

1 be maintained by the ASSOCIATION as provided in this DECLARATION, including, but not
2 limited to, utilities, taxes, assessments, insurance, operation, maintenance, repairs,
3 improvements, and alterations.
4

5 1.07.02 Expenses of obtaining, repairing or replacing personal
6 property in connection with any COMMON AREA or the performance of the ASSOCIATION's
7 duties.
8

9 1.07.03 Expenses incurred in connection with the administration
10 and management of the ASSOCIATION.
11

12 1.07.04 Expenses declared to be COMMON EXPENSES by the
13 provisions of this DECLARATION, or by the ARTICLES, or BYLAWS.
14

15 1.07.05 Any amounts payable by the ASSOCIATION to any other
16 association or any governmental authority.
17

18 1.08 COMMON SURPLUS means the excess of all receipts of the
19 ASSOCIATION over the amount of the COMMON EXPENSES.
20

21 1.09 DECLARANT means the PERSON who executed this
22 DECLARATION. .
23

24 1.10 DECLARATION means this document as it may be amended from time to
25 time.
26

27 1.11 INSTITUTIONAL LENDER means the holder of a mortgage encumbering
28 a LOT, which holder in the ordinary course of business makes, purchases, guarantees, or insures
29 mortgage loans, and which is not owned or controlled by the OWNER of the LOT encumbered.
30 An INSTITUTIONAL LENDER may include, but is not limited to, a bank, savings and loan
31 association, insurance company, real estate or mortgage investment trust, pension or profit
32 sharing plan, mortgage company, the Federal National Mortgage Association, the Federal Home
33 Loan Mortgage Corporation, an agency of the United States or any other governmental authority,
34 or any other similar type of lender generally recognized as an institutional-type lender.
35

36 1.12 LOT means any parcel of land located within the SUBJECT PROPERTY,
37 which has been conveyed to an OWNER and which contains a UNIT, and shall include any
38 UNIT constructed upon the LOT.
39

40 1.13 OWNER means the record owner(s) of the fee title to a LOT.
41

42 1.14 PERSON means an individual, corporation, partnership, trust, or any other
43 legal entity.
44

45 1.15 SUBJECT PROPERTY means all of the property subject to this
46 DECLARATION from time to time, which initially is the property described in Exhibit "A"
47 attached hereto, and includes any UNITS or improvements constructed thereon.
48

49 1.16 UNIT means the residential dwelling constructed upon a LOT.
50

51 1.17 MASTER ASSOCIATION shall mean Pinebrook South Homeowners'
52 Association Inc.
53

54 2. ASSOCIATION. In order to provide for the administration of the SUBJECT
55 PROPERTY and this DECLARATION, the ASSOCIATION has been organized under the Laws
56 of the State of Florida.
57

58 2.01 ARTICLES. A copy of the ARTICLES is attached hereto as Exhibit "B".
59 No amendment to the ARTICLES shall be deemed an amendment to this DECLARATION, and
60 this DECLARATION shall not prohibit or restrict amendments to the ARTICLES, except as
61 specifically provided herein.
62

1 2.02 BYLAWS. A copy of the BYLAWS is attached as Exhibit "C". No
2 amendment to the BYLAWS shall be deemed an amendment to this DECLARATION, and this
3 DECLARATION shall not prohibit or restrict amendments to the BYLAWS, except as
4 specifically provided herein.
5

6 2.03 Powers of the ASSOCIATION. The ASSOCIATION shall have all of the
7 powers indicated or incidental to those contained in its ARTICLES and BYLAWS. In addition,
8 the ASSOCIATION shall have the power to enforce this DECLARATION and shall have all of
9 the powers granted to it by this DECLARATION. By this DECLARATION, the SUBJECT
10 PROPERTY is hereby submitted to the jurisdiction of the ASSOCIATION.
11

12 2.04 Approval or Disapproval of Matters. Whenever the decision of the
13 OWNERS is required upon any matter, whether or not the subject of an ASSOCIATION
14 meeting, such decision shall be expressed in accordance with the ARTICLES and the BYLAWS,
15 except as otherwise provided herein.
16

17 2.05 Acts of the ASSOCIATION. Unless the approval or action of the
18 OWNERS and/or a certain specific percentage of the BOARD is specifically required by this
19 DECLARATION, the ARTICLES or BYLAWS, or by applicable law, all approvals or actions
20 required or permitted to be given or taken by the ASSOCIATION shall be given or taken by the
21 BOARD, without the consent of the OWNERS, and the BOARD may so approve an act through
22 the proper officers of the ASSOCIATION without a specific resolution. When an approval or
23 action of the ASSOCIATION is permitted to be given or taken, such action or approval may be
24 conditioned in any manner the ASSOCIATION deems appropriate, or the ASSOCIATION may
25 refuse to take or give such action or approval without the necessity of establishing the
26 reasonableness of such conditions or refusal, except as herein specifically provided to the
27 contrary.
28

29 2.06 Management and Service Contracts. The ASSOCIATION shall have the
30 right to contract for professional management or services on such terms and conditions as the
31 BOARD deems desirable in its sole discretion, provided, however, that any such contract shall
32 not exceed (3) years and shall be terminable by either party without cause and without payment
33 of a termination or penalty fee on ninety (90) days or less written notice.
34

35 2.07 Membership. All LOT OWNERS shall be members of the
36 ASSOCIATION. Membership shall be established, and transferred, as provided by the
37 ARTICLES and BYLAWS.
38

39 2.07.01 RESIDENT MEMBER. The OWNER of a LOT/UNIT has
40 the right to appoint one person residing in his/her/their household as a RESIDENT-MEMBER of
41 the ASSOCIATION by written notice to the ASSOCIATION Secretary. The RESIDENT-
42 MEMBER shall have the same rights and privileges (except for the power to appoint a
43 RESIDENT-MEMBER) as the OWNER making the appointment. This appointment shall
44 remain in effect until the OWNER making it rescinds it by written notice to the ASSOCIATION
45 Secretary, or the person who made the appointment is no longer a member of the
46 ASSOCIATION.
47

48 Reference hereafter to MEMBERS in the Covenants and the BYLAWS also means
49 RESIDENT-MEMBERS.
50

51 2.08 OWNERS Voting Rights. The votes of the OWNERS shall be established
52 and exercised as provided in the ARTICLES and BYLAWS.
53

54 3. COMMON AREAS, DUTIES AND OBLIGATIONS OF THE ASSOCIATION.

55

56 3.01 Conveyance of COMMON AREAS to ASSOCIATION.

57

58 3.01.01 BY DECLARANT. DECLARANT has conveyed title to
59 all the SUBJECT PROPERTY owned by it, and any easement or interest therein, to the
60 ASSOCIATION as COMMON AREA, and the ASSOCIATION has accepted such conveyance.
61 This conveyance was effective with the recording of the deed or instrument of conveyance in the
62 public records of the county where the SUBJECT PROPERTY is located.

1
2 3.01.02 By Any Other PERSON. Any other PERSON may also
3 convey title to any property owned by such PERSON, or any easement or interest therein, to the
4 ASSOCIATION as a COMMON AREA, but the ASSOCIATION shall not be required to accept
5 any such conveyance, and no such conveyance shall be effective to impose any obligation for the
6 maintenance, operation or improvement of any such property upon the ASSOCIATION, unless
7 the BOARD expressly accepts the conveyance by executing the deed or other instrument of
8 conveyance or by recording a written acceptance of such conveyance in the public records of the
9 county in which the SUBJECT PROPERTY is located.
10

11 3.02 Use and Benefit. All COMMON AREAS shall be held by the
12 ASSOCIATION for the use and benefit of the ASSOCIATION and the OWNERS, the residents
13 of the SUBJECT PROPERTY, and their respective guests and invitees, the holders of any
14 mortgage encumbering any PROPERTY from time to time, and any other persons authorized to
15 use the COMMON AREAS or any portion thereof by the ASSOCIATION, for all proper and
16 reasonable purposes and uses for which the same are reasonably intended, subject to the terms of
17 this DECLARATION, subject to the terms of any easement, restriction, reservation or limitation
18 of record affecting the COMMON AREA or contained in the deed or instrument conveying the
19 COMMON AREA to the ASSOCIATION, and subject to any rules and regulations adopted by
20 the ASSOCIATION. An easement and right for such use is hereby created in favor of all
21 OWNERS, appurtenant to the title to their PROPERTY.
22

23 3.03 Grant and Modification of Easements. The ASSOCIATION shall have the
24 right to grant, modify or terminate easements over, under, upon, and/or across any property
25 owned by the ASSOCIATION, and shall have the further right to modify, relocate or terminate
26 existing easements in favor of the ASSOCIATION.
27

