

**DECLARATION
OF GENERAL PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
OF DANIELS PRESERVE**

THIS DECLARATION OF GENERAL PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF **DANIELS PRESERVE** (hereinafter referred to as the "Declaration") is made this 5th day of March, 2004, by **DANIELS PRESERVE COMMUNITY DEVELOPERS, INC., a Florida Corporation** (hereinafter referred to as "**Declarant**"), as fee simple owner of the real property hereinafter described, for itself, its successors, grantees, assignees and their transferees.

WITNESSETH:

WHEREAS, the Declarant as fee simple owner, **makes** the following declaration:

**A R T I C L E I
Introduction and Submission.**

1.1. The Declarant owns fee simple title to certain real property located in Lee County, Florida, as more particularly described in **Exhibit 1.** It is the Declarant's present plan, subject to change in the Declarant's sole discretion, that the Declarant shall convey Lots to Builder, and Builder shall construct Homes on the Lots for sale to purchasers. Builder shall therefore have the rights of the Declarant granted in this Declaration by the following provisions, and as otherwise granted to the Builder by the **Declarant, in** Declarant's sole discretion: 5.5., 5.9., 5.12., 5.16., 6.5., 6.9., 8.1., 8.2., 8.6., 8.7., 8.10,7., Article IX and Article XVI.

1.2. The real property submitted hereby and subject initially to this Declaration is described in **Exhibit 1** and is now, and shall hereafter, unless withdrawn in accordance with **Article Two of this** Declaration, be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, limitations, easements, reservations, charges and liens set forth in this Declaration, for the benefit of the Declarant and Owners (as defined in **Appendix A**) of the real property described in **Exhibit 1.**

1.3. The name by which this development is to be identified is **DANIELS PRESERVE.**

1.4. All provisions of this Declaration, including the Exhibits attached hereto are perpetual covenants running with the land submitted hereby and with every part thereof and interest therein, **and every** subsequent Owner and claimant of the land or any part thereof or interest therein, and his heirs, executors and administrators, successors and assigns, are bound by all of the provisions of this Declaration, including the Exhibits attached hereto, unless this Declaration terminates or is terminated pursuant to the provisions provided for herein, or the real property or a part or parts of the real property submitted are withdrawn in accordance with **Article Two** of this Declaration. Both the burdens imposed and the benefits granted shall run with the land submitted hereby. The acceptance of a deed of conveyance, entering into **a lease**, or entering into occupancy of the real property described in **Exhibit 1** or any real property hereafter **added** by Supplemental Declaration in accordance with **Article Two** of this Declaration constitutes an adoption and ratification of the provisions of this Declaration, the Exhibits attached hereto, or any amendments hereof or Supplemental Declarations.

1.5. THIS DECLARATION DOES NOT, AND IS NOT INTENDED, TO CREATE A CONDOMINIUM. THIS DECLARATION, THE COMMUNITY ASSOCIATION AND RIGHTS **AND DUTIES THEREUNDER** SHALL NOT BE GOVERNED BY CHAPTER 718 FLORIDA STATUTES, AS IT EXISTS NOW OR IN THE FUTURE, OR BY ANY ADMINISTRATIVE RULES PROMULGATED THEREUNDER.

1.6. NOTE: In this Declaration the capitalization of a word or term not normally capitalized in general usage indicates the word or term is defined in **Appendix A** of this Declaration; and that the word or term means what the definition of that word or term says it means in Appendix A.

ARTICLE II

Property initially Subject to this Declaration; Additions i Hereto and Withdrawals Therefrom.

2.1. Legal Description. The real property initially submitted hereunder which shall be owned, held, transferred, sold, conveyed, used and occupied subject to this Declaration is located in Lee County, Florida and is legally described in Exhibit 1, all of which real property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "The Properties." Exhibit 1 may not necessarily describe all Common Areas to the extent any are Maintenance Common Areas as defined in Appendix A.

2.2. Addition By Supplement. The Declarant may from time to time add additional real property to DANIELS PRESERVE, and thereby add to The Properties, by submitting that additional real property to this Declaration and to the provisions hereof by recording a Supplemental Declaration in the Public Records of the County. The addition of real property by Supplemental Declaration does not require prior notice to or the consent of any Owner, the Association, any mortgagee or any other person or entity other than the mortgagee, if any, of the real property intended to be added to DANIELS PRESERVE (and The Properties). To the extent additional real property is made a part of The Properties, reference herein to The Properties includes reference to all additional real property where reference is intended to include real property in addition to that real property legally described in Exhibit 1. Nothing herein, however, obligates Declarant to add to the real property initially submitted hereunder, to submit any additional real property to this Declaration, to develop additions to the real property initially submitted hereunder under a common scheme, or prohibits Declarant from rezoning and changing its Development Plan with respect to additional real property. Declarant also has the right to add real property pursuant hereto which Declarant previously withdrew pursuant to Article Two Section 3 below.

2.3. Withdrawal by Amendment. Declarant reserves the right to amend this Declaration at any time, without prior notice and without the consent of any Owner, the Association, any mortgagee or any other person or entity, other than the mortgagee, if any, of the real property intended to be withdrawn, for the purpose of removing certain portions of The Properties then owned by Declarant, a Sub-Developer or the Association from the provisions of this Declaration: (1) to the extent added originally in error; or, (2) as a result of any changes whatsoever in the Declarant's Development Plan; provided, however, that withdrawal is not unequivocally contrary to the Declarant's Development Plan. Any withdrawal of real property not owned by Declarant requires the written consent or joinder of the Owner and mortgagee of the real property to be withdrawn, and of the Declarant prior to turnover, but not of any other person or entity. Notwithstanding the foregoing, no withdrawal which affects the operation and maintenance of the Surface Water Management System may be made without the consent of the South Florida Water Management District.

2.4. Consent to Additions and Withdrawals. Each Owner, by acceptance of a deed to or other conveyance of his Lot, automatically consents to rezoning, change, addition or withdrawal thereafter made by Declarant and will evidence that consent in writing if requested to do so by Declarant at anytime; provided, however, that the Owner's refusal to give written consent does not obviate the general and automatic effect of this provision.

ARTICLE III Definitions and Interpretation

_____ The words and terms defined in Appendix A when used in this Declaration, any Amendment hereto, any Supplemental Declaration, and the Development Documents (unless the context prohibits or unless

defined by applicable law on the date of recording this Declaration) have the meanings given in **Appendix A**. Note: the capitalization of a word or term not normally capitalized indicates the word or term is defined in Appendix A and has that meaning when used in this Declaration, in any Amendment hereto, in any Supplemental Declaration, and the Development Documents. In addition to definitions, Appendix A describes the rules applicable to the construction and interpretation of this Declaration, any Amendment hereto, any Supplemental Declaration and the Development Documents. Appendix A is incorporated herein by this reference as if fully set forth herein.

ARTICLE IV
Membership in the Association

4.1. **Membership.** Only Owners of Lots and Declarant prior to the turnover date as defined in **Appendix A**, are Members of the Association. Each Owner accepts membership and agrees to be bound by the Declaration, the Articles and By-Laws of the Association, and the Rules and Regulations adopted pursuant hereto. Membership may not be transferred separate and apart from a transfer of ownership of a Lot. Membership commences upon acquisition, and terminates upon sale or transfer, of an Owner's interest in a Lot whether voluntary or involuntary. An Owner's grant of a security interest in a Lot as security for an obligation neither terminates the Owner's membership in the Association, nor makes the creditor secured thereby a Member.

4.2. **Voting Rights.** For purposes of voting rights only, the Association has two (2) categories of membership: (1) Regular Memberships, which include all Owners of Lots within The Properties; and (2) Declarant Membership which is held exclusively by the Declarant and its designated successors and assigns.

4.2.1. **Regular Membership.** Regular Members are entitled to one (1) vote for each Lot owned by that Regular Member; provided, however, that multiple Owners of a Lot have a total of only one (1) vote for one (1) Lot.

