair. If the damage for which the proceeds are paid is to be reconstructed or repaired by the Association, the remaining proceeds shall be paid to defray the costs thereof. Any proceeds remaining after defraying costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being paid jointly to them.





(C) Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided herein that the damages for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them.

15.9 Association as Agent. The Association is hereby irrevocably appointed as agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the Condominium property.

16. RECONSTRUCTION OR REPAIR AFTER CASUALTY: If any part of the Condominium property is damaged by casualty, whether and how it shall be reconstructed or repaired shall be determined as follows:

16.1 Damage to Units. Where loss or damage occurs within one or more Units, any Association insurance proceeds on account of the loss or damage shall be distributed to the Owner(s) of the damaged Unit(s) in shares as provided in Section 15.7 above. The Owner(s) of the damaged Unit(s) shall be responsible for reconstruction and repair, and shall bear the burden of the deductible in the same shares as they received the benefits of the Association's coverage.

16.2 Damage to Common Elements-Less than "Very Substantial." Where loss or damage occurs to the common elements, but the loss is less than "very substantial," as hereinafter defined, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the costs of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the costs of repair and reconstruction of the common elements, the Association shall promptly, upon determination of the deficiency, levy a Special Assessment against all Unit Owners in proportion to their shares in the common elements for the deficiency. Such Special Assessments need not be approved by the Unit Owners. The proceeds from the Special Assessment shall be added to the funds available for repair and restoration of the property.

16.3 "Very Substantial" Damage. As used in this Declaration, the term "very substantial" damage shall mean loss or damage caused by a common occurrence whereby at least five-sevenths (5/7ths) of the total Units cannot reasonably be rendered habitable within sixty (60) days or it is impossible or structurally imprudent to repair or rebuild. Should such "very substantial" damage occur then:

(A) The Board of Directors and the Officers, or any of them, are authorized,



regardless of any other provision of this Declaration, to take such action as may reasonably appear to be necessary under emergency conditions to evacuate or shore-up structures and salvage property, to engage security to protect against looting or other criminal acts, and alter the Condominium property or Association property as might be reasonable under the circumstances to protect the Condominium property or Association property from further damage or deterioration. This authority includes the authority to expend any and all available Association funds.

(B) The Board of Directors shall endeavor to obtain comprehensive, detailed estimates of the cost of repair and restoration.

(C) A Membership meeting shall be called by the Board of Directors to be held not later than sixty (60) days after the Board has obtained the estimates, to determine the opinion of the Membership with reference to rebuilding or termination of the Condominium, subject to the following:

1. If the insurance proceeds, reserves and other Association funds available for the restoration and repairs that are the Association's responsibility are sufficient to cover the estimated cost thereof so that it is reasonably anticipated that the repairs and reconstruction can be accomplished with a Special Assessment not exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then the Condominium shall be restored or repaired unless two-thirds (2/3rds) of the total voting interests vote for termination, in which case the Condominium shall be terminated.

2. If upon the advice of legal counsel, it appears unlikely that the then applicable zoning or other regulatory laws will allow reconstruction of the same number and general types of Units; or if the insurance proceeds, reserves and other Association funds available for restoration and repair are not sufficient to cover the estimated costs thereof so that it is reasonably anticipated that the repairs and reconstruction can only be accomplished by levying Special Assessments exceeding fifteen percent (15%) of the total annual budget for the year in which the casualty occurred, then unless two-thirds (2/3rds) of the total voting interests vote in favor of such Special Assessment and against termination of the Condominium, it shall be terminated and the property removed from the provisions of the Florida Condominium Act. If the requisite number of Unit Owners approves reconstruction, the Board of Directors shall levy such Assessments as are necessary and shall proceed to negotiate and contract for necessary repairs and restoration. The proceeds from the Special Assessments shall be added to the funds available for repair and restoration of the property.

(D) If any dispute shall arise as to whether "very substantial" damage has occurred, or as to the amount of Special Assessments required, a determination approved by at least two-thirds (2/3rds) of the Board of Directors shall be conclusive, and shall be binding upon all Unit Owners.

16.4 Application of Insurance Proceeds. It shall always be presumed that monies disbursed for repair and restoration come first from insurance proceeds; if there is



a balance left in the funds held by the Association after the payment of all costs of repair and restoration, such balance shall be distributed to the Unit Owners, except as otherwise provided in Section 15.7(C) above.