28 3.04 Additions, Alterations or Improvements. The ASSOCIATION shall have
29 the right to make additions, alterations or improvements to the COMMON AREAS, and to
30 purchase any personal property, as it deems necessary or desirable from time to time, provided,
31 however, that the approval of two-thirds (2/3) of the votes of the OWNERS shall be required for
32 any addition, alteration, or improvement or any purchase of personal property, exceeding a sum
33 equal to one (1) month's total ASSESSMENTS for COMMON EXPENSES payable by all of the
34 MEMBERS, or if the cost of the foregoing shall in any fiscal year exceed in the aggregate a sum
35 equal to two (2) month's ASSESSMENTS for COMMON EXPENSES payable by all of the
36 OWNERS. The foregoing approval shall in no event be required with respect to expenses
37 incurred in connection with the maintenance, repair or replacement of existing COMMON
38 AREAS, or any existing improvements or personal property associated therewith. The cost and
39 expense of any such additions, alterations or improvements to the COMMON AREAS, or the
40 purchase of any personal property, shall be a COMMON EXPENSE.
41

42 3.05 Utilities. The ASSOCIATION shall pay for all utility services for the
43 COMMON AREAS, or for any other property to be maintained by the ASSOCIATION, as a
44 COMMON EXPENSE.
45

46 3.06 Taxes. The ASSOCIATION shall pay all real and personal property taxes
47 and assessments for any property owned by the ASSOCIATION, as a COMMON EXPENSE.
48

49 3.07 Insurance. The ASSOCIATION shall purchase insurance as a COMMON
50 EXPENSE as follows:
51

52 3.07.01 Hazard Insurance protecting against loss or damage by fire
53 and all other hazards that are normally covered by the standard extended coverage endorsement,
54 and all other perils customarily covered for similar types of projects, including those covered by
55 the standard all-risk endorsement, covering 100% of the current replacement cost of all
56 COMMON AREAS and property owned by the ASSOCIATION, if commercially feasible. The
57 ASSOCIATION shall not use hazard insurance proceeds for any purpose other than the repair,
58 replacement or reconstruction of any damaged or destroyed property without the approval of at
59 least two-thirds (2/3) of the votes of the OWNERS. Any hazard insurance purchased by the
60 ASSOCIATION shall not include any UNIT, or any improvement constructed upon a LOT by
61 any OWNER. It is each Lot owner(s) responsibility (by purchase of insurance or other means) to
62 insure that in the event any improvement on his/her/their LOT is damaged or destroyed due to

1 fire, flood, wind or other casualty, the damaged improvement will be restored, repaired or rebuilt
2 to the condition the improvement was in immediately prior to such damage or destruction. At
3 the discretion of the LOT owner(s), landscape bushes, plants and trees may be replaced with
4 nursery-size stock rather than with bushes, plants and trees of the size immediately prior to such
5 damage or destruction.
6

7 3.07.02 Comprehensive General Liability Insurance protecting the
8 ASSOCIATION from claims for bodily injury, death or property damage providing for coverage
9 of at least \$1,000,000 for each single occurrence.
10

11 3.07.03 Blanket Fidelity Bonds for anyone who handles or is
12 responsible for funds held or administered by the ASSOCIATION or any managing agent, which
13 coverage shall be at least equal to the sum of three (3) months assessments on all units plus
14 reserve funds.
15

16 3.07.04 Such other insurance as may be desired by the
17 ASSOCIATION, such as flood insurance, errors and omissions insurance, workman's
18 compensation insurance, or any other insurance.
19

20 3.07.05 All insurance purchased by the ASSOCIATION must
21 include a provision requiring at least ten (10) days written notice to the ASSOCIATION before
22 the insurance can be canceled or the coverage reduced for any reason.
23

24 3.07.06 Any deductible or exclusion under the policies shall be a
25 COMMON EXPENSE and shall not exceed \$2,500 or such other sum as is approved by the
26 OWNERS.
27

28 3.07.07 Upon request, each INSTITUTIONAL LENDER shall have
29 the right to receive a copy or certificate of the insurance purchased by the ASSOCIATION, and
30 shall have the right to require at least ten (10) days written notice to the INSTITUTIONAL
31 LENDER before any insurance can be canceled or the coverage reduced for any reason. Each
32 INSTITUTIONAL LENDER shall have the right upon notice to the ASSOCIATION to review
33 and approve, which approval shall not be unreasonably withheld, the form, content, issuer,
34 coverage and deductibles of all insurance purchased by the ASSOCIATION, and to require the
35 ASSOCIATION, to purchase insurance complying with the reasonable and customary
36 requirements of the INSTITUTIONAL LENDER. In the event of a conflict between the
37 INSTITUTIONAL LENDERS, the requirements of the INSTITUTIONAL LENDER holding
38 mortgages encumbering UNITS which secure the largest aggregate indebtedness shall control.
39
40

41 3.08 Default. Any OWNER or INSTITUTIONAL LENDER may pay for any
42 utilities, taxes or assessments or insurance premiums which are not paid by the ASSOCIATION
43 when due, or may secure new insurance upon the lapse of an insurance policy, and shall be owed
44 immediate reimbursement therefor from the ASSOCIATION, plus interest and any cost of
45 collection, including attorneys' fees.
46

47 3.09 Damage or Destruction. In the event any improvement within any
48 COMMON AREA is damaged or destroyed due to fire, flood, wind, or other casualty or reason,
49 the ASSOCIATION shall restore, repair, replace or rebuild (hereinafter collectively referred to as
50 a "repair") the damaged improvement to the condition the improvement was in immediately prior
51 to such damage or destruction, unless otherwise approved by two-thirds (2/3) of the votes of the
52 OWNERS. Any excess cost of repairing any improvement over insurance proceeds payable on
53 account of any damage or destruction shall be a COMMON EXPENSE, and the ASSOCIATION
54 shall have the right to make a special ASSESSMENT for any such expense.
55

56 3.10 Maintenance of Property by the ASSOCIATION.

57 3.10.01 COMMON AREAS. The ASSOCIATION shall maintain
58 all COMMON AREAS and property owned by the ASSOCIATION, and all improvements
59 thereon, in good condition at all times. If pursuant to any easement the ASSOCIATION is to
60 maintain any improvement within any property, then the ASSOCIATION shall maintain such
61 improvement in good condition at all times. The ASSOCIATION shall maintain and operate the
62

1 surface water management system in compliance with all permit conditions of the Florida
2 Administrative Code (Chapter 40D-4).

3
4 3.10.02 Landscaping.

5
6 3.10.02.01 COMMON AREAS. The ASSOCIATION shall
7 maintain the grass areas of all the COMMON AREAS including but not limited to mowing,
8 trimming, fertilizing, and insect and disease control. In addition the ASSOCIATION shall
9 promptly remove all excessive weeds, underbrush or unsightly growth. The ASSOCIATION
10 shall maintain all bushes, shrubs, flowers, hedges and trees of all COMMON AREAS, including
11 but not limited to trimming, fertilizing, and insect and disease control. Trees will be trimmed as
12 appropriate for that species. The ASSOCIATION shall also maintain the sprinkler systems on
13 the COMMON AREAS and be responsible for the metered sprinkler water costs thereof.

14
15 3.10.02.02 UNIT OWNER LOTS. On all LOTS the
16 ASSOCIATION shall be responsible for the mowing, trimming, fertilizing, mulching, and insect
17 and disease control of all the grass areas and the removal of all excessive weeds, underbrush or
18 unsightly growth. The ASSOCIATION shall also be responsible for the trimming, fertilizing,
19 mulching, and insect and disease control of all bushes, shrubs, hedges, foundation plants and
20 trees except flower beds and fruit trees which are the responsibility of the LOT OWNER(s). The
21 ASSOCIATION shall be responsible for keeping the sprinkler systems for all LOTS in good
22 operating condition. This shall include but not be limited to the repair, upkeep and replacement
23 of the underground water pipes, control valves, the master control unit, sprinkler heads,
24 relocation of sprinkler heads and the like required to maintain good water coverage. The LOT
25 OWNER(s) is/are responsible for the metered sprinkler water cost on his/her/their LOT.

26
27 On each LOT the ASSOCIATION shall promptly remove and replace all dead or diseased sod,
28 bushes, shrubs, hedges and foundation plants. At the sole discretion of the ASSOCIATION, the
29 replacement in grass areas may be with sod or plugs and the replacement of bushes, shrubs,
30 hedges, and foundation plants may be with nursery-size stock (consistent in size with that
31 originally planted during construction) rather than with bushes, shrubs, hedges and foundation
32 plants of the size as those removed.

33
34 Trees on LOTS are included in the ASSOCIATION's responsibility for trimming, fertilizing,
35 mulching, and insect and disease control. Trees will be trimmed as appropriate for that species.
36 However, the removal and replacement of trees for any reason on LOTS and all costs associated
37 therewith are the responsibility of the LOT OWNER(s). At the sole discretion of the LOT
38 OWNER(s), the replacement tree may be nursery-size or larger. These above actions are subject
39 to Article 5.23.01 of this DECLARATION.