4.2.2. **Declarant Membership.** The Declarant Member is the Declarant, its assignee or designee to whom the Declarant assigns all or part of its voting rights as a Declarant Member. The Declarant has the number of votes at any meeting in which votes are to be taken equal to the total of all Regular Members plus one vote. Declarant Membership terminates and converts to Regular membership within three (3) months of the date Declarant conveys at least ninety percent (90%) of the Lots within The Properties to Owners other than the Declarant, Builder, or any Sub-Developer, or on an earlier date as the Declarant may elect to terminate its Declarant Membership.

4.2.4. **Election of Board of Directors.** Directors of the Association will be elected and removed, and vacancies on the Board of Directors will be filled, as provided in the Articles and By-Laws of the Association.

4.2.6. **Control of Board of Directors During Development.** During the time Declarant is a Declarant Member, Declarant has the right to designate, elect and remove members of the Board, and the Directors designated by Declarant need not be Members. In addition, as long as Declarant owns at least five percent (5%) of the Lots within The Properties and owns them for sale in the ordinary course of its business, Declarant is entitled to appoint at least one (1) Director. The Declarant may waive its right to elect at least one (1) Director.

4.2.7. **Successor by Foreclosure.** In the event a mortgagee or other person or entity acquires title to a Lot by foreclosure or deed in lieu of foreclosure, that mortgagee, or the other person or entity, has the category of membership last held by the Owner of the Lot from whom title was acquired.

4.2.8. **Majority.** When reference is made herein, or in the Articles, By-Laws, Rules and Regulations, management contracts or otherwise, to a "majority" or specific "percentage of Members," that

reference is reference to a majority or specific percentage of the votes of Members represented at a duly constituted meeting (i.e., one for which proper notice has been given and at which a quorum exists) and not of all the Members of the Association.

4.2.9. Effect of Dissolution. in the event of the termination, dissolution or final liquidation of the Association, the responsibility for the operation and maintenance of the Surface Water Management System will be transferred to and accepted by an entity approved by the South Florida Water Management District and the County (if applicable) prior to termination, dissolution or liquidation.

ARTICLE V

Common Areas

5.1. **Dedication and Ownership of Common Areas.** The Declarant dedicates the General Common Areas non-exclusively to the joint and several use, in common by: the Declarant; Owners; Owners' Designees, and their families, tenants, guests and invitees; and the Association; all as provided and regulated by this Declaration, subject to Article **Two**. The General Common Areas will be conveyed to the Association upon the later of: completion of the Improvements thereon (if any) or the date when Declarant conveys its last Lot within The Properties (or sooner in the sole election of Declarant). The Declarant will convey the Common Areas by quitclaim deed. The Association will accept the conveyance. Beginning on the date this Declaration is recorded, the Association is responsible for the maintenance, repair, replacement, insuring and administration of the General Common Areas and the Maintenance Common Areas (whether or not conveyed to the Association), all of which will be performed in a continuous and satisfactory manner without cost to the general taxpayers of the County. Real estate taxes and assessments levied against the Common Areas will be (or have been, because the purchase prices of the Lots took into account the proportionate shares of the values of the Common Areas), proportionally assessed against and payable as part of the taxes of the applicable Lots within The Properties. However, in the event that, notwithstanding the foregoing, any taxes or assessments are assessed directly against the Common Areas, the Association will pay them (subject to protest or appeal before or after payment), including taxes on Improvements and any personal property located thereon. Those taxes will be prorated between Declarant and the Association as of the date of the recording of this Declaration.

5.2. **Owners' Easement.** Each Owner, has a non-exclusive perpetual easement over and upon the Common Areas (but unless expressly set forth in this Declaration to the contrary, not over and upon the Exclusive Common Areas and Maintenance Common Areas), for the use and enjoyment thereof in common with all other Owners, their employees, guests, tenants, and invitees, as reasonably regulated by the Association and subject to Article V, Section 1, above and Article V, Section 3 below. The easements granted in this Article V, Section 2 are appurtenant to and pass with the title to each Lot, but do not grant or convey any ownership interest in the Common Areas, subject thereto.

5.3. Without limiting the generality of Article V, Section 1 above, Owners' easements of use and enjoyment of the General Common Areas are subject to the following:

5.3.1. The Association's right and duty to levy Assessments against each Lot and its Owner for the purpose of, among other things, maintaining the Common Areas and any facilities located thereon in compliance with the provisions of this Declaration, the restrictions of any plat of property within The Properties, other plats of Additional Property added to The Properties by Supplemental Declaration, Governmental Requirements, and Governmental Approvals;

5.3.2. The Association's right to suspend an Owner's right to use the Common Areas for any period during which any Assessment against the Owner's Lot remains unpaid for more than thirty (30) days; and for a period not to exceed sixty (60) days for any infraction of this Declaration or the Association's Rules and Regulations. However, suspension of Common Areas use right does not impair an Owner's, his family's, his guests', his invitees', his Owner's Designees or his tenants' right to vehicular and pedestrian ingress to and egress from his Lot ;

5.3.3. The Association's right to adopt, amend and enforce Rules and Regulations governing the use of the Common Areas, including the right to fine Owners as hereinafter provided. Any Rules and Regulations adopted by the Association apply until rescinded or amended as if originally set forth at length in this Declaration;

5.3.4. The non-exclusive right of use and enjoyment of the General Common Areas extend to all Owners' family, guests, invitees and tenants, subject to Article V, Section 2 above and to regulation by this Declaration and the Association as set forth in its Rules and Regulations, including those relating to the gate(s) and other entry and traffic control procedures (which may permit the installation of "speed bumps" and other traffic calming & control devices);

5.3.5. The Declarant's right to permit persons Declarant designates to use the Common Areas;

5.3.6. The right of Declarant and the Association to have, grant and use general ("blanket") and specific easements over, under, across and through the Common Areas, which right is reserved to Declarant and granted to the Association, the former to control over the latter in the event of conflict;

5.3.7. The Association's right, by a two thirds (2/3rds) affirmative vote of the Members, and with Declarant's written consent (prior to turnover), to dedicate or convey (subject to the Owners' easements as herein provided) portions of the Common Areas to a Governmental Authority, under terms the Association determines appropriate;

5.3.8. Article **Eleven** of this Declaration (with respect to transfer of rights);

5.3.9. The Association's right to limit the number of an Owner's guests and to limit the use of the Common Areas by Members not in possession of a Lot ;

5.3.10. The Association's right to borrow money for the purpose of improving, replacing, restoring or expanding the Common Areas, or adding new Common Areas. In furtherance thereof the Association has the right to mortgage the Common Areas (except Exclusive Common Areas and Maintenance Common Areas). In order to mortgage the Common Areas, the prior affirmative vote of not less than two-thirds (2/3rds) of the total votes of all the Members and the Declarant's written consent (prior to turnover) is required. The rights of mortgagees are subordinate to the Owners' rights. In the event of a default upon any mortgage on the Common Areas, the mortgagee's rights are limited to the right, after taking possession, to charge admission and other fees as a condition to the Owners' continued use of the Common Areas, and if necessary, to open the use of the Common Areas to a wider public until the mortgage debt is satisfied, whereupon the mortgage will be satisfied of record and possession of (and title to, if applicable) the Common Areas mortgaged will be returned to the Association and all the Owners' rights will be fully restored. The Association's right to mortgage the Common Areas does not extend to any part of the Exclusive Common Areas or Maintenance Common Areas;

5.3.11, The Declarant's right to grant additional non-exclusive easements over, across, under or through Common Areas, to owners of real property not within The Properties, for the purpose of access, ingress, egress, utilities or drainage. The grant will be on the condition that non-members contribute in a fair and equitable manner to the maintenance of the portion of the Common Areas within which those rights are granted. The Declarant will establish a method of determining the proportional contribution when the easement is granted;

5.3.12. WITH RESPECT TO THE USE OF THE COMMON AREAS AND THE PROPERTIES GENERALLY, ALL PERSONS ARE REFERRED TO **ARTICLE EIGHTEEN**, WHICH APPLIES AT ALL TIMES;

5.3.13. The right of Lee County Elections Board to conduct polling and voting activities for Owners on Common Areas as required by applicable zoning ordinance.