16.5 Equitable Relief. In the event of damage to the common elements which renders any Unit uninhabitable, and the damage is not repaired, reconstructed, or rebuilt within a reasonable period of time, the Owner of the uninhabitable Unit may petition a court for equitable relief, which may include a termination of the Condominium and a partition. For the purposes of this provision, it shall be conclusively presumed that repair, reconstruction or rebuilding has occurred within a reasonable period of time if substantial work is commenced within six (6) months following the damage or destruction, and is completed within nine (9) months thereafter.

16.6 Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the original buildings, or according to different plans and specifications approved by the Board of Directors, by the Owners of at least five-sevenths (5/7ths) of the Units, and by the Primary Institutional Mortgagee, if any. Such approvals may not be unreasonably withheld. However, no change in plans and specifications shall materially reduce the interior floor space of any Unit without the consent of the Unit Owner and his institutional mortgagee, if any.

17. CONDEMNATION:

17.1 Deposit of Awards with Association. The taking of all or any part of the Condominium property by condemnation or eminent domain shall be deemed to be a casualty to the portion taken and the awards for that taking shall be deemed to be proceeds from insurance on account of the casualty. Even though the awards may be payable to Unit Owners, the Unit Owners shall deposit the awards with the Association; and if any fail to do so, a special charge shall be made against a defaulting Unit Owner in the amount of his award, or the amount of that award shall be set off against any sums payable to that Owner.

17.2 Determination Whether to Continue Condominium. Whether the Condominium will be continued after condemnation will be determined in the same manner provided for determining whether damaged property will be reconstructed and repaired after a casualty.

17.3 Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of all awards and Special Assessments will be deemed to be Condominium property and shall be owned and distributed in the manner provided for insurance proceeds when the Condominium is terminated after a casualty. If the Condominium is not terminated after condemnation, but the size of the Condominium will be reduced, the Owners of condemned Units, if any, will be made whole, and any property damaged by the taking will be made usable in the manner provided below. Proceeds of awards and Special Assessments shall be used for these purposes and shall be disbursed in the manner provided for disbursements of funds after a casualty.



17.4 Association as Agent. The Association is hereby irrevocably appointed as each Unit Owner's attorney-in-fact for purposes of negotiating or litigating with the condemning authority for the purpose of realizing just compensation.

17.5 Units Reduced but Habitable. If the condemnation reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the awards for the taking of a portion of that Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, the additional funds required shall be paid by the Owner of the Unit.

(B) Distribution of Surplus. The balance of the award, if any, shall be distributed to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagees.

(C) Adjustment of Shares in Common Elements. If the floor area of a Unit is reduced by the taking, the number representing the share in the common elements appurtenant to the Unit shall be reduced in the proportion by which the floor area of the Unit is reduced by the taking, and then the shares of all Unit Owners in the common elements shall be restated as percentages of the total of the numbers representing their original shares as reduced by the taking.

17.6 Unit Made Not Habitable. If the condemnation is of an entire Unit or reduces the size of a Unit so that it cannot be made habitable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium:

(A) Payment of Award. The fair market value of the Unit immediately prior to the taking shall be paid to the Owner of the Unit and to each mortgagee of the Unit, the remittance being made payable jointly to the Owner and mortgagee(s).

(B) Addition to Common Elements. If possible and practical, the remaining portion of the Unit shall become a part of the common elements and shall be placed in condition for use by some or all Unit Owners in a manner approved by the Board of Directors.

(C) Adjustment of Shares in Common Elements. The shares in the common elements appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the common elements among the reduced number of Unit Owners. This shall be done by restating the shares of continuing Unit Owners in the common elements as percentages of the total of the numbers representing the shares of these as they existed prior to the adjustment.



(D) **Assessments.** If the amount of the award for the taking is not sufficient to pay the fair market value of the condemned Unit to the Unit Owner and to condition the remaining portion of the Unit for use as a part of the common elements, the additional funds required for those purposes shall be raised by Special Assessment against all Unit Owners who will continue as Owners of Units after the changes in the Condominium affected by the taking. The Assessments shall be made in proportion to the shares of those Owners in the common elements after the changes affected by the taking.

(E) **Arbitration.** If the fair market value of a Unit prior to the taking cannot be determined by agreement between the Unit Owner and the Association within thirty (30) days after notice by either party, the value shall be determined by appraisal in accordance with the following. The Unit Owner and the Association shall each appoint one certified real property appraiser, who shall appraise the Unit and determine the fair market value by computing the arithmetic average of their appraisals of the Unit. If there is a first mortgage, the first mortgagee shall have the right, but not the obligation, to appoint a third state certified appraiser to participate in this process. A judgment of specific performance upon the fair market value calculated in this manner may be entered in any court of competent jurisdiction. Each party shall bear the costs of his own appraiser.