40
41
42 3.10.03 Other Property. In addition to the foregoing, the
43 ASSOCIATION shall have the right to assume the obligation to operate and/or maintain any
44 property which is not owned by the ASSOCIATION if the BOARD, in its sole discretion,
45 determines that the operation and/or maintenance of such property by the ASSOCIATION would
46 be in the best interests of the residents of the SUBJECT PROPERTY. In such event, where
47 applicable the ASSOCIATION shall so notify any OWNER otherwise responsible for such
48 operation or maintenance, and thereafter such property shall be operated and/or maintained by
49 the ASSOCIATION and not by the OWNER, until the BOARD determines no longer to assume
50 the obligation to operate and/or maintain such property and so notifies the appropriate OWNER
51 in writing. Without limitation, the ASSOCIATION shall have the right to assume the obligation
52 to operate and/or maintain any walls or fences on or near the boundaries of the SUBJECT
53 PROPERTY, and any pavement, landscaping, sprinkler systems, sidewalks, paths, signs,
54 entrance features, or other improvements, in or within 40 feet of any public road right-of-ways
55 within or contiguous to the SUBJECT PROPERTY. To the extent the ASSOCIATION assumes
56 the obligation to operate and/or maintain any PROPERTY which is not owned by the
57 ASSOCIATION, the ASSOCIATION shall have an easement and right to enter upon such
58 PROPERTY in connection with the operation in or maintenance of same, and no such entry shall
59 be deemed a trespass. Such assumption by the ASSOCIATION of the obligation to operate
60 and/or maintain any property which is not owned by the ASSOCIATION may be evidenced by a
61 supplement to this DECLARATION, or by a written document recorded in the public records of
62 the county in which the SUBJECT PROPERTY is located, and may be made in connection with

1 an agreement with any OWNER, or any governmental authority otherwise responsible for such
2 operation or maintenance, and pursuant to any such document the operation and/or maintenance
3 of any property may be made a permanent obligation of the ASSOCIATION. The
4 ASSOCIATION may also enter into agreements with any other PERSON, or any governmental
5 authority, to share in the maintenance responsibility of any property if the BOARD, in its sole and
6 absolute discretion, determines this would be in the best interest of the OWNER.
7 Notwithstanding the foregoing, if any UNIT OWNER or any resident of any UNIT, or their
8 guests or invitees, damages any COMMON AREA or any improvement thereon, the UNIT
9 OWNER of such UNIT shall be liable to the ASSOCIATION for the cost of repair or restoration
10 to the extent not covered by the Association's insurance.

11
12 3.10.04 Common Expense. All maintenance performed by the
13 ASSOCIATION as hereinabove provided shall be a COMMON EXPENSE.
14

15 3.11 Mortgage and Sale of COMMON AREAS. The ASSOCIATION shall not
16 abandon, partition, subdivide, encumber, sell or transfer any COMMON AREA owned by the
17 ASSOCIATION without the approval of at least 2/3 of the votes of the OWNERS. If ingress or
18 egress to any PROPERTY is through any COMMON AREA, any conveyance or encumbrance of
19 such COMMON AREA shall be subject to an appurtenant easement for ingress and egress in
20 favor of the OWNER(s) of such PROPERTY, unless alternative ingress and egress is provided to
21 the OWNER(s).
22

23 4. EASEMENTS. Each of the following easements are hereby created, which shall
24 run with the land and, notwithstanding any of the other provisions of this DECLARATION, may
25 not be substantially amended or revoked in such a way as to unreasonably interfere with proper
26 and intended use and purposes, and each shall survive the termination of this DECLARATION.
27

28 4.01 Easements for Pedestrian and Vehicular Traffic. Easements for pedestrian
29 traffic over, through and across sidewalks, paths, lanes and walks, as the same may from time to
30 time exist upon the COMMON AREAS and be intended for such purpose; and for pedestrian and
31 vehicular traffic and parking over, through, across and upon such portion of the COMMON
32 AREAS as may from time to time be paved and intended for such purposes, same being for the
33 use and benefit of the OWNERS and the residents of the SUBJECT PROPERTY, their
34 mortgagees, and their guests and invitees.
35

36 4.02 Perpetual Nonexclusive Easement in COMMON AREAS. The
37 COMMON AREAS shall be, and the same are hereby declared to be, subject to a perpetual
38 nonexclusive appurtenant easement in favor of all OWNERS and residents of the SUBJECT
39 PROPERTY from time to time, and their guests and invitees, for all proper and normal purposes
40 and for the furnishing of services and facilities for which the same are reasonably intended.
41

42 4.03 Service and Utility Easements. Easements in favor of governmental and
43 quasi-governmental authorities, utility companies, cable television companies, ambulance or
44 emergency vehicle companies, and mail carrier companies, over and across all roads existing
45 from time to time with the SUBJECT PROPERTY, and over, under, on and across the
46 COMMON AREAS, as may be reasonably required to permit the foregoing, and their agents and
47 employees, to provide their respective authorized services to and for the SUBJECT PROPERTY.
48 Also, easements as may be required for the installation, maintenance, repair and providing of
49 utility services, equipment and fixtures in order to adequately serve the SUBJECT PROPERTY,
50 including, but not limited to, electricity, telephones, sewer, water, lighting, irrigation, drainage,
51 television antenna and cable television facilities, and electronic security. However, easements
52 affecting any LOT which serve any other portion of the SUBJECT PROPERTY shall only be for
53 utility services actually constructed, or reconstructed, and for the maintenance thereof, unless
54 otherwise approved in writing by the OWNER of the LOT. An OWNER shall do nothing on his
55 LOT which interferes with or impairs the utility services using these easements. The BOARD or
56 its designee shall have a right of access to each LOT and UNIT to inspect, maintain, repair or
57 replace the utility service facilities contained under the LOT and to remove any improvements
58 interfering with or impairing the utility services or easement herein reserved; provided such right
59 of access shall not unreasonably interfere with the OWNER's permitted use of the LOT and
60 except in the event of an emergency, entry into any UNIT shall be made with reasonable notice to
61 the OWNER.
62

1 4.04 Service and Maintenance Easement. If any UNIT is located within 4 feet
2 of the boundary line of any LOT, the OWNER of such LOT shall have an easement into the
3 contiguous LOT or COMMON AREA, as the case may be, which easement shall be 4 feet from
4 the UNIT, for the purpose of servicing and maintaining the UNIT. The OWNER of such UNIT
5 shall not be liable for any damage or destruction to any landscaping or improvements within any
6 such easement area which is caused in connection with the reasonable maintenance and servicing
7 of his UNIT. In addition, the ASSOCIATION shall have an easement upon all LOTS, as may be
8 reasonably required to perform the maintenance and other obligations of the ASSOCIATION as
9 provided in this DECLARATION.

10
11 4.05 Encroachments. If any portion of the COMMON AREAS encroaches
12 upon any LOT; if any UNIT or other improvement encroaches upon any LOT or upon any
13 portion of the COMMON AREAS; or if any encroachment shall hereafter occur as a result of (i)
14 construction or reconstruction of any improvements; (ii) settling or shifting of any
15 improvements; (iii) any addition, alteration or repair to the COMMON AREAS made by or with
16 the consent of the ASSOCIATION, (iv) any repair or restoration of any improvements (or any
17 portion thereof) or any UNIT after damage by fire or other casualty or any taking by
18 condemnation or eminent domain proceedings of all or any portion of any UNIT or the
19 COMMON AREAS; or (v) any non-purposeful or non-negligent act of an OWNER except as
20 may be authorized by the BOARD, then, in any such event, a valid easement shall exist for such
21 encroachment and for the maintenance of the same so long as the improvements shall stand.

22
23 4.06 Easements for overhanging troughs or gutters, downspouts and the
24 discharge therefrom of rainwater and the subsequent flow thereof over the LOTS and the
25 COMMON AREAS.

26
27 4.07 Additional Easements. The ASSOCIATION, on their behalf and on behalf
28 of all OWNERS, each shall have the right to (i) grant and declare additional easements over,
29 upon, under and/or across the COMMON AREAS in favor of the ASSOCIATION, or any
30 person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate,
31 abandon or terminate existing easements benefiting or affecting the SUBJECT PROPERTY. In
32 connection with the grant, modification, relocation, abandonment or termination of any
33 easement, the ASSOCIATION reserves the right to relocate roads, parking areas, utility lines,
34 and other improvements upon or serving the SUBJECT PROPERTY. So long as the foregoing
35 will not unreasonably and adversely interfere with the use of LOTS for dwelling purposes, no
36 consent of any OWNER or any mortgagee of any LOT shall be required or, if same would
37 unreasonably and adversely interfere with the use of any LOT for dwelling purposes, only the
38 consent of the OWNERS and INSTITUTIONAL LENDERS of LOTS so affected shall be
39 required. To the extent required, all OWNERS hereby irrevocably appoint the ASSOCIATION
40 as their attorney-in-fact for the foregoing purposes.

41
42
43 5. USE RESTRICTIONS.

44
45 5.01 One UNIT Per LOT. Only one UNIT shall be constructed on any LOT,
46 which shall comply with the following minimum standards.

47
48 5.01.01 Minimum Size. All UNITS shall have a minimum of 1,200
49 square feet of living area, exclusive of garage, patios or porches.

50
51 5.01.02 Maximum Height. The maximum height of any UNIT shall
52 be 30 feet above the front street elevation. The finish floor elevations are to be a minimum of 16
53 inches above the crown of the road.