5.4. **Effect of Dissolution of Association.** Notwithstanding anything to the contrary in this Declaration, in the Articles of Incorporation, or in the By-Laws, no merger, consolidation or dissolution of the Association which affects Owners' easements in and to the Common Areas is effective without the approval of two-thirds (2/3rds) of the votes cast by the Members and the written consent of Declarant (prior to turnover). Upon dissolution of the Association, its assets will be conveyed to a similar association or appropriate Governmental Authority having a purpose similar to the Association.

5.5. **Declarant's Rights as to Common Areas.** Declarant has the right to enter upon the Common Areas and other portions of The Properties (including, without limitation, the unimproved portions of Lots) for the purpose of the installation, construction, reconstruction, repair, replacement, operation, expansion or alteration of any Improvements or facilities on the Common Areas or elsewhere on The Properties that Declarant elects to make, and to use without charge, the Common Areas and other portions of The Properties for sales displays and signs, or for any other purpose during the period of construction and sale of any portion thereof or of other portions of adjacent or nearby communities. Without limiting the generality of the foregoing, Declarant has the specific right to maintain upon any portion of The Properties sales, administrative, construction, or other offices and non-exclusive easements of use thereof and access thereto are expressly reserved unto Declarant, its employees and contractors, for this purpose.

5.6. **Maintenance.** The Association will at all times maintain in good repair, manage, operate, insure, and replace the Common Areas, and, to the extent not otherwise provided for, the Roads, drainage structures, landscaping, Improvements and other structures (except public utilities to the extent they are not Maintenance Common Areas) situated on the Common Areas, if any, all work to be done as ordered by the Board of Directors of the Association. Without limiting the generality of the foregoing, the Association assumes all of Declarant's duties, responsibilities and liabilities to the County and other Governmental Authority, with respect to the Common Areas. The Association will indemnify and hold Declarant harmless with respect thereto in the event the Association fails to fulfill those duties, responsibilities and liabilities.

5.6.1. The Association may enter into one or more agreements with the County, or other Governmental Authority, or another association, whereby the Association will maintain the property owned by or dedicated to the County, or other Governmental Authority. Accordingly, to the extent an agreement (which may be in the form of a contract, easement or other instrument) provides for maintenance, then the areas to be maintained are Maintenance Common Areas hereunder, so as to authorize an agreement, the performance of maintenance duties pursuant thereto, and the imposition and expenditure of Assessments necessary to fund maintenance,

5.6.2. The Association, has or will, enter into a Shared Maintenance Agreement, a copy of which is attached as Exhibit 5 to this Declaration. The Shared Maintenance Agreement provides, in pertinent part, that the Association shall be responsible to reimburse Worthington Commerce Park Association, Inc., for the Association's agreed portion of the expense of the Maintenance of: (1) Commerce Lakes Drive and Express Court (Tract R-1) on the Plat of Worthington Commerce Park; and (2) the Street Lighting if installed by Florida Power & Light or another entity. In addition, the Shared Maintenance Agreement also provides, in pertinent part, that the Association shall be responsible for the maintenance of Open Space Tract 0-1 described on the Plat of Worthington Commerce Park. The Association's share of the expense of the Maintenance of Commerce Lakes Drive and Express Court and the Street Lighting, the expense of the Association for the Maintenance of the Open Space Tract 0-1, and any other amounts incurred by the Association in the performance of the Shared Maintenance Agreement, shall be paid by the Association from Assessments.

5.6.3. All work performed pursuant to Article V, Section 7, and all expenses incurred or allocated to the Association pursuant to this Declaration, will be paid by the Association through Assessments.

5.7. Surface Water Management System; Lakes; Conservation Areas. The Properties are within the Gateway Services Community Development District (hereafter "GSD") as part of System 5 of the Gateway Project. GSD is responsible for the operation and maintenance of the Surface Water Management System, which is a Maintenance Common Area. The Surface Water Management System includes, but may not be limited to, those parcels (or portions of parcels as in the case of CA-5) located within The Properties and described on the Plat of Worthington Commerce Park as Lake Parcels L-2, L-3, L-4 and L-5; Lake Maintenance Easements; Drainage Easements; and Conservation Area Tracts CA-2, CA-3, and CA-5. The GSD will perform the operation and maintenance of the Surface Water Management System in accordance with sound drainage management practices and the permit(s) issued by the South Florida Water Management District ("SFWMD") including, without limitation, all general and special conditions thereof and amendments thereto. GSD will comply with SFWMD monitoring requirements. If the GSD does not comply with the SFWMD monitoring requirements, then the Association will do so.

5.7.1. The Association and the GSD is each notified of, and is responsible for compliance with, a Deed of Conservation Easement, if any, in favor of SFWMD recorded or to be recorded in the Public Records of the County and of any similar dedication in the Plat of Worthington Commerce Park. Without limiting the generality of the foregoing, neither the Association, nor GSD, may conduct nor permit any of the prohibited activities in or on the property described in the Deed of Conservation Easement and in Article VIII, Section 18. For purposes hereof, the GSD is the successor-in-interest to the "Grantor" of a Deed of Conservation Easement.

5.7.2. The GSD may not abandon the Surface Water Management System or any duties with respect thereto or with respect to the Deed of Conservation Easement and any similar dedication in the Plat of Worthington Commerce Park, except in accordance with all applicable SFWMD requirements and with the consent of SFWMD including, without limitation, the requirement that those duties be transferred to a responsible entity meeting those requirements.

5.7.3. The Declarant grants the Association the following additional powers if the grant elsewhere in this Declaration is not sufficient to do so: (a) to own and convey property; (b) to establish rules and regulations as it may deem appropriate or as may be required by SFWMD; (c) to sue and be sued; (d) to assess Owners and enforce Assessments relating to the charges of GSD for the operation and maintenance of the Common Areas; (e) to contract for services for operation and maintenance of the Association by an appropriate outside service, if feasible; and (f) in the event of the dissolution of the GSD, the Association, and in the event of the dissolution of the Association, its officers and directors have the power to dedicate the operation and maintenance of the Common Areas and specifically the Surface Water Management System to an appropriate agency of local government, or private agency, for the purpose of operating and maintaining the Surface Water Management System in accordance with SFWMD requirements, or if not accepted, then the Surface Water Management System will be dedicated to a successor or similar non-profit corporation. Any amendment of this Declaration affecting the Surface Water Management System, including the water management portions of the Common Areas must be approved by SFWMD.

5.8. Utility Easements. The Common Areas Intended for utilities, as well as utility easements shown on the Plat of Worthington Commerce Park, and plats of Additional Property added to The Properties by Supplemental Declaration, must be used in accordance with the applicable provisions of this Declaration and all recorded plats. Declarant has a non-exclusive perpetual easement over, across, through, upon and under the Common Areas and the unimproved portions of Lots for the installation, operation, maintenance, repair, replacement, alteration and expansion of other utilities serving The Properties.

5.9. Public Easements. There is hereby created, declared, granted, and reserved for the benefit of fire, police, health, sanitation, lake maintenance and other public service personnel and vehicles a non-exclusive permanent and perpetual easement for ingress and egress over and across the Roads and where applicable the other Common Areas for the performance of their respective duties.

5.10. Emergency Access and Drainage Easement. There is hereby created, declared, granted, and reserved for the benefit of the County, a non-exclusive easement over and upon the streets and roads, and all drainage easements for the purpose of undertaking emergency maintenance and repairs in the event that inadequate maintenance or repair shall create a hazard to the public health, safety, or general welfare. Under the foregoing easement, the County shall have the right, but not the obligation, to undertake emergency repairs and maintenance.