17.7 Taking of Common Elements. Awards for the taking of common elements only shall be used to make the remaining portion of the common elements usable in a manner approved by the Board of Directors. The balance of such awards, if any, shall be distributed to the Unit Owners in the shares in which they own the common elements.

17.8 Amendment of Declaration. Any changes in Units and in the common elements, in the ownership of the common elements, and in the sharing of common expenses that are necessitated by condemnation shall be accomplished by amending this Declaration and, if appropriate, its Exhibits. Such Amendment need be approved only by the Owners of a majority of the Units. Approval of or joinder by lien holders is not required for any such Amendment.

18. TERMINATION: The Condominium may be terminated in the following manner:

18.1 Agreement. The Condominium may be terminated at any time by written agreement of the Owners of 100% of the Units, joined by the holders of any mortgages on the Units.

18.2 Very Substantial Damage. If the Condominium, as a result of casualty, suffers "very substantial damage" to the extent defined in Section 16.3, and it is not decided as therein provided that it will be reconstructed or repaired, the Condominium form of ownership of the property in this Condominium will thereby terminate without agreement.

18.3 General Provisions. Prior to termination of the Condominium or Association, the Division of Florida Land Sales, Condominiums and Mobile Homes shall be



notified. A copy of the recorded termination notice certified by the clerk of the county in which the recording took place shall be submitted to the Division. Upon termination, the former Unit Owners shall become the Owners, as tenants in common, of all Condominium and Association property and the assets of the Association. The shares of such tenants in common shall be the same as were their shares of the common elements, and the costs of termination, as well as post-termination costs of maintaining the former Condominium property, shall be common expenses, the payment of which shall be secured by a lien on the interest owned by each tenant in common. The mortgagee or lienor of a Unit Owner shall have a mortgage or lien solely and exclusively upon the undivided share of such tenant in common in and to the lands and other assets of the Association which he may become entitled to receive by reason of such termination. The termination of the Condominium shall be evidenced by a certificate of the Association, executed with the formalities of a deed, and certifying as to the facts affecting the termination. Termination shall become effective when that certificate is recorded in the Public Records of Brevard County, Florida.

18.4 New Condominium. The termination of the Condominium does not bar creation of another Condominium affecting all or any portion of the same property.

18.5 Partition; Sale. Following termination, the former Condominium property and Association property may be partitioned and sold upon the application of any Unit Owner. If following a termination, at least seventy-five (75%) of the voting interests agree to accept an offer for the sale of the property, all Owners shall be bound to execute deeds and other documents reasonably required to affect the sale. In that event, any action for partition of the property shall be held in abeyance pending the sale, and upon the consummation of the sale shall be discontinued by all parties thereto.

18.6 Last Board. The termination of the Condominium does not, by itself, terminate the Association. The Members of the last Board of Directors and the Officers of the Association shall continue to have the powers granted in this Declaration for the purpose of winding up the affairs of the Association.

18.7 Provisions Survive Termination. The provisions of this Section 18 are covenants running with the land, and shall survive the termination of the Condominium until all matters covered by those provisions have been completed.

19. ENFORCEMENT:

19.1 Duty to Comply; Right to Sue. Each Unit Owner, his tenants and guests, and the Association shall be governed by and shall comply with the provisions of the Florida Condominium Act, the Condominium documents and the Rules and Regulations of the Association. Actions for damages or for injunctive relief, or both, for failure to comply may be brought by the Association or by a Unit Owner against:

- (A) The Association;



- (B) A Unit Owner;
- (C) Anyone who occupies or is a tenant or guest in a Unit; or
- (D) Any Member of the Board of Directors who willfully and knowingly fails to comply with these provisions.

19.2 Waiver of Rights. The failure of the Association or any Member to enforce a right, provision, covenant or condition which may be granted by the Condominium documents shall not constitute a waiver of the right of the Association or Member to enforce such right, provision, covenant or condition in the future. A provision of the Florida Condominium Act may not be waived by a Unit Owner if the waiver would adversely affect the rights of the Owner or defeat the purpose of the provision, except that Unit Owners or Directors may waive notice of specific meetings as provided in the Bylaws. Any written instrument or instruction given by a purchaser or Unit Owner to an escrow agent may be relied upon by the escrow agent, whether or not such instruction and the payment of funds thereunder might otherwise constitute a waiver of any provision of the Florida Condominium Act or the Condominium documents.