54
55 5.01.03 Minimum Set-Back. Any UNIT shall be set-back a
56 minimum of 15 feet from the front lot line, and 5 feet from the side and 10 feet from the rear of
57 the LOT, unless otherwise approved by the ASSOCIATION.

58
59 5.01.04 Garages. All garages shall be for 2 cars and equipped with
60 automatic garage door openers. Driveways and side walks shall be constructed of concrete.

61
62 5.01.05 Roofs. All roofs shall be of cement tile.

1
2 5.02 OCCUPANCY. No UNIT shall be permanently occupied by more than
3 two (2) persons for each bedroom in the UNIT. In addition, temporary guests are permitted so
4 long as they do not create an unreasonable source of noise or annoyance to the other residents of
5 the SUBJECT PROPERTY.
6

7 5.03 No Trade or Business. No trade, business, profession, or commercial
8 activity, or any other nonresidential use, shall be conducted upon any portion of the SUBJECT
9 PROPERTY or within any LOT or UNIT. The foregoing shall not prohibit any OWNER from
10 leasing his UNIT.
11

12 5.04 Sales and Leases. All leases of a UNIT must be in writing and specifically
13 be subject to this DECLARATION, the ARTICLES and the BYLAWS, and copies delivered to
14 the ASSOCIATION prior to occupancy by the Tenant(s). No Lease shall be for a period of less
15 than one month.
16

17 5.05 Outside Storage of Personal Property. The personal property of any
18 resident of the SUBJECT PROPERTY shall be kept inside the resident's UNIT, and no personal
19 property may be stored on the exterior of any UNIT.
20

21 5.06 Portable Buildings/Fences. No portable, storage, temporary or accessory
22 buildings or structures, or tents, shall be erected, constructed or located upon any LOT for
23 storage or otherwise. No fences are allowed on any LOT.
24

25 5.07 Garbage and Trash. Each OWNER shall regularly pick up all garbage,
26 trash, refuse or rubbish on the OWNER's LOT. Garbage, trash, refuse, or rubbish that is
27 required to be placed at the front of the LOT in order to be collected may be placed and kept at
28 the front of the LOT after 5:00 p.m. on the day before the scheduled day of collection, and any
29 trash facilities must be removed on the collection day. All garbage, trash, refuse or rubbish must
30 be placed in appropriate trash facilities or bags. All containers, dumpsters or garbage facilities
31 shall be stored inside a UNIT or screened from view and kept in a clean and sanitary condition.
32 No noxious or offensive odors shall be permitted.
33

34 5.08 Vehicles. Automobiles, vans, small pickup trucks, and other vehicles
35 manufactured and used as private passenger vehicles, may be parked within the SUBJECT
36 PROPERTY overnight without the prior written consent of the ASSOCIATION. In particular
37 and without limitation, no vehicle shall be parked outside a UNIT overnight without the prior
38 written consent of the ASSOCIATION if commercial lettering or signs are painted on or affixed
39 to the vehicle, or if commercial equipment is placed upon the vehicle, or if the vehicle is a truck,
40 recreational vehicle, camper, trailer, or other than a private passenger vehicle as specified above.
41 Notwithstanding the foregoing, automobiles owned by governmental law enforcement agencies
42 are expressly permitted. The foregoing restrictions shall not be deemed to prohibit the temporary
43 parking of commercial vehicles while making delivery to or from, or while used in connection
44 with providing services to the SUBJECT PROPERTY. All vehicles parked within the SUBJECT
45 PROPERTY must be in good condition, and no vehicle which is unlicensed or which cannot
46 operate on its own power shall remain within the SUBJECT PROPERTY for more than 24
47 hours, and no major repair of any vehicle shall be made on the SUBJECT PROPERTY. Parking
48 shall be permitted upon driveways and other paved surfaces or within garages, but parking shall
49 not be permitted upon grassy areas. Motorcycles are not permitted except with the prior written
50 consent of the ASSOCIATION which may be withdrawn at any time, and any permitted
51 motorcycle must be equipped with appropriate noise muffling equipment so that the operation of
52 same does not create an unreasonable annoyance to the residents of the SUBJECT PROPERTY.
53

54 5.09 Pets. No animals, livestock or poultry of any kind shall be permitted
55 within the SUBJECT PROPERTY except for common household domestic pets. Any pet must
56 be carried or kept on a leash when outside of a UNIT. No pet shall be kept outside of a UNIT, or
57 in any screened porch or patio, unless someone is present in the UNIT. Any pet must not be an
58 unreasonable nuisance, annoyance or danger to other residents of the SUBJECT PROPERTY.
59 No commercial breeding of pets is permitted within the SUBJECT PROPERTY. The
60 ASSOCIATION may require any pet to be immediately and permanently removed from the
61 SUBJECT PROPERTY due to a violation of this paragraph.
62

1 Notwithstanding the above, prior to making any decision regarding any pet residing in the
2 SUBJECT PROPERTY, the BOARD upon receiving a written complaint regarding a pet residing
3 within the SUBJECT PROPERTY, shall afford the OWNER or tenant an opportunity for a
4 hearing after reasonable notice to the OWNER or tenant of not less than 14 days. This notice
5 shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the
6 provisions of the DECLARATION or BYLAWS which have allegedly been violated, and (iii) a
7 short and plain statement of the reasons asserted by the complaint for the pet to be removed. The
8 OWNER or tenant shall have an opportunity to respond, to present evidence, and to provide
9 written and oral argument on all issues involved and shall have an opportunity at the hearing to
10 review, challenge and respond to any material in the written complaint to the BOARD that is to
11 be considered in the hearing. At the hearing, the BOARD shall conduct a reasonable inquiry to
12 determine whether the alleged violation in fact occurred, and the BOARD is to act as an impartial
13 jury with the burden of proof resting upon the person making the written complaint. If the
14 BOARD so determines, it may require that the pet be removed from the SUBJECT PROPERTY
15 by written notice to the OWNER or tenant. If the OWNER or tenant fails to attend the hearing as
16 set by the BOARD, unless for reasons beyond the control of the OWNER or tenant, the OWNER
17 or tenant shall be deemed to have admitted the allegations contained in the notice to the OWNER
18 or tenant; however, if the OWNER or tenant failed to attend the scheduled hearing for reasons
19 beyond the control of the OWNER or tenant, a new hearing shall be scheduled by the BOARD as
20 specified above.
21

22 5.10 Landscaping. On each LOT the ASSOCIATION shall be responsible for
23 mowing, trimming, fertilizing, mulching, and insect and disease control of all grass areas, and
24 trimming, fertilizing, mulching, and insect and disease control of all bushes, shrubs, hedges,
25 foundation plants and trees, except for flower beds and fruit trees, and on any contiguous
26 property between each LOT and the pavement edge of any abutting road or the waterline of any
27 abutting lake or canal, all in accordance with landscaping plans approved by the
28 ASSOCIATION. All landscaped areas shall be primarily sodded with grass, and shall not be
29 paved or covered with gravel or any artificial surface.
30

31 No OWNER shall install or maintain any landscaping on any portion of the LOT maintained by
32 the ASSOCIATION pursuant to Article 3.10 of this DECLARATION without the prior written
33 consent of the BOARD of DIRECTORS. Notwithstanding the foregoing, an OWNER may plant
34 flower beds and fruit trees. No fruit trees are permitted closer to the front lot line than the rear of
35 the home situated upon the LOT. OWNER(s) are solely responsible for the maintenance, repair
36 and replacement of all flower beds and fruit trees planted pursuant to this section, all of which
37 shall be maintained in a neat, attractive and first-class appearance.
38

39 5.11 Maintenance. Each OWNER shall maintain his UNIT and all
40 improvements upon his LOT in first class condition at all times, except any portions thereof to be
41 maintained by the ASSOCIATION as provided in Paragraph 3.10 of this DECLARATION. The
42 exterior of all UNITS including but not limited to roofs, walls, windows, patio areas, pools,
43 screenings, and awnings shall be maintained in first class condition and repair and in a neat and
44 attractive manner. Any extraordinary maintenance required due to actions of any OWNER, or
45 the residents of any UNIT, or their guests or invitees can be performed by the ASSOCIATION
46 and the cost of such maintenance to the UNIT shall be assessed to the OWNER of the UNIT.
47

48 5.11.01 Exterior Painting. All exterior areas shall be painted, with
49 the approval of the ASSOCIATION, as reasonably necessary with colors which match the color
50 scheme and are harmonious with other UNITS, and no excessive rust deposits on the exterior of
51 any UNIT, peeling of paint, or discoloration of same shall be permitted. No OWNER shall
52 change the exterior color of his UNIT without the consent of the ASSOCIATION.
53

54 5.11.02 Roof Cleaning. All roofs shall be cleaned as reasonably
55 necessary.
56

57 5.12 Air Conditioning Units. Only central air conditioning units are permitted,
58 and no window, wall, or portable air conditioning units are permitted.
59