5.11. Construction and Sales Easements. There is hereby created, declared, granted, and reserved for the benefit of the Declarant, together with the right to grant, assign, and transfer the same to the Declarant's sales agents and sales representatives, real estate broker, or any real estate sales agents engaged by the Declarant, as well as to builders or building contractors approved by Declarant for the construction of residences within The Properties, an easement for construction activities within The Properties and an easement for sales activities and signs within the Properties, and for the maintenance within The Properties from time to time of a sales and administrative center in which, and from which, the Declarant and its authorized sales agents and sales representatives and approved builders and building contractors may engage in sales and administrative activities of a commercial nature on a temporary basis during the period of the development of and construction within The Properties. Provided, however, that sales and administrative activity shall be conducted from and within a building constructed as a single family residential dwelling which is temporarily used for sales and administrative activities and which is thereafter to be sold, used and occupied as a single family residential dwelling. The location of a sales and administrative center within The Properties may be changed from time to time by the Declarant, in its sole and absolute discretion.

5.12. Association Easement. There is hereby created, declared, and granted to the Association, easements over and upon all or any portion of The Properties, as may be reasonably necessary to permit the Association to carry out and discharge its duties, obligations, and responsibilities under the pursuant to this Declaration and the Articles, By-laws, and Rules and Regulations of the Association. The foregoing Association easement shall be in addition to the drainage and utility easements granted to the Association pursuant to other sections of this Declaration for the purpose of constructing, installing, inspecting, maintaining, repairing and replacing any and all portions of and facilities comprising the Surface Water Management System for Daniels Preserve.

5.13. Streetlight Easements. There is hereby declared, granted, and reserved for the benefit of the Association a nonexclusive easement upon each Lot for the installation, repair, maintenance and access to streetlights which may be installed by Florida Power & Light, the Association or the County.

5.14. Entrance Feature Easement. There is hereby created, declared and granted to the Association a non-exclusive perpetual easement over and upon that portion of The Properties depicted on Exhibit 4 for the placement of decorative entrance features for Daniels Preserve. All costs and expenses of installing, constructing and maintaining the entrance feature shall be borne by the Association. Owners shall take no action which shall be adverse to any structures or landscaping located within the foregoing Easements.

_____ 5.15. Future Easements. There is hereby reserved to the Declarant and its successors and assigns, together with the right to grant and transfer the same, the right, power, and privilege to, at any time hereafter, grant to itself, the Association, the County, GSD, or any other parties additional easements as may be reasonably necessary or desirable in the sole opinion and within the sole discretion of the Declarant for the future orderly development of The Properties. It is expressly provided, however, that no additional easements shall be granted or created over and upon any Lot pursuant to the provisions of this section if the easement shall unreasonably interfere with the presently contemplated or future use and development of a particular Lot as a single family residential home site. The easements contemplated by this section may include, without limitation, easements as may be required for utility, drainage, road right-of-way or other purposes reasonably related to the orderly development of The Properties. Additional easements may be hereafter created, granted or reserved by the Declarant without the necessity for the consent or joinder of the

Association or any Owner of the particular portion of the The Properties over which any additional easement is granted or required.

5.16. Association's Contract for Provision of Cable Communications Services. The Association has contracted with Comcast of California XIV, LLC ("Comcast") for the provision of cable communications services to The Properties. The Properties are subject to the terms of that cable contract. A copy of the cable contract is available for inspection upon request. Pursuant to the cable contract, Comcast shall be the exclusive provider of cable communication services to the Properties. Pursuant to the cable contract, each Owner shall pay for cable services as part of an Assessment, and may be required to pay a hook-up, activation or similar fee.

5.1.7 **Enforcement.** Owners, and all beneficiaries of The Properties and corresponding infrastructure, shall have the right to enforce the maintenance covenants of the Association, GSD, or other entity responsible for maintenance according to this Declaration.

ARTICLE VI Covenant for Assessments

6.1. Creation of the Lien and Personal Obligation for Assessments. Except as provided elsewhere herein, Declarant (and each party joining in any Amendment or Supplemental Declaration), for all Lots now or hereafter located within The Properties, covenants and agrees, and each Owner of any Lot by acceptance of a deed or other conveyance thereof, whether or not it is expressed In the deed or other conveyance, covenants and agrees to pay to the Association all Assessments as defined in 6.2., including but not limited to charges for the operation of the Association, for the maintenance, management, operation and insuring of the Common Areas, including reasonable reserves as the Association determines necessary, and all other charges and Assessments hereinafter referred to or lawfully imposed by or on the Association, all Assessments to be fixed, established and collected from time to time as herein provided.

6.1.1. Assessments, together with interest thereon and costs of collection thereof as hereinafter provided, are a charge and continuing lien upon the Lot against which each Assessment is made. Each Assessment, together with interest thereon and costs of collection thereof as hereinafter provided, is also the personal obligation of the person or entity, or the joint and several obligation of the persons or entities, who own the Lot at the time when the Assessment becomes due, including all subsequent Owners, until paid, except as provided in 6.8.

6.1.2. Reference herein to Assessments includes reference to all charges whether or not specifically mentioned.

6.1.3. No Owner may waive or otherwise avoid liability for Assessments by non-use of Common Areas whether voluntary or involuntary, or by abandonment of the Owner's use or right to use the Common Areas.

6.2. **Types of Assessments.** Each Assessment levied hereunder shall be one (1) of the following types (although two (2) or more types of Assessment may be payable by an Owner as a single sum):

6.2.1. "Initial Assessment" means and refers to an Assessment paid by an Owner at the closing of the purchase of his Lot to be applied as provided in a purchase contract with Declarant. Unless otherwise expressly waived by Declarant in writing, at the closing of the purchase of a Lot, each Owner (except the Declarant), will pay an Initial Assessment in an amount determined by Declarant. Declarant may in its sole discretion defer the payment of an Initial Assessment with respect to a Lot sold to a Sub-Developer, until the sale of the Lot constructed thereon by the Sub-Developer.

6.2.2. "Individual Assessment" means and refers to an Assessment paid by an Owner for those expenses directly related to providing a service or maintenance to one (1) or more Lots, whether at the request of the Owner, or as an exercise of an Association (or Declarant) remedy hereunder, and also includes fines levied pursuant to Article Twelve. If an Individual Assessment is levied upon more than one (1) Lot, it will be allocated between or among the applicable Lots as the Board (or Declarant) directs, absent which it will be prorated equally. The fact that Individual Assessments are authorized hereby does not require the Association, (or Declarant) to provide any particular service (maintenance or otherwise) to an individual Lot. Individual Assessments shall differ depending on whether the Individual Assessment is for a Standard Lot or an Estate Lot.

6.2.3. "Regular Assessment" (or "Assessment") means and refers to an Assessment for those expenses incurred primarily for payment of recurring periodic budgeted Common Expenses for the benefit of all Owners, as primary benefit is determined by the Board of Directors. By way of example only, Regular Assessments will be levied for expenses relating to Common Areas. Regular Assessments will be levied upon all Lots at an equal rate. When the word Assessment is used without reference to its type, but referring to only one type of Assessment, the Assessment is a Regular Assessment unless the context clearly indicates otherwise. Assessments may differ depending on whether the Assessment is levied upon a Standard Lot or an Estate Lot.

6.2.4. "Special Assessment" means and refers to an Assessment for those expenses which otherwise would be Regular Assessments but for the fact that they are of a nonrecurring or unforeseen nature [i.e., they cannot be paid by budgeting therefor as part of Common Expenses], including (without limitation) the cost of capital additions or uninsured casualty losses. Special Assessments will be levied against all applicable Lots subject thereto at an equal rate. Special Assessments may differ depending on whether the Special Assessment is levied upon a Standard Lot or an Estate Lot.

6.2.5. "Initial Irrigation Assessment" means and refers to an Assessment for each Lot for the reclaimed water irrigation system. The Initial Irrigation Assessment shall be \$750.00 per Lot, paid at the closing of the purchase of an Owner's Lot. The Initial Irrigation Assessment shall be paid to the Declarant, not to the Association.