19.3 Attorneys' Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, Unit Owner or the Association to comply with the requirements of the Florida Condominium Act, the Condominium documents, or the Association's Rules and Regulations, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees, including costs and reasonable attorneys' fees upon appeal.

19.4 No Election of Remedies. All rights, remedies and privileges granted to the Association or Unit Owners under the law and the Condominium documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

20. RIGHTS OF MORTGAGEES:

20.1 Approvals. Written consent of the institutional mortgagee of a Unit shall be required for any Amendment to the Declaration which would decrease the Unit's share of ownership of the common elements, except as otherwise provided in Sections 17.5(C), 17.6(C) and 17.8, which consent may not be unreasonably withheld.

20.2 Notice of Casualty or Condemnation. In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of, any Unit or any part of the common elements, the record holder of any first mortgage on an affected Unit shall be entitled to notice.



20.3 First Mortgage Foreclosure. If the mortgagee of a first mortgage of record acquires title to a Condominium parcel as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure, the liability of the first mortgagee for the unpaid common expenses or Assessments attributable to the Condominium parcel, or chargeable to the former Owner of the parcel, which came due prior to the first mortgagee's acquisition of title, shall be limited to the amount the first mortgagee is required to pay under the Florida Condominium Act, as it may be amended from time to time. No acquirer of title to a Condominium parcel by foreclosure, or by a deed in lieu of foreclosure, may be excused from the payment of any Assessments coming due during the period of such ownership.

20.4 Redemption. If proceedings are instituted to foreclose any mortgage or lien on any Unit, the Association, on behalf of one or more Unit Owners and with the permission of the mortgagee, may redeem the mortgage or lien for the amount due thereon and be thereby subrogated to all of the mortgagee's or lienor's rights of action, or the Association may purchase the Unit at the foreclosure sale. Any mortgagee shall have an unrestricted, absolute right to accept title to the Unit in settlement and satisfaction of the mortgage or to foreclose its mortgage in accordance with its terms, and to bid upon the Unit at the foreclosure sale.

20.5 Right to Inspect Books. The Association shall make available to institutional mortgagees requesting same current copies of the Condominium documents and the books, records and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be provided at the expense of the person requesting them.

20.6 Financial Statement. Any institutional mortgagee is entitled, upon written request, to a copy of the most recent financial report or financial statement of the Association.

21. AMENDMENT OF DECLARATION: Except as otherwise provided above as to Amendments made by the Developer, all Amendments to this Declaration shall be proposed and adopted in the following manner:

21.1 Proposal. Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by the Owners of at least one-fourth (1/4) of the Units.

21.2 Procedure. Upon any Amendment or Amendments to this Declaration being proposed as provided above, the proposed Amendment or Amendments shall be submitted to a vote of the Members not later than the next Annual Meeting for which proper notice can still be given.

21.3 Vote Required. Except as otherwise provided by law, or by specific provision of the Condominium documents, this Declaration may be amended if the proposed



Amendment is approved by a majority of the voting interests appearing in person or by proxy at any annual or Special Meeting called for the purpose.

Alternatively, Amendments may be adopted without a meeting following the procedure set forth in Section 3.12 of the Bylaws.

21.4 Certificate; Recording. A copy of each adopted Amendment shall be attached to a certificate that the Amendment was duly adopted as an Amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association. The Amendment shall be effective when the certificate and copy of the Amendment are recorded in the Public Records of Brevard County, Florida.

21.5 Proviso. No Amendment may change the boundaries or size of any Unit in any material fashion, materially alter or modify the appurtenances to the Unit, or change the proportion or percentage by which the Owner of a parcel shares the common expenses and owns the common surplus, unless 75% of all record Owners of the Units consent in writing to the Amendment, but no other person need join in or consent to the Amendment. This proviso does not apply to changes caused by condemnation or a taking by eminent domain as provided in Section 17, nor to mergers. No Amendment shall operate to unlawfully discriminate against any Unit Owner or against any class of Unit Owners. All Unit Owners of record and all record Owners of liens on the Unit or Units which are directly affected by any such change must join in the execution of the Amendment.

21.6 Enlargement of Common Elements. The common elements designated by this Declaration may be enlarged to add real property acquired by the Association through Amendment of Exhibits "B" and "C" to the Declaration. The Amendment must be approved by at least five-sevenths (5/7ths) of the total voting interests, but no other person need join in or consent to the Amendment. The Amendment divests the Association of title and vests title in the Unit Owners without naming them and without further conveyance, in the same proportion as the undivided shares in the common elements that are appurtenant to the Units.