60 5.13 Clotheslines and Outside Clothes Drying. No clotheslines or clothes poles
61 shall be erected, and no outside clothes-drying is permitted, except where such activity is advised
62 or mandated by governmental authorities for energy conservation purposes, in which event the

1 ASSOCIATION shall have the right to approve the portions of any LOT used for outdoor
2 clothes-drying purposes and the types of devices to be employed in this regard, which approval
3 must be in writing.
4

5 5.14 Nuisances. No nuisances shall be permitted within the SUBJECT
6 PROPERTY, and no use or practice which is an unreasonable source of annoyance to the
7 residents within the SUBJECT PROPERTY or which shall interfere with the peaceful possession
8 and proper use of the SUBJECT PROPERTY by its residents shall be permitted. No
9 unreasonably offensive or unlawful action shall be permitted, and all laws, zoning ordinances and
10 regulations of all controlling governmental authorities shall be complied with at all times by the
11 OWNERS.
12

13 5.15 Outside antennas. No outside signal receiving or sending antennas, dishes
14 or devices are permitted. The foregoing shall not prohibit OWNERS from maintaining satellite
15 dish antennas that are one (1) meter in diameter or less for the reception of video programming or
16 any antenna or signal receiving dish owned by the ASSOCIATION which services the entire
17 SUBJECT PROPERTY.
18

19 5.16 Post Light, Identification Signs and House Numbers. Post lights
20 controlled by a photocell are required on all LOTS in locations approved by the ASSOCIATION.
21 In order to provide uniformity through the property, the ASSOCIATION may promulgate design
22 standards and specifications to be used for all post lights, identification signs, and house
23 numbers.
24

25 5.17 Further Subdivision. No LOTS shall be further subdivided without the
26 prior written consent of the ASSOCIATION if same would result in the creation of more LOTS
27 than before such resubdivision. Notwithstanding the foregoing, portions of a LOT may be
28 conveyed to the OWNER(s) of contiguous LOT(s), in order to increase the size of the contiguous
29 LOT(s), so long as any remaining portion of the divided LOT not so conveyed is independently
30 useful for the construction of a UNIT that complies with the requirements of this
31 DECLARATION.
32

33 5.18 Garbage Containers, Water Softeners, Gas Tanks, Air Conditioners. All
34 garbage and refuse containers, air conditioning units, water softeners and all permanently affixed
35 swimming pool equipment and housing shall be screened or walled so that they shall be
36 substantially concealed or hidden from any eye-level view from any street or adjacent property.
37 Propane gas tanks shall be installed underground.
38

39 5.19 Signs. No signs shall be placed upon any LOT, and no signs shall be
40 placed in or upon any UNIT which are visible from the exterior of the UNIT, without the prior
41 written consent of the ASSOCIATION. However, "House for Sale" signs, which size shall not
42 exceed 9-inches by 12-inches, shall be permitted. Signs required by the City of Venice or traffic
43 signs shall be allowed.
44

45 5.20 Window Treatments. Window treatments shall consist of drapery, blinds,
46 decorative panels, or other tasteful window coverings, and no newspaper, aluminum foil, sheets
47 or other temporary window treatments are permitted, except for periods not exceeding one (1)
48 week after an OWNER of tenant first moves into a UNIT or when permanent window treatments
49 are being cleaned or repaired.
50

51 5.21 Boats. No boats shall be kept or stored outside of any UNIT.
52

53 5.22 Surface Water Management. No OWNER or any other PERSON shall do
54 anything to adversely affect the surface water management and drainage of SUBJECT
55 PROPERTY without the prior written approval of the ASSOCIATION and any controlling
56 governmental authority, including but not limited to the excavation or filling in of any lake or
57 any portion of the SUBJECT PROPERTY.
58

59 5.23 Architectural Control for Exterior Changes.
60

61 5.23.01 OWNER to Obtain Approval. COMMON AREAS: No
62 OWNER shall make, install, place, or remove any building, fence, wall, patio area, pool, spa,

1 landscaping, or any other alteration, addition, improvement, or change of any kind or nature to, in
2 or upon any portion of the COMMON AREAS unless the OWNER first obtains the written
3 approval of the ASSOCIATION to the same.
4

5 OWNER's LOT and UNIT: No OWNER shall make, install, place, or remove any building,
6 fence, wall, patio area, pool, spa, landscaping except for flower beds and fruit trees, or any other
7 alteration, addition, improvement, or change of any kind or nature to the OWNER's LOT, or the
8 exterior of the OWNER's UNIT, unless the OWNER first obtains the written approval of the
9 ASSOCIATION to the same, except that such approval shall not be required for replacements in
10 preexisting landscape beds or any maintenance or repair which does not result in a material
11 change in any improvement including the color of same.
12

13 5.23.02 ASSOCIATION's Consent. Any request by an OWNER
14 for approval by the ASSOCIATION to any addition, alteration, improvement, or change shall be
15 in writing and shall be accompanied by plans and specifications or other details as the
16 ASSOCIATION may deem reasonably necessary in connection with its determination as to
17 whether or not it will approve same. The ASSOCIATION shall have the right to charge a
18 reasonable fee in connection with the approval of any request to pay for the cost of any architect
19 or engineer hired by the ASSOCIATION to review any plans or specifications. Approval of any
20 request shall not be withheld in a discriminatory manner or in a manner which unreasonably
21 prohibits the reasonable improvement of any LOT or UNIT, but may be withheld due to aesthetic
22 considerations. The ASSOCIATION shall notify the OWNER of its approval or disapproval by
23 written notice within 30 days after request for such consent is made in writing to the
24 ASSOCIATION, and in the event the ASSOCIATION fails to disapprove any request within
25 such 30 day period, the consent shall be deemed approved and upon request the ASSOCIATION
26 shall give written notice of such approval. In consenting to any plans or specification, the
27 ASSOCIATION may condition such consent upon changes being made. If the ASSOCIATION
28 consents to any plans and specifications, the OWNER may proceed to make the alteration,
29 addition, improvement, or change in strict conformance with the plans and specifications
30 approved by the ASSOCIATION, and subject to any conditions of the ASSOCIATION's
31 approval.
32

33 5.23.03 No Liability. The ASSOCIATION shall not be liable to
34 any OWNER in connection with the exercise or non-exercise of architectural control hereunder,
35 or the approval or disapproval of any alteration, addition, improvement, or change. Furthermore,
36 any approval of any plans or specifications by the ASSOCIATION shall not be deemed to be a
37 determination that such plans or specifications are complete or do not contain defects, or in fact
38 meet any standards, guidelines and/or criteria of the ASSOCIATION, or are in fact
39 architecturally or aesthetically appropriate, or comply with any applicable governmental
40 requirements, and the ASSOCIATION shall not be liable for any deficiency, or any injury
41 resulting from any deficiency, in such plans and specifications.
42

43 5.23.04 Remedy for Violations. In the event this section is violated
44 in that any alteration, addition, improvement, or change is made without first obtaining the
45 approval of the ASSOCIATION, or is not made in strict conformance with any approval granted
46 by the ASSOCIATION, the ASSOCIATION shall specifically have the right to injunctive relief
47 to require the OWNER to stop, remove and/or alter any alteration, addition, improvement, or
48 change in a manner which complies with the requirements of the ASSOCIATION, or the
49 ASSOCIATION may pursue any other remedy available to it. In connection therewith, the
50 ASSOCIATION shall have the right to enter onto any LOT and make any inspection necessary to
51 determine that the provisions of this paragraph have been complied with. The foregoing shall be
52 in addition to any other remedy set forth herein for violations of this DECLARATION.
53 Notwithstanding anything contained within this DECLARATION to the contrary, the
54 ASSOCIATION shall have the exclusive authority to enforce the provisions of this paragraph.
55

56 5.23.05 Compliance with Governmental Requirements. In addition
57 to the foregoing requirements, any alterations, addition, improvements, or changes made by an
58 OWNER must be in compliance with the requirements of all controlling governmental
59 authorities, and the OWNER shall be required to obtain an appropriate building permit from the
60 applicable governmental authority when required by controlling governmental requirements.
61 Any consent or approval by the ASSOCIATION to any addition, alteration, improvement, or
62 change may be made conditioned upon the OWNER obtaining a building permit for same, or

1 providing the ASSOCIATION written evidence from the controlling governmental authority that
2 such permit will not be required, and in that event the OWNER shall not proceed with any
3 addition, alteration, improvement, or change until such building permit or evidence that a
4 building permit is not required is submitted to the ASSOCIATION. The retention pond and
5 drainage swales to the pond shall require periodic inspection.
6

7 5.24 Rules and Regulations. The ASSOCIATION may adopt additional
8 reasonable rules and regulations relating to the use and maintenance of the SUBJECT
9 PROPERTY. Copies of such rules and regulations and amendments shall be furnished by the
10 ASSOCIATION to any OWNER upon request.
11