6.3. Establishment of Budgets and Assessments. The Board of Directors will, by appropriate resolution duly adopted, establish the first operating budget (and thereafter an annual budget) for the Association (including Regular Assessments) and the rates of Assessments thereunder in accordance with this Article **Six**. The budget will reflect the Association's estimated revenues and expenses for the **next year** and its estimated surplus or deficit as of the end of the current year. The budget will set out separately all fees or charges for recreational amenities, whether owned by the Association, Declarant or other person or entity.

6.3.1. After adopting the initial budget (and thereafter an annual budget) and Regular Assessment, the Board of Directors will fix the amount of the Regular Assessment against Lots for each Assessment period, to the extent practicable, at least sixty (60) days in advance of the date or period, and will, at that time, prepare a roster of the Lots and Regular Assessments applicable thereto, which will be kept in the office of the Association and will be open to inspection by any Owner or mortgagee of any Owner.

6.3.2. Written notice of the Regular Assessment and the budget, or notice that the budget is available upon request at no charge to an Owner within ten (10) days of request, will be sent to every Owner thirty (30) days prior to the date payment of the first installment thereof is due. In the event no notice of the Regular Assessments for a new Assessment period is given, the amount payable will continue to be the **same** as the amount payable for the previous period, until changed in the manner provided for herein.

6.3.3. In the event that the Association shall determine during any Assessment period that the Regular Assessment established for that Assessment period is or will become inadequate or insufficient to meet all Common Expenses for that Assessment Period, for whatever reason, the Association, upon approval by the Board, shall be entitled to immediately determine the approximate amount of the deficiency or inadequacy of the Regular Assessment for the Assessment period, issue a supplemental budget to all

Owners, and within thirty (30) days thereafter establish, make, levy, impose, enforce and collect a supplemental or revised Regular Assessment for that Assessment period.

6.3.4 The Association shall not establish, make, levy, impose, enforce, and collect any Regular Assessment exceeding the amount of the Regular Assessment for the immediately preceding Assessment Period by more than fifteen percent (15%) without the prior approval of a majority of the Owners who are voting in person or by proxy at a meeting of the Association duly called for such purpose and for which written notice specifying the amount of a proposed increase of the Regular Assessment is sent to each Owner at least thirty (30) days in advance of the meeting. Notwithstanding anything herein set forth to the contrary, however, if the Association determines it necessary to establish, make, levy, impose, or enforce collection of, any Regular Assessment exceeding the amount of the Regular Assessment for the immediately preceding Assessment Period by more than fifteen percent (15%) due to the addition of Common Area or personal property or an increase in The Properties, the increase may be imposed by the Association with the approval of the Board without a vote of the Owners.

6.3.5. Except as provided in 6.3.7. below, funds generated by one type of Assessment may not be used for expenses for which another type of Assessment is levied.

6.3.6. The Association, through the action of its Board of Directors, has the power, but not the obligation, to enter into an agreement or agreements with one or more persons or entities (including affiliates of Declarant) for management services, including the administration of budgets and Assessments as herein provided.

6.3.7. The Board may establish reserve accounts funded from Regular Assessments in reasonable amounts and in categories as are determined by the Board for deferred maintenance and repair, including maintenance of all Common Areas, emergency repairs as a result of casualty loss, recurring periodic maintenance, or the initial cost of any new service to be performed by the Association. Reserve accounts may be used by the Board on a temporary basis for cash flow management of the Association, even though expended on items other than those for which the reserve account was established. The amount borrowed from the reserve account will be repaid from revenues subsequently received, it being the intent that the Board may borrow from the reserve account, without diminishing the obligation to levy and collect Assessments that will, upon collection, permit the restoration of the reserve account.

6.3.6. All Assessments regardless of type are payable in the amount specified and no set-offs are permitted for any reason, including without limitation, a claim that the Association is not properly performing its responsibilities set forth in this Declaration.

6.4. Purpose of Assessments. The Assessments levied by the Association will be used for the purposes expressed in this Article **Six** and for other purposes as the Association has within its power and elects to undertake.

6.5. Prohibited Use of Assessments. Notwithstanding anything to the contrary set forth in or otherwise implied from the terms and provisions of this Declaration generally, or this Article Six in particular, the Association shall not have the power or authority to use, make, levy, impose, enforce, and collect and is hereby expressly prohibited from using, making, levying, imposing, enforcing and collection, any Assessment, whether Initial Assessment, Special Assessment, Regular Assessment, Individual Assessment, or any other Assessment, for the purpose, in whole or part, of financing the prosecution of or otherwise supporting any actual or contemplated litigation, including any and all appeals related thereto, against the Declarant with respect to matters related to The Properties or the development or operation of The Properties. If, notwithstanding the foregoing prohibition, the Association shall attempt to use, make, levy, impose, enforce, and collect any Assessment for the prohibited purpose or use, the Declarant and any Lot or other property owned by Declarant shall be and are hereby exempted from any of the prohibited Assessment or attempted Assessment.

6.6. Date of Commencement of Assessments, Due Dates. Regular Assessments provided for in this Article **Six** commence on the first day of the month next following the recording of this Declaration

and are applicable through December 31 of that year. Each subsequent annual Regular Assessment will be imposed for the year beginning January 1 and ending December 31.

6.6.1. Regular Assessments are payable in advance in monthly, annual, semi-annual or quarterly installments as determined by the Board of Directors (absent which determination they are payable monthly).

6.6.2. The due date of any Individual or Special Assessment will be fixed in the Board resolution authorizing the Individual or Special Assessment.

6.7. Effect of Non-Payment of Assessment; Personal Obligation; Lien; Remedies of the Association. If an Assessment (or an installment thereof) is not paid on the date when due, the Assessment (or installment) is delinquent and is, together with late charges, interest and the cost of collection thereof as hereinafter provided, a continuing lien on the Lot which binds that Lot, its Owner, his heirs, personal representatives, successors and assigns. Except as provided in 6.7 to the contrary, the personal obligation of an Owner to pay an Assessment passes to his successors in title and recourse may be had against either or both, jointly and severally.

6.7.1. If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association the next twelve (12) months' installments may be accelerated and become immediately due and payable in full. Further, each overdue installment (regardless of whether accelerated or not) accrues interest from the date when due until paid at the rate of eighteen percent (18%) per annum. In the event of a delinquent installment, the Association may pursue one or more of the following remedies: (1) an action at law against the Owner and, if applicable his predecessor or successor in title, who are personally, jointly and severally liable for the Assessment; (2) record a claim of lien (as evidence of its lien rights as herein above provided for) against the Lot for which the Assessment and interest is unpaid; (3) foreclose the lien against the Lot for which the Assessment and interest is unpaid; and (4) pursue one or more of these remedies simultaneously or successively. Attorneys' fees and costs actually incurred will be added to the amount of the Assessment and interest secured by the lien, and in the event a judgment is obtained, that judgment will include all sums herein described, attorneys' fees actually incurred together with the costs of the action, through all applicable appellate levels.

6.7.2. In the event of the acceleration of the next twelve (12) months' installments, each installment accelerated is initially considered equal to the amount of the then most current delinquent installment, provided that if any installment accelerated would have been greater in amount by reason of a subsequent increase in the applicable budget, the Owner of the Lot whose installments were accelerated will continue to be liable for the balance due by reason of the increase and an Individual Assessment against the Lot and Owner will be levied by the Association for that purpose.

6.7.3. In addition to the rights of collection of Assessments stated in this Article Six, any person or entity acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation those acquiring title by operation of law and by judicial sale, are not entitled to possession of the Lot, or the use and enjoyment of the Common Areas, until all delinquent Assessments and other sums due from the selling or conveying Owner are paid; provided, however, that this provision does not apply to the mortgagees and purchasers contemplated by 6.7.

6.7.4. All Assessments, interest, attorneys' fees and other sums provided for herein accrue to the benefit of the Association.