21.7 Correction of Errors. If there is an omission or error in this Declaration of Condominium or in other documents required by Florida law to establish the Condominium, the Association may correct the error or omission by following the procedures set forth in the Florida Condominium Act.

21.8 Developer Amendment Rights. The Developer reserves the right to amend this Declaration of Condominium and any of its covenants, restrictions, reservations, conditions, or easements until seventy five percent (75%) of the Units have been sold and titled out to individual purchasers, unless doing so would be a violation of the Florida Condominium Act; and further, except that the Developer, or if said Corporation has been legally dissolved, then any one of its last stockholders of record, or a Member of the last Board of Directors, their administrators or assigns must approve in writing any modification or Amendment of this Declaration of Condominium or any of its Exhibits, until one hundred



percent (100%) of the Units are sold and titled out to individual purchasers. Notwithstanding anything contained herein to the contrary, no Amendment to the Declaration which materially affects the rights or interests of mortgagees of Units of Lakes at Viera East, A Condominium or the land subject to this Declaration shall be valid without the consent of said mortgagees, which consent may not be unreasonably withheld. It shall be presumed that except as to those matters described in subsections (4) and (8) of Section 718.110 Florida Statutes, Amendments to the Declaration do not materially affect the rights or interests of mortgagees.

22. MISCELLANEOUS:

22.1 Severability. The invalidity or unenforceability in whole or in part of any covenant or restriction or any section, subsection, sentence, clause, phrase or word or other provision of this Declaration, or any recorded Exhibit to this Declaration, shall not effect the remaining portions.

22.2 Applicable Statutes. The validity, application and construction of this Declaration and its recorded Exhibits shall be governed by the Laws of Florida, particularly the Florida Condominium Act, as it may be amended from time to time.

22.3 Conflicts. If there is a conflict between any provision of this Declaration and the Florida Condominium Act, the Florida Condominium Act shall control. If there is a conflict between this Declaration and the Association's Articles of Incorporation or Bylaws, the Declaration shall control.

22.4 Exhibits. All Exhibits attached hereto are incorporated herein as if fully set forth in this Declaration.

22.5 Singular, Plural and Gender. Whenever the context so requires, the use of the plural shall include the singular and the plural, and the use of any gender shall be deemed to include all genders.

22.6 Headings. The headings used in the Condominium documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

23. VIERA EAST COMMUNITY: Lakes at Viera East, A Condominium lies within the Viera East community which is governed by the Viera East Community Association, Inc., (hereinafter "Master Association"), a Florida not for profit Corporation. The Condominium property and its membership are subject to the First Amendment to and Restatement of Declaration of Covenants, Conditions, Easements, Reservations and Restrictions for Viera East Community (formerly referred to as Viera Southeast Community) as recorded at official records Book 3225, Page 4071, Public Records of Brevard County, Florida, as the same may be amended, modified or supplemented from time to time (hereinafter "Master Declaration"). The property is also subject to the Amended and Restated Declaration of



Restrictions For Murrell Apartments Multifamily District recorded at Official Records Book 5395, Page 3473, Public Records of Brevard County, Florida, the plat of Lakes at Viera East recorded at Plat Book 49, Page 13, Public Records of Brevard County, Florida and any other restrictions of record. Said Declaration places additional covenants and restrictions on the property and individual condominium units. Said Declaration also governs the relationship between the District of which the condominium is a part and the Master Association which governs the District. At the time of the recording of this Declaration, the assessments due from the Condominium's membership to Viera East Community Association, Inc. are incorporated into the Condominium Association's budget. This payment arrangement may be changed in the future at the election of the Board of Directors of the Community Association and the individual Condominium Unit Owners may be required to pay Assessments directly to Viera East Community Association.

Viera East Community is a part of the Viera East Community Development District which imposes taxes or assessments, or both taxes and assessments, on the properties through a special taxing district. These taxes and assessments paid the construction, operation and maintenance cost of certain public facilities of the District and are set annually by the governing board of the District. These taxes and assessments are in addition to County and all other taxes and Assessments provided for by law.

23.1 Amendment. As long as the Declarant of the Viera East Community Association, Inc. continues to have rights pursuant to Article IV of the Master Declaration, any Amendment or restatement of this Declaration of Condominium is subject to the written consent of said Declarant.

23.2 Subordination of Lien. The Association's lien for unpaid Assessments pursuant to Section 10 of this Declaration is subordinate to any lien for Assessment, imposed on a unit by the Master Association.