12 5.25 Waiver. The ASSOCIATION shall have the right to waive the application
13 of one or more of these restrictions, or to permit a deviation from these restrictions, as to any
14 LOT where, in the discretion of the BOARD, circumstances exist which justify such waiver or
15 deviation. In the event of any such waiver or permitted deviation, or in the event any party fails
16 to enforce any violation of these restrictions, such actions or inactions shall not be deemed to
17 prohibit or restrict the right of the ASSOCIATION, or any other person having the right to
18 enforce these restrictions, from insisting upon strict compliance with respect to all other LOTS,
19 nor shall any such actions be deemed a waiver of any of the restrictions contained herein as same
20 may be applied in the future.
21

22 5.26 Relationship with Master Association. All of the provisions of this
23 instrument are in addition to and not in limitation of the terms of the Master Association. Where
24 the terms hereof are more restrictive than but consistent with the Master Association covenants,
25 all provisions hereof shall be binding. In the event of impossibility of compliance with both
26 documents the terms of LAKESIDE WOODS shall control.
27

28 6. ASSESSMENT FOR COMMON EXPENSES. 29

30 6.01 Each OWNER of a LOT shall be responsible for the payment to the
31 ASSOCIATION of ASSESSMENTS for COMMON EXPENSES for each LOT owned by the
32 OWNER, which amount shall be assessed to the OWNER as described below. In addition, each
33 OWNER shall be responsible for the payment to the Association of any ASSESSMENTS owed
34 by the prior OWNER, and except as provided in Paragraph 7.01.06 of this DECLARATION.
35

36 6.02 Prior to the beginning of each fiscal year, the BOARD shall adopt a budget
37 for such fiscal year which shall estimate all of the COMMON EXPENSES to be incurred by the
38 ASSOCIATION during the fiscal year. The BOARD shall then establish the ASSESSMENT for
39 COMMON EXPENSES for each LOT, and shall notify each OWNER in writing of the amount,
40 frequency, and the due dates of the ASSESSMENT for COMMON EXPENSES. From time to
41 time during the fiscal year, the BOARD may modify the budget, and pursuant to the revised
42 budget or otherwise, the BOARD may, upon written notice to the OWNERS, change the amount,
43 frequency, and/or due dates of the ASSESSMENT for COMMON EXPENSES. If the
44 expenditure of funds for COMMON EXPENSES is required in addition to funds produced by the
45 ASSESSMENTS for COMMON EXPENSES, the BOARD may make special ASSESSMENTS
46 for COMMON EXPENSES, which shall be levied in the same manner as hereinbefore provided
47 for regular ASSESSMENTS, and shall be payable in the manner determined by the BOARD, as
48 stated in the notice of any special ASSESSMENTS for COMMON EXPENSES. In the event
49 any ASSESSMENTS for COMMON EXPENSES are made payable in equal periodic payments,
50 as provided in the notice from the ASSOCIATION, such periodic payments shall automatically
51 continue to be due and payable in the same amount and frequency unless and until (i) the notice
52 specifically provides that the periodic payments will terminate or change upon the occurrence of
53 a specified event or date or the payment of the specified amount, or (ii) the ASSOCIATION
54 notifies the OWNER in writing of a change in the amount and/or frequency of the periodic
55 payments. In no event shall any ASSESSMENTS for COMMON EXPENSES be due less than
56 ten (10) days from the date of notification of such ASSESSMENTS.
57

58 6.03 ASSESSMENTS for COMMON EXPENSES as to any LOT not
59 containing a UNIT, and except for the foregoing the ASSESSMENTS for COMMON
60 EXPENSES assessed against each LOT shall be equal. The full ASSESSMENT for COMMON
61 EXPENSES for each LOT upon which a UNIT is constructed shall commence on the first day of

1 the full calendar month after a certificate of occupancy for the UNIT is issued, or upon the first
2 occupancy of the UNIT, whichever occurs first.
3

4 6.04 In addition to ASSESSMENTS for COMMON EXPENSES each
5 OWNER of a LOT shall be responsible for the payment of an annual fee to the MASTER
6 ASSOCIATION. The MASTER ASSOCIATION maintains the clubhouse, pool, boat dock,
7 shuffleboard courts, and COMMON AREAS that are available to all residents of LAKESIDE
8 WOODS and PINEBROOK SOUTH.
9

10 7. DEFAULT.

11
12 7.01 Monetary Defaults and Collection of Assessments.

13
14 7.01.01 Late Fees and Interest. If any ASSESSMENT is not paid
15 within ten (10) days after the due date, the ASSOCIATION shall have the right to charge the
16 defaulting OWNER a late fee of ten (10%) percent of the amount of the ASSESSMENT, or TEN
17 (\$10.00) Dollars, whichever is greater, plus interest at the then highest rate of interest allowable
18 by law from the due date until paid. If there is no due date applicable to any particular
19 ASSESSMENT, then the ASSESSMENT shall be due ten (10) days after written demand by the
20 ASSOCIATION.
21

22 7.01.02 Acceleration of ASSESSMENTS. If any OWNER is in
23 default in the payment of any ASSESSMENT owed to the ASSOCIATION for more than thirty
24 (30) days after written demand by the ASSOCIATION, the ASSOCIATION upon written notice
25 to the defaulting OWNER shall have the right to accelerate and require such defaulting OWNER
26 to pay to the ASSOCIATION ASSESSMENTS for COMMON EXPENSES for the next twelve
27 (12) month period, based upon the then existing amount and frequency of ASSESSMENTS for
28 COMMON EXPENSES. In the event of such acceleration, the defaulting OWNER shall
29 continue to be liable for any increases in the regular ASSESSMENTS for COMMON
30 EXPENSES, for all special ASSESSMENTS for COMMON EXPENSES, and/or for all other
31 ASSESSMENTS payable to the ASSOCIATION.
32

33 7.01.03 Lien for ASSESSMENTS. The ASSOCIATION has a lien
34 on each LOT for unpaid ASSESSMENTS owed to the ASSOCIATION by the OWNER of such
35 LOT, and for late fees and interest, and for reasonable attorneys' fees incurred by the
36 ASSOCIATION incident to the collection of the ASSESSMENT or enforcement of the lien, and
37 all sums advanced and paid by the ASSOCIATION for taxes and payment on account of superior
38 mortgages, liens or encumbrances in order to preserve and protect the ASSOCIATION's lien.
39 The lien is effective from and after recording a claim of lien in the public records in the county in
40 which the LOT is located, stating the description of the LOT, the name of the record OWNER,
41 and the amount due as of the recording of the claim of lien. A recorded claim of lien shall secure
42 all sums set forth in the claim of lien, together with all ASSESSMENTS or other moneys owed
43 to the ASSOCIATION by the OWNER until the lien is satisfied. The lien is in effect until all
44 sums secured by it have been fully paid or until the lien is barred by law. The claim of lien must
45 be signed and acknowledged by an officer or agent of the ASSOCIATION. Upon payment in full
46 of all sums secured by the lien, the person making the payment is entitled to a satisfaction of the
47 lien.
48

49 7.01.04 Collection and Foreclosure. The ASSOCIATION may
50 bring an action in its name to foreclose a lien for ASSESSMENTS in the manner a mortgage of
51 real property is foreclosed and may also bring an action to recover a money judgment for the
52 unpaid ASSESSMENTS without waiving any claim of lien, and the applicable OWNER shall be
53 liable to the ASSOCIATION for all costs and expenses incurred by the ASSOCIATION in
54 connection with the collection of any unpaid ASSESSMENTS, and in filing, enforcement, and/or
55 foreclosure of the ASSOCIATION's lien, including reasonable attorneys' fees, and all sums paid
56 by the ASSOCIATION for taxes and on account of any other mortgage, lien, or encumbrance in
57 order to preserve and protect the ASSOCIATION's lien. The BOARD is authorized to settle and
58 compromise the ASSOCIATION's lien if the BOARD deems a settlement or compromise to be
59 in the best interest of the ASSOCIATION.
60

61 7.01.05 Rental and Receiver. If an OWNER remains in possession
62 of his UNIT and the claim of lien of the ASSOCIATION against his UNIT is foreclosed, the

1 court, in its discretion, may require the OWNER to pay a reasonable rental for the UNIT, and the
2 ASSOCIATION is entitled to the appointment of a receiver to collect the rent.
3

4 7.01.06 Subordination of Lien. Where any person obtains title to a
5 LOT pursuant to the foreclosure of a first mortgage of record, or where the holder of a first
6 mortgage accepts a deed to a LOT in lieu of foreclosure of the first mortgage of record of such
7 lender, such acquirer of title, its successors and assigns, shall not be liable for any
8 ASSESSMENTS or for other moneys owed to the ASSOCIATION which are chargeable to the
9 former OWNER of the LOT and which became due prior to acquisition of title as a result of such
10 funds is secured by a claim of lien recorded prior to the recording of the foreclosed or underlying
11 mortgage. The unpaid ASSESSMENTS or other moneys are COMMON EXPENSES
12 collectable from all of the OWNERS, including such acquirer and his successors and assigns.
13 The new OWNER, from and after the time of acquiring such title, shall be liable for payment of
14 all future ASSESSMENTS for COMMON EXPENSES and such other expenses as may be
15 assessed to the OWNER's LOT. Any person who acquires a LOT, except through foreclosure of
16 a first mortgage of record or deed in lieu thereof, including, without limitation, persons acquiring
17 title by sale, gift, devise, operation of law or by purchase at a judicial or tax sale, shall be liable
18 for all unpaid ASSESSMENTS and other moneys due and owing by the former OWNER to the
19 ASSOCIATION, and shall not be entitled to occupancy of the UNIT or enjoyment of the
20 COMMON AREAS, or of the recreational facilities as the same may exist from time to time,
21 until such time as all unpaid ASSESSMENTS and other moneys have been paid in full.
22