6.8. **Subordination of the Lien.** The lien of the Assessment provided for in this Article Six is subordinate to County ad valorem tax and County assessment liens, and the lien of any first mortgage; provided, however, that any mortgagee or receiver when in possession, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any mortgagee or its affiliate acquiring title by a deed in lieu of foreclosure, and all those claiming by, through or under a purchaser or mortgagee, hold title subject to the

liability and lien of any Assessment due after taking possession as to a mortgagee or receiver in possession, or otherwise due after foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions of 6.7 is an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the Association, including the Lot foreclosed (or conveyed in lieu of foreclosure).

6.9. **Declarant's Assessments.** For any assessment year, notwithstanding anything herein to the contrary, Declarant has the option, in its sole discretion, to either:

6.9.1. pay Assessments on the Lots it owns; however, Declarant does not have the duty under any circumstances to pay Assessments on a Parcel, or any property, not a part of The Properties, or any property not submitted by the Declarant to this Declaration; or

6.9.2. pay Assessments only on certain Lots designated by Declarant (e.g., those upon which a Home has been constructed and has received a certificate of occupancy); or,

6.9.3. not pay Assessments on any Lots and in lieu thereof, for an assessment year, pay the Association's actual operating expenses incurred (either paid or payable) exclusive of capital improvement costs, reserves, depreciation, amortization and Special Assessments. The amount so determined will be reduced by revenues earned (either received or receivable) from all sources (including, without limitation, Assessments, interest, fines, working capital, Initial Assessments and similar contributions made by Lot purchasers, and incidental income) and any surplus carried forward from the preceding year(s). In computing the annual amount to be funded by the Declarant as aforesaid, revenues and expenses will not be segregated or earmarked by type of Assessment or type of Common Area, but instead, will be taken as a whole, without regard to the purpose for which the expenses were incurred. Also, depreciation and capital asset acquisition are not deemed a cost or expense for purposes of this 6.8.3, and Declarant is not deemed to in any manner guaranty the types or levels of any inventory, goods or equipment existing at any time.

6.9.4. For any assessment year, Declarant may from time to time change the option (or combination thereof) under which Declarant is making payments to the Association by written notice to the Association. When all Lots within The Properties have been sold and conveyed to purchasers, Declarant has no further liability to the Association for payment of Assessments of any type or for deficits or contributions. The Declarant may assign its rights under this Article Six in whole or in part and on an exclusive or non-exclusive basis.

6.10. **Property and Owners Exempt from Assessments and Lien of Assessments.** All portions of The Properties dedicated to and accepted by Lee County, the Lee County Water-Sewer District, or any other Governmental Authority, are exempt from the lien and any charge for Assessments and the owner of any interest therein is also exempt from payment of Assessments thereon. Except as may be otherwise provided in 6.8. and elsewhere in this Declaration, no Lot is exempt from the lien and any charge for Assessments.

6.11. **Certificate of Assessments Due.** The Association shall, upon the request of an Owner or any other interested party, furnish a certificate executed by its president, secretary, treasurer or any other officer duly authorized, setting forth whether Assessments payable with respect to a particular Lot have been paid, the amount of the delinquency, if any, and the amounts of any outstanding and unpaid interest, late charges, penalties, and costs of collection, including attorneys' fees and court costs, if any, associated with any delinquent Assessments. A properly executed certificate of the Association as to the status of Assessments, as aforesaid, shall be binding upon the Association as conclusive evidence of the status of the payment of any Assessment therein stated to have been paid or to be delinquent as of the date of the issuance of the certificate. The Association shall be entitled to charge and collect a reasonable fee not to exceed ten percent (10%) of the regular Assessment for and as a condition precedent to this issuance of a Certificate.

6.12. **No defenses or offsets.** All Assessments shall be payable in the amounts and at the times determined by the Board and no defenses or offsets against the payment of such amount shall be permitted for any reason whatsoever, including, without limitation, any claim by an owner that:

- a. the Association is not properly exercising its rights and powers or performing or discharging its duties and obligations as provided in this Declaration or its By-laws;
- b. an Owner and his or her family or guests has made or elected to make no use of the Common Property;
- c. the Owner and his or her family or guests have otherwise waived or elected to waive their membership in the Association; or
- d. the Association has suspended the right, privilege, and easement of such Owner and his or her family to use the common property as provided in Article X of this Declaration.

ARTICLE VII
Maintenance.

7.1. **Maintenance of Homes, Lots, and Exclusive Common Areas.**

7.1.1. **Home Exteriors.** The Owner of each Home has the duty to maintain his Home and all exterior surfaces, roofs, facias and soffits of the Home and other Improvements located on his Lot in a neat, orderly and attractive manner. The Owner's maintenance duty includes maintaining screens, screen enclosures, windows and doors. The minimum standard for the Owner's performance of exterior maintenance is consistency with the general appearance of the Home as initially constructed and subsequently improved, considering, normal weathering and fading of exterior finishes, but not to the point of unsightliness. Each Home Owner is required to clean, repaint or restain, as appropriate, the exterior portions of his Home (with the same colors initially used), including exterior surfaces of garage doors, as often as is necessary to comply with the minimum standard. The Board of Directors may adopt rules governing the frequency of required exterior Home cleaning, repainting or restaining.

7.1.2. **Lots and Exclusive Common Areas.** The Owner of each Home has the duty to replace trees on its Lot.

7.2. **Association's Maintenance Duty.** The Association is responsible for the operation, maintenance, repair and replacement (hereinafter collectively "Maintenance") of the following, notwithstanding that title or other ownership interest is not then conveyed to the Association:

7.2.1. Maintenance and other similar Improvements within the Maintenance Common Areas and General Common Areas as follows:

7.2.2.1. Entry walls, signs, lighting, Landscaping and the irrigation system located on either side of the Road at an entry to the Properties and in any median located within the Roads. The Association's duty includes, but is not limited to Improvements, Landscaping and the irrigation system within the Roads, medians, and any Improvements located within any easement adjacent to the Roads.

7.2.2.2. Other landscaping and Buffer Area within or adjacent to the Roads. Declarant may specify additional areas by instrument filed with the Association, by Amendment hereto, by Supplemental Declaration, or by any other instrument filed in the Public Records of the County. The Association's Maintenance duty under this Article **Seven** includes Landscaping, walls, fences, signs, electrical and utility installations and Improvements located within Common Areas for aesthetic, artistic or decorative purposes. Nothing contained herein prohibits the Board from determining to maintain any Landscaping within or adjacent to any public street or right-of-way contiguous to The Properties, to the extent

it is not maintained by Governmental Authority at an acceptable level, as determined by the Board. The Association has no responsibility for any maintenance duty of an Owner.

7.2.2.3. The General Common Areas and Maintenance Common Areas, including all Improvements, facilities, equipment and supplies within them or used therewith.

7.2.3. The Surface Water Management System, including but not limited to, all lakes, ponds, canals, ditches, culverts, lines, structures and in-flow and out-flow facilities not dedicated to and maintained by a Governmental Authority, to the extent so dedicated, and to the extent not maintained by the Governmental Authority to a level acceptable to the Board. The Surface Water Management System must be maintained to not less than the minimum standards and requirements imposed by GSD or Governmental Approvals.

7.2.3.1. Any Surface Water Management System within The Properties, and any surface water discharge facility within The Properties, as exempted or permitted by the Florida Department of Environmental Protection, to the extent not maintained by GSD, including monitoring as required by SFWMD. With respect thereto, the Board may establish appropriate rules and regulations, assess the Owners for the cost thereof, and contract for services to provide for the operation and maintenance of the systems and facilities.

7.2.4. The Roads, all additions thereto, or any parts thereof.

7.2.5. Monitoring of water quality and quantity according to and as required by Governmental Approvals. The obligation of the Association hereunder may not be amended, modified or eliminated until five (5) years after completion of all of DANIELS PRESERVE as provided in the Development Plan, except with the written consent of Declarant and the necessary Governmental Authority. The Association's obligation to monitor terminates if that duty is transferred to a Governmental Authority.