23.3 Master Association's Rules. Unit Owners, guests, tenants and invitees are subject to the Covenants, Restrictions, Rules and Regulations of the Master Association.

23.4 Architectural Review. In addition to the provisions of this Declaration restricting Architectural changes to Units, each Unit is subject to the authority of the Master Association's Architectural Review Committee as set forth in the Master Declaration.

23.5 Lake. Any use of the Lakes on the property is subject to Article VI, Section 5 of the Master Declaration.



In Witness Whereof, the Developer has caused this Declaration of Condominium to be executed this 11 day of JANUARY, 2005.

WITNESSES:

LAKES AT VIERA EAST, LLC

BY: BENCHMARK PROPERTIES
MANAGEMENT CORP., Manager

Robert S. Williams Jr.
(Print Name): ROBERT S. WILLIAMS JR.

BY: [Signature]
John F. Rehak, Jr.
Title: Vice President

Suzanne Martone
(Print Name): Suzanne Martone

Date: 1-11-2005

STATE OF ~~FLORIDA~~ New York
COUNTY OF Erie

THE FOREGOING instrument was acknowledged before me this 13th day of January, 2005, by **John F. Rehak, Jr.**, Vice-President of Benchmark Properties Management Corp., who is personally known to me or produced identification (type of identification produced) _____ and who did/did not take an oath.

[Signature]
Printed Name:
Notary Public - State of Florida New York
My Commission Expires:
Commission No.:

DEBORAH M. SLISZ
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires July 7, 2007



LAKES AT VIERA EAST, A CONDOMINIUM
 JOINDER OF MORTGAGEE

CFN:2005018552
 OR Book/Page: 5410 / 6323

KNOW ALL MEN BY THESE PRESENTS:

THAT KEYBANK NATIONAL ASSOCIATION, a National Banking Association, its successors and/or assigns as their interest may appear, whose address is 201 S. Warren Street, Syracuse, New York, 13202, (hereinafter referred to as the "Mortgagee"), joins the Developer/Owner in the execution of the foregoing Declaration of Condominium, LAKES AT VIERA EAST, LLC a Florida Limited Liability Company, in the foregoing DECLARATION OF CONDOMINIUM OF LAKES AT VIERA EAST, A CONDOMINIUM, located in Brevard County, Florida, but such joinder is entered into by Mortgagee without recourse or warranty, whether of title or otherwise; without assuming any obligation whatsoever of the Owner; and reserving to Mortgagee all of its rights and remedies as granted under the mortgage held by Mortgagee on the land and improvements lying and being in Brevard County, Florida, and under the note secured by said mortgage and other loan documents executed in connection with said mortgage.

Dated this 12th day of January, 2005.

Signed, sealed and delivered
 In the presence of:

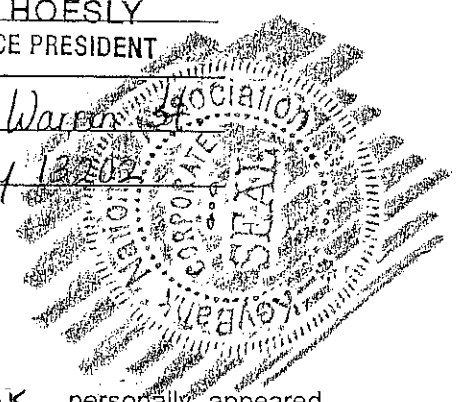
KEYBANK NATIONAL ASSOCIATION

Janice Lariviere
 Print Name: Janice Lariviere

By: *Roy H. Hoesly*
 Print Name: ROY H. HOESLY
 Title: SENIOR VICE PRESIDENT

Andrew P. March
 Print Name: Andrew P. March

Address: 201 South Warren St.
Syracuse NY 13202
 (Corporate Seal)



STATE OF NEW YORK)
) SS:
 COUNTY OF ONONDAGA)

BEFORE ME, a Notary Public in and for the State of New York, personally appeared Roy H. Hoesly, as the Senior Vice President of KEYBANK NATIONAL ASSOCIATION, to me known to be the person who executed the foregoing instrument, and he/she acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State aforesaid this 12th day of JANUARY, 2005.

Marcus Kaspar
 NOTARY PUBLIC
 My Commission Expires:
 Stamp:

MARCUS KASPAR
 Notary Public, State of New York
 Qual. in Onondaga Co. No. 01KA6105909
 Commission Expires 2/23/20 08