23 7.01.07 Assignment of Claim and Lien Rights. The
24 ASSOCIATION acting through its BOARD, shall have the right to assign its claim and lien
25 rights for the recovery of any unpaid ASSESSMENTS and any other moneys owed to the
26 ASSOCIATION, to any third party.
27

28 7.01.08 Unpaid ASSESSMENTS Certificate. Within 15 days after
29 written request by any OWNER or any INSTITUTIONAL LENDER holding or making a
30 mortgage encumbering any LOT, the ASSOCIATION shall provide the OWNER or
31 INSTITUTIONAL LENDER a written certificate as to whether or not the OWNER of the LOT is
32 in default with respect to the payment of ASSESSMENTS or with respect to compliance with
33 the terms and provisions of this DECLARATION, and any person or entity who relies on such
34 certificate in purchasing or in making a mortgage loan encumbering any LOT shall be protected
35 thereby.
36

37 7.01.09 Application of Payments. Any payments made to the
38 ASSOCIATION by any OWNER shall first be applied towards any sums advanced and paid by
39 the ASSOCIATION for taxes and payment on account of superior mortgages, liens or
40 encumbrances which may have been advanced by the ASSOCIATION in order to preserve and
41 protect its lien, next toward reasonable attorneys' fees incurred by the ASSOCIATION incidental
42 to the collection of ASSESSMENTS and other moneys owed to the ASSOCIATION by the
43 OWNER and/or for the enforcement of its lien; next towards interest on any ASSESSMENTS or
44 other moneys due to the ASSOCIATION, as provided herein, and next towards any unpaid
45 ASSESSMENTS owed to the ASSOCIATION, in the inverse order that such ASSESSMENTS
46 were due.
47

48 7.02 Non-Monetary Defaults. In the event of a violation by any OWNER or
49 tenant of an OWNER, or any person residing with them, or their guests or invitees, (other than
50 the nonpayment of any ASSESSMENT or other moneys) of any of the provisions of this
51 DECLARATION, the ARTICLES, the BYLAWS or the Rules and Regulations of the
52 ASSOCIATION, the ASSOCIATION shall notify the OWNER and any tenant of the OWNER
53 of the violation, by written notice. If such violation is not cured as soon as practicable and in any
54 event within seven (7) days after such written notice, or if the violation is not capable of being
55 cured within such seven (7) day period, if the OWNER or tenant fails to commence and
56 diligently proceed to completely cure such violation as soon as practicable within seven (7) days
57 after written notice by the ASSOCIATION, or if any similar violation is thereafter repeated, the
58 ASSOCIATION may, at its option:
59

60 7.02.01 Impose a fine against the OWNER or tenant as provided in
61 Paragraph 7.03; and/or
62

1 7.02.02 Commence an action to enforce the performance on the part
2 of the OWNER or tenant, or for such equitable relief as may be necessary under the
3 circumstances, including injunctive relief; and/or
4

5 7.02.03 Commence an action to recover damages; and/or
6

7 7.02.04 Take any and all actions reasonably necessary to correct
8 such failure, which action may include, where applicable, but is not limited to, removing any,
9 addition, alteration, improvement or change which has not been approved by the
10 ASSOCIATION, or performing any maintenance required to be performed by this
11 DECLARATION.
12

13 All expenses incurred by the ASSOCIATION in connection with the correction of any
14 failure, plus a service charge of ten (10%) percent of such expenses, and all expenses incurred by
15 the ASSOCIATION in connection with any legal proceedings to enforce this DECLARATION,
16 including reasonable attorneys' fees, shall be assessed against the applicable OWNER, and shall
17 be due upon written demand by the ASSOCIATION. The ASSOCIATION shall have a lien for
18 any such ASSESSMENT and any interest, costs or expenses associated therewith including
19 attorneys' fees incurred in connection with such ASSESSMENT, and may take such action to
20 collect such ASSESSMENT or foreclose said lien as in the case and in the manner of any other
21 ASSESSMENT as provided above. Any such lien shall only be effective from and after the
22 recording of a claim of lien in the public records of the county in which the SUBJECT
23 PROPERTY is located.
24

25 7.03 Fines. The amount of any fine shall be determined by a fining committee
26 composed of at least three (3) homeowners who are not Board Members or related to Board
27 Members. This fine shall not exceed the greater of \$25.00 or 1/3 of one month's ASSESSMENT
28 for COMMON EXPENSES for the first offense, \$50.00 or 2/3 of one month's ASSESSMENT
29 for COMMON EXPENSES for a second similar offense, and \$100.00 or one month's
30 ASSESSMENT for COMMON EXPENSES for a third or subsequent similar offense. Prior to
31 imposing any fine, the OWNER or tenant shall be afforded an opportunity for a hearing after
32 reasonable notice to the OWNER or tenant of not less than 14 days, which notice shall include (i)
33 a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the
34 DECLARATION, BYLAWS or Rules and Regulations which have allegedly been violated, and
35 (iii) a short and plain statement of the matters asserted by the ASSOCIATION. The OWNER or
36 tenant shall have an opportunity to respond, to present evidence, and to provide written and oral
37 argument on all issues involved and shall have an opportunity at the hearing to review, challenge
38 and respond to any material considered by the ASSOCIATION. At the hearing, the BOARD
39 shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred,
40 and if the BOARD so determines, it may impose such fine as it deems appropriate by written
41 notice to the OWNER or tenant. If the OWNER or tenant fails to attend the hearing as set by the
42 BOARD, the OWNER or tenant shall be deemed to have admitted the allegations contained in
43 the notice to the OWNER or tenant. Any fine imposed by the BOARD shall be due and payable
44 within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely
45 requested within ten (10) days after written notice of the BOARD's decision at the hearing. Any
46 fine levied against an OWNER shall be deemed an ASSESSMENT, and if not paid when due all
47 of the provisions of this DECLARATION relating to the late payment of ASSESSMENTS shall
48 be applicable. If any fine is levied against a tenant and is not paid within ten (10) days after same
49 is due, the ASSOCIATION shall have the right to evict the tenant as hereinafter provided.
50

51 7.04 Negligence. An OWNER shall be liable and may be assessed by the
52 ASSOCIATION for the expense of any maintenance, repair or replacement rendered necessary
53 by his act, neglect or carelessness, to the extent otherwise provided by law and to the extent that
54 such expense is not met by the proceeds of insurance carried by the ASSOCIATION. Such
55 liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy
56 or abandonment of a LOT or UNIT, or the COMMON AREAS.
57

58 7.05 Responsibility of an OWNER for Occupants, Tenants, Guest and Invitees.
59 Each OWNER shall be responsible for the acts and omissions, whether negligent or willful, of
60 any person residing in his UNIT, and for all guests and invitees of the OWNER or any such
61 resident, and in the event the acts or omissions of any of the foregoing shall result in any damage
62 to the COMMON AREAS, or any liability to the ASSOCIATION, the OWNER shall be assessed

1 for same as in the case of any other ASSESSMENT, limited where applicable to the extent that
2 the expense or liability is not met by the proceeds of insurance carried by the ASSOCIATION.
3 Furthermore, any violation of any of the provisions of this DECLARATION, of the ARTICLES,
4 or the BYLAWS, by any resident of a UNIT, shall also be deemed a violation by the OWNER,
5 and shall subject the OWNER to the same liability as if such violation was that of the OWNER.
6

7 7.06 Right of ASSOCIATION to Evict Tenants, Occupants, Guests and
8 Invitees. With respect to any tenant or any person present in any UNIT or any portion of the
9 SUBJECT PROPERTY, other than an OWNER and the members of his immediate family
10 permanently residing with him in the UNIT, if such person shall materially violate any provision
11 of this DECLARATION, the ARTICLES, or the BYLAWS, or shall create a nuisance or an
12 unreasonable and continuous source of annoyance to the residents of the SUBJECT PROPERTY,
13 or shall willfully damage or destroy any COMMON AREAS or personal property of the
14 ASSOCIATION, then upon written notice by the ASSOCIATION such person shall be required
15 to immediately leave the SUBJECT PROPERTY and if such person does not do so, the
16 ASSOCIATION is authorized to commence an action to evict such tenant or compel the person
17 to leave the SUBJECT PROPERTY and, where necessary, to enjoin such person from returning.
18 The expense of any such action, including attorneys' fees, may be assessed against the applicable
19 OWNER, and the ASSOCIATION may collect such ASSESSMENT and have a lien for same as
20 elsewhere provided. The foregoing shall be in addition to any other remedy of the
21 ASSOCIATION.
22