7.2.6. Conservation Area shown on the Plot Plan, on any plat of property within The Properties, and on any subsequent plat of Additional Property added to The Properties by Supplemental Declaration, and areas within any Conservation Easement; the Association will preserve and protect the Conservation Area and Buffer Zone Area. Conservation Area and Buffer Zone Area may not be altered in any way from their natural or protected state except as follows: (i) "exotic or nuisance vegetation" may be removed; and (ii) restoration in accordance with a restoration plan included in Conservation Easements may be undertaken. "Exotic Vegetation" may include, but is not limited to, melaleuca, Brazilian pepper, Australian pine, and Japanese climbing fern. "Nuisance Vegetation" may include, but is not limited to, cattails, primrose willow and grape vine. The Association will perform all mitigation/monitoring within the Conservation Area and Buffer Zone Area as required by Governmental Requirements and Governmental Approvals. The Association has responsibility for perpetual maintenance of the Conservation Area and Buffer Zone Area and agrees to take action against any Owner who violates any of the covenants contained either in this Declaration, any recorded Conservation Easement, Governmental Requirements and Governmental Approvals.

7.2.7. The Recreational Area and related facilities.

7.2.8. The Maintenance required to be performed by the Shared Maintenance Agreement described in Exhibit 5, including any modifications thereof.

7.2.9. Reclaimed irrigation water shall be provided through a master meter. The costs for irrigation water shall be paid by Owners as part of the Regular Assessments. The Association may, but shall not be obligated to, install timers, valves and other equipment to monitor and control the use of irrigation water on individual Lots. The Association shall establish rules to govern the use of irrigation water by individual users.

7.2.10. Enforcement. Owners, and all beneficiaries of The Properties and corresponding

infrastructure, shall have the right to enforce the maintenance covenants of the Association, GSD, or other entity responsible for maintenance according to this Declaration.

7.3 . The Expense of Maintenance. The Association's cost of performance of the Maintenance required or implied by Article VII, Section 2. is a Common Expense unless otherwise expressly provided. If an item of Maintenance results from any intentional or negligent act of an Owner, his family, agent, tenant, contractor, invitee or licensee, then the cost of Maintenance, to the extent so caused, is the responsibility of the Owner and his Lot . Even if the cost thereof is advanced as a Common Expense, it will be assessed to and payable by the Owner and his Lot as an Individual Assessment.

7.4. Maintenance by Owners. Except for Exclusive Common Areas serving a particular Owner, no Owner has Maintenance responsibility for the Common Areas or other items to be maintained by the Association in 7.2., except obligations provided in 7.3, and any Maintenance obligation specifically assigned by written agreement to an Owner or a particular group of Owners.

7.5. Association's Maintenance Right Upon Non-Compliance.

7.5.1. The Association and its agents may enter any Lot following Notice to its Owner and during reasonable hours to inspect the Lot, Improvements and Landscaping. If the Association determines the Owner's Maintenance duty is not being performed the Association will notify the Owner. Except in an emergency, following Notice and the expiration of any cure period set forth in the notice, the Board may perform the necessary Maintenance to the extent the Owner has failed to do so. All costs of Maintenance incurred by the Association hereunder will be assessed to the Owner and Lot as an Individual Assessment,

7.5.2. Provided, however, and except as provided in 7.5.3, nothing herein obligates the Board or the Association to perform any Maintenance to remedy an Owner's failure to fulfill his Maintenance duty. The Association's failure to perform an Owner's Maintenance duty does not waive the Association's right to do so subsequently, nor does its performance of Maintenance in any one or more instance establish any obligation of the Association to continue to do so, or to do so in any particular circumstance.

7.5.3. The Association will take action against an Owner who violates any of the provisions hereof applicable to Conservation Area, Buffer Zone Area, any of the provisions of a Conservation Easement, or any Governmental Requirement applicable to Conservation Area and Buffer Zone Area.

7.5.4. The Board may, in its discretion, establish uniform levels of Maintenance and upkeep for Lots, and may rely upon those standards in performing its responsibilities hereunder.

7.6. Transfer of Maintenance Duty to Governmental Authority. The Association may transfer its Maintenance duty for any part of the Maintenance Common Areas, any Community Service System, or any other item or items for which the Association has a Maintenance duty, to any special tax district, taxing unit, or Governmental Authority having jurisdiction of those matters without the necessity of Owner approval, provided the Governmental Authority accepts the Association's Maintenance duty and transfer is not inconsistent with the Governmental Approvals. If the Association transfers its Maintenance duty, the Association retains the authority to supplement Maintenance to the extent the Governmental Authority does not maintain those items to an acceptable level, as determined by the Board.

ARTICLE VIII
Certain Land Use Restrictions.

8.1. Applicability. The provisions of this Article Eight apply to all of The Properties. Except as expressly stated in Article Eight to the contrary, the Land Use Restrictions in Article Eight do not apply to property owned by Declarant even if that property is part of The Properties.

8.2. Single Family Residential Use. No Home may be used except as a single family residence. However, Declarant may temporarily use any part of The Properties for model homes, sales displays, parking lots, sales offices and other offices, or any one or combination thereof, until Declarant's permanent cessation of those uses takes place.

8.2.1. The use of a Lot which involves business activities does not violate 8.2. as long as that use conforms to applicable Governmental Requirements, and does not involve customers, clients, patients, suppliers or others regularly visiting the Home, although limited express and courier service and similar deliveries are allowed. Notwithstanding the foregoing, the privilege of conducting business activities within a Home does not entitle the Owner or other persons conducting the activities to any exemption, variance from, or special treatment under, Article Eight, Appendix B, or the Rules and Regulations of the Association.

8.3. Subdivision. No Lot shall be subdivided nor shall any portion of a Lot less than the whole thereof be sold, conveyed, or transferred without the prior written approval and consent of the Declarant or the Association. Nothing herein contained, however, shall prevent the subdivision of a Lot by the Declarant in such a manner so that any portion of a Lot may be sold, transferred, and conveyed by the Declarant, together with the whole of an adjacent or contiguous Lot such that the whole of one Lot and a portion of another Lot which are owned in common by the same owner may be combined, developed, and improved by an Owner as a single Home. Once so combined, developed, and improved as a single Home, no such combination of a Lot and a portion of another Lot or combination of two (2) or more Lots shall thereafter be re-subdivided into more than one (1) Lot. Each portion of any subdivided Lot and the owner thereof shall be liable for a prorate share of all Assessments affecting the Lot.

8.4. Easements. Drainage, lake, water and sewer, utilities, and access easements are reserved and dedicated on the Plat of Worthington Commerce Park, and will be reserved and dedicated on subsequent replats, and subsequent plats of Additional Property added to The Properties by Supplemental Declaration. The Maintenance of the facilities within the easement area of each Lot is the duty of the Association to the extent provided herein, unless a Governmental Authority or utility company has that duty.

8.4.1. Utility companies, the Association, and Declarant have a non-exclusive perpetual easement for the installation and Maintenance, all underground, of water lines, sanitary sewers and sewer lines, storm drains, and electric, gas, telephone and Community Service System lines, cables and conduits, under the applicable easements shown on the Plat of Worthington Commerce Park, and on subsequent plats of Additional Property added to The Properties by Supplemental Declaration. These duties are in addition to any duties set forth on the recorded plats referred to.

8.5. Offensive Activities and Nuisances. No illegal, noxious, unpleasant, unsightly, noisy, or offensive activity shall be carried on or conducted upon or from any Lot nor shall anything be done thereon which may be or tend to become or cause an unreasonable annoyance or nuisance, whether public or private, to residents in the immediate vicinity, or to Daniels Preserve in general, or which may be or tend to become an interference with the comfortable and quiet use, occupation, or enjoyment of any other any Lot or any common property, unless specifically approved in writing by the Association. No activity that unreasonably interferes with another Owner's use and enjoyment of his Lot or the Common Areas may be conducted or maintained on any Lot. Any activity on a Lot which interferes with television, cable, radio, or internet reception on another Lot is a nuisance and a prohibited activity. ALL PERSONS ARE REFERRED TO ARTICLE EIGHTEEN HEREOF WITH RESPECT TO CERTAIN ACTIVITIES OF DECLARANT.