23 7.07 No Waiver. The failure of the ASSOCIATION to enforce any right,
24 provision, covenant, or condition which may be granted by this DECLARATION, the
25 ARTICLES or the BYLAWS, shall not constitute a waiver of the right of the ASSOCIATION to
26 enforce such right, provision, covenant, or condition in the future.
27

28 7.08 Rights Cumulative. All rights, remedies and privileges granted to the
29 ASSOCIATION pursuant to any terms, provisions, covenants or conditions of this
30 DECLARATION, the ARTICLES or BYLAWS, shall be deemed to be cumulative, and the
31 exercise of any one or more shall neither be deemed to constitute an election of remedies, rights
32 or privileges as may be granted or as it might have by law.
33

34 7.09 Enforcement By or Against Other Persons. In addition to the foregoing,
35 this DECLARATION may be enforced by the ASSOCIATION, by any procedure at law or in
36 equity against any person violating or attempting to violate any provision herein, to restrain such
37 violation, to require compliance with the provisions contained herein, to recover damages, or to
38 enforce any lien created herein. The expense of any litigation to enforce this DECLARATION,
39 including attorneys' fees, shall be borne by the person against whom enforcement is sought,
40 provided such proceedings results in a finding that such person was in violation of this
41 DECLARATION. In addition to the foregoing, any OWNER shall have the right to bring an
42 action to enforce this DECLARATION against any person violating or attempting to violate any
43 provision herein, to restrain such violation or to require compliance with the provisions
44 contained herein, but no OWNER shall be entitled to recover damages or to enforce any lien
45 created herein as a result of a violation or failure to comply with the provisions contained herein
46 by any person, and the prevailing party in such action shall be entitled to recover its reasonable
47 attorneys' fees.
48

49 8. Term of DECLARATION. All of the foregoing covenants, conditions,
50 reservations, and restrictions shall run with the land and continue and remain in full force and
51 effect at all times as against all OWNERS, their successors, heirs or assigns, regardless of how
52 the OWNERS acquire title, for a period of thirty (30) years from the date of this
53 DECLARATION, unless within such time, one hundred (100%) percent of the OWNERS
54 execute a written instrument declaring a termination of this DECLARATION (as it may have
55 been amended from time to time). After such thirty (30) year period, unless sooner terminated as
56 provided above, these covenants, conditions, reservation and restrictions shall expire unless the
57 BOARD by two-thirds vote of the Board of Directors prior to the expiration date, votes to extend
58 this DECLARATION for an additional thirty (30) years in accordance with the Marketable
59 Record Title Act. Any termination of this DECLARATION shall be effective on the date the
60 instrument of termination is recorded in the public records of the county in which the SUBJECT
61 PROPERTY is located.
62

1 9. AMENDMENT.

2
3 9.01 This DECLARATION may be amended upon the approval of not less than
4 2/3 of the OWNERS. In order to be effective, any amendment to this DECLARATION must
5 first be recorded in the public records of the county in which the SUBJECT PROPERTY is
6 located and in the case of an amendment made by the OWNERS, such amendment shall contain
7 a certification by the President and Secretary of the ASSOCIATION that the amendment was
8 duly adopted.
9

10 9.02 No amendment shall discriminate against any OWNER or class or group
11 of OWNERS, unless the OWNERS so affected join in the execution of the amendment. No
12 amendment shall change the number of votes of any OWNER or increase any OWNER's
13 proportionate share of the COMMON EXPENSES, unless the OWNERS affected by such
14 amendment join in the execution of the amendment. No amendment may prejudice or impair the
15 priorities of INSTITUTIONAL LENDERS granted hereunder unless all INSTITUTIONAL
16 LENDERS join in the execution of the amendment.
17

18 10. SPECIAL PROVISIONS REGARDING INSTITUTIONAL LENDERS.

19
20 10.01 Notice of Action. Upon written request to the ASSOCIATION by an
21 INSTITUTIONAL LENDER holding, insuring or guaranteeing a first mortgage encumbering any
22 LOT, identifying the name and address of the holder, insurer or guarantor and the LOT number
23 or address, any such holder, insurer or guarantor will be entitled to timely written notice of:
24

25 10.01.01 Any condemnation or casualty loss which affects a material
26 portion of the SUBJECT PROPERTY or the LOT;
27

28 10.01.02 Any sixty (60) day default in the payment of
29 ASSESSMENTS or charges owed to the ASSOCIATION or in the performance of any
30 obligation hereunder by the OWNER of the LOT;
31

32 10.01.03 Any lapse, cancellation or material modification of any
33 insurance policy or fidelity bond maintained by the ASSOCIATION;
34

35 10.01.04 Any proposed action which would require the consent of a
36 specified percentage of INSTITUTIONAL LENDERS.
37

38 10.02 Consent of INSTITUTIONAL LENDERS. Whenever the consent or
39 approval of any, all or a specified percentage or portion of the holder(s) of any mortgage(s)
40 encumbering any LOTS is required by this DECLARATION, the ARTICLES, the BYLAWS, or
41 any applicable statute or law, to any amendment of the DECLARATION, the ARTICLES, or the
42 BYLAWS, or to any action of the ASSOCIATION, or to any other matter relating to the
43 SUBJECT PROPERTY, the ASSOCIATION may request such consent or approval of such
44 holder(s) by written request sent certified mail, return receipt requested (or equivalent delivery
45 evidencing such request was delivered to and received by such holders). Any holder receiving
46 such request shall be required to consent to or disapprove the matter for which the consent of
47 approval is requested, in writing, by certified mail, return receipt requested (or equivalent
48 delivery evidencing such request was delivered to and received by the ASSOCIATION), which
49 response must be received by the ASSOCIATION within thirty (30) days after the holder
50 receives such request, and if such response is not timely received by the ASSOCIATION, the
51 holder shall be deemed to have consented to and approved the matter for which such approval or
52 consent was requested. Such consent or approval given or deemed to have been given, where
53 required, may be evidenced by an affidavit signed by all of the directors of the ASSOCIATION,
54 which affidavit, where necessary may be recorded in the public records of the county where the
55 SUBJECT PROPERTY is located, and which affidavit shall be conclusive evidence that the
56 applicable consent or approval was given as to the matters therein contained. The foregoing shall
57 not apply where an INSTITUTIONAL LENDER is otherwise required to specifically join in an
58 amendment to this DECLARATION.
59

60 10.03 Payment of Taxes and Insurance. Any INSTITUTIONAL LENDER may
61 pay any taxes or assessments which are in default, or any overdue insurance premiums, or may
62 secure new insurance upon the lapse of a policy, and shall be owed immediate reimbursement

1 therefor from the ASSOCIATION plus interest at the highest rate permitted by law and any costs
2 of collection, including attorneys' fees.
3
4
5

6 11. MISCELLANEOUS.
7

8 11.01 Conflict with ARTICLES or BYLAWS. In the event of any conflict
9 between the ARTICLES and the BYLAWS and this DECLARATION, the DECLARATION, the
10 ARTICLES, and the BYLAWS, in that order, shall control.
11

12 11.02 Authority of ASSOCIATION and Delegation. Nothing contained in this
13 DECLARATION shall be deemed to prohibit the BOARD from delegating to any one of its
14 members, or to any officer, or to any committee or any other person, any power or right granted
15 to the BOARD by this DECLARATION including, but not limited to, the right to exercise
16 architectural control and to approve any deviation from any use restriction, and the BOARD is
17 expressly authorized to so delegate any power or right granted by this DECLARATION.
18

19 11.03 Severability. The invalidation in whole or in part of any of these
20 covenants, conditions, reservations and restrictions, or any section, subsection, sentence, clause,
21 phrase, word or other provision of this DECLARATION shall not affect the validity of the
22 remaining portions which shall remain in full force and effect.
23

24 11.04 Validity. In the event any court shall hereafter determine that any
25 provisions as originally drafted herein violate the rule against perpetuities, the period specified in
26 this DECLARATION shall not thereby become invalid, but instead shall be reduced to the
27 maximum period allowed under such rules of law.
28

29 11.05 Inapplicability of Condominium Act. It is acknowledged that the
30 ASSOCIATION is not intended to be a condominium association, and is not intended to and
31 shall not be governed by the provisions of Florida Statutes, Chapter 718.
32

33 11.06 Actions Against DECLARANT. The ASSOCIATION shall not institute
34 any legal proceedings against DECLARANT, or spend or commit to spend any ASSOCIATION
35 funds in connection with any legal proceedings against DECLARANT, or make a special
36 ASSESSMENT for funds to pay for costs or attorneys' fees in connection with any legal
37 proceedings against DECLARANT, without the consent of 75% of the votes of all of the
38 OWNERS obtained at a meeting of the OWNERS called expressly for the purpose of approving
39 such action.
40

41 IN WITNESS WHEREOF, DECLARANT executed this DECLARATION the 26
42 day of October, 1993.
43
44
45
46

RECORDED IN
SARASOTA CT HOUSE
INST # 2904032 690
FEBRUARY 24 2004