8.6. Temporary Structures; Gas Tanks; Other Outdoor Equipment. Except as may be approved or used by Declarant during construction and sales, no structure of a temporary character, or trailer, mobile home or recreational vehicle, is permitted on The Properties at any time. No gas tank, gas container or **gas** cylinder is permitted to be placed on a Lot, except a gas tank used for one (1) swimming pool heater which is screened from view, one (1) gas cylinder connected to a barbecue grill, and another tank as is designed and used for household purposes and approved in accordance with **Appendix B**. Any outdoor equipment such as, but not limited to, pool pumps and water softening devices must be reasonably screened

from the view of adjacent and contiguous Lots, sidewalks, lakes and Roads by landscaping or other means approved according to **Appendix B**; provided, however, the use of screening does not obviate the requirement that the installation of any equipment nevertheless be approved in accordance with **Appendix B**.

8.7. **Signs.** No sign or billboard of any kind may be displayed to the public view from any Lot, without the prior written consent of the ARC and the Declarant (which consent may be withheld in their sole discretion) except as follows:

8.6.1. directional and informational signs associated with the Common Areas, the development of The Properties in general, or as may be approved in accordance with **Appendix B**;

8.6.2. one professional sign inserted in a sign holder by an Owner or an Owner's real estate agent advertising the Lot for sale or lease; the sign must be removed promptly after the sale or lease of the Lot.

8.6.3. Declarant's signs in connection with the development and sale of Lots, The Properties and parts thereof;

8.6.4. small address and family nameplates as approved in accordance with **Appendix B**;

8.6.5. signs not more than twenty (20) square feet, but not wider than five (5) feet or higher than four (4) feet, identifying the builder or contractor and lender during the period of construction of a Home as may be approved in accordance with Appendix B; and

8.6.6. Other signs, whether free standing, attached, lighted, moving, informational, directional, promotional or for other purposes as approved in accordance with **Appendix B**.

8.7. **Oil and Mining Operation; Water Wells.** Oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind upon or below The Properties is prohibited. Water wells, oil wells, tanks, tunnels, mineral excavations or shafts upon or below The Properties is prohibited, except wells and other irrigation devices installed by or on behalf of Declarant, the Association, or an Owner for irrigation of his Lot. Derricks or other structures designed for boring for oil or natural gas may not be erected, maintained or permitted upon any portion of The Properties. ALL PERSONS ARE REFERRED TO ARTICLE EIGHTEEN WITH RESPECT TO CERTAIN ACTIVITIES OF DECLARANT.

8.8. **Pets.** No reptiles, livestock, poultry, pigs (including pot bellied pigs) or animals of **any kind**, nature, or description shall be kept, bred, or raised upon subject property unless specifically approved in writing by the association, except for dogs, cats, birds, or other usual and customary household pets (which weigh less than seventy-five pounds) which may be kept, raised, and maintained upon subject property, provided that the same are not kept, raised, or maintained thereon for business or commercial purposes, or in number deemed unreasonable by the Declarant or the Association in the exercise of their reasonable discretion. Numbers in excess of two (2) of each such type of household pet, or a total of five (5) (other than aquarium-kept fish) shall be prima facia and considered unreasonable. Notwithstanding the foregoing provisions of this section permitting dogs, cats, birds, or other usual and customary household pets, however, no such reptiles, animals, birds, or other pets may be kept, raised, or maintained on the subject property under circumstances which, in the good faith judgment of the Declarant or the Association, shall constitute an unreasonable annoyance or nuisance to the residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation, and enjoyment of other Lots or adjoining Common Areas. Any pet must be carried or kept on a leash when outside a Home or fenced-in area. Each Owner shall be responsible for his or her pets and the pets of any person residing in his or her Home. Any resident shall pick **up and** remove any solid animal waste deposited by his or her pet on the Common Area or on other Lots, except as designated pet-walk areas, if any. The Association may require any pet to be immediately and permanently removed from the Properties due to a violation of this section, or may seek other remedies as provided **in** this

Declaration. The Association may grant written permission allowing any owner to keep on any lot other animals not specifically permitted herein. Permission may be withdrawn at any time and may have specific restrictions placed on it by the Association, which may be modified by the Association from time to time at its sole discretion.

8.9. Visibility at intersections. No obstruction to visibility at intersections of the Roads or Common Area intersections are permitted; provided, that neither the Association nor the Declarant is liable in any manner to any person or entity, including Owners, their families, guests, invitees, agents, and contractors, for any damages, injuries or deaths arising from any violation of this 8.9.

8.10. **Vehicles.** All prospective Lot or Home purchasers, Owners and other occupants of Homes are advised to consult with the Association prior to purchasing, or bringing onto the Properties, any type of vehicle other than a passenger car inasmuch as other types of vehicles may not be permitted to be kept within the Properties.

8.10.1. Parking of Vehicles. No truck, bus, trailer, or other "commercial vehicle" (as that term is herein defined in 8.10.6., and no mobile home, motor home, house trailer, camper, boat, boat trailer, horse trailer, or other recreational vehicle or the like shall be permitted to be parked or stored on the Properties unless the parked or stored entirely within and fully enclosed by a garage; nor shall any commercial or recreational vehicle or the like be permitted to be parked or stored on any street in front of or adjacent to any Lot. Notwithstanding the foregoing, however, it is expressly provided that recreational and commercial vehicles shall be permitted to be parked on, or in front of, or adjacent to any Lot on which bona fide ongoing construction activity is taking place; nor shall the foregoing provision apply to parking on "a temporary or short-term basis" (as that term is hereinafter defined) "Truck" does not include sport utility vehicles intended as a private passenger vehicle.

8.10.2. **Repair of Vehicles.** No passenger automobile, commercial, recreational, or other motorized vehicle, or trailerable boat, or the like, shall be dismantled, serviced, rebuilt, repaired, or repainted on any Lot. Notwithstanding the foregoing provision, it is expressly provided that the foregoing restriction shall not be deemed to prevent or prohibit those activities (not exceeding four (4) hours) normally associated with and incident to the day-to-day washing, waxing, and polishing of a vehicles or repairs as may be necessary in an emergency situation. Repairs, service, or painting made within the confines of a garage or designated enclosure may be denied by the Association if deemed a nuisance by the Association.

8.10.3. Motorcycles, etc.. No motorcycle, golf carts, motor scooter, moped, ATV (all terrain vehicle), or other two-wheeled, three-wheeled, or four-wheeled motorized vehicle, or the like, shall be permitted to be parked or stored on any Lot, unless outfitted with an appropriate noise reduction device which is in working order. The foregoing vehicles shall be parked or stored entirely within, and fully enclosed by, a garage; except for those which may be used or employed in connection with the internal security of the Properties and the maintenance and operation of the Common Area or for sales and promotion by the Declarant. Notwithstanding, the foregoing provision permitting motorcycles, motor scooters, mopeds, ATV (all terrain vehicle), or other two-wheel, three-wheel, or four-wheel motorized vehicles or the like with an appropriate noise reduction device, no such vehicle shall be allowed on the Properties under circumstances which, In the good faith judgment of the Declarant or the Association, shall constitute an unreasonable annoyance or nuisance to the residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation, and enjoyment of any other Lot or adjoining Common Area. The Association or Declarant may, at its sole discretion, grant permission for the use and storage of such vehicles, notwithstanding the foregoing provisions. Such permission may be withdrawn at any time, from time to time, for any reason at the sole discretion of the Association or Declarant. Permission may have specific restrictions attached to it as deemed necessary by the Declarant or the Association and any violation of those restrictions or the Association deeming that the vehicle is a nuisance shall be considered prima facie evidence of an automatic revocation and withdrawal of permission.

_____ 8.10.4. Parking on a Temporary or Short-term Basis. Parking on "a temporary or short-term basis" shall mean and be defined as parking for not more than twenty-four (24) hours in any seven (7) day time period, of commercial, recreational vehicles or boats belonging to owners or their guests, and four (4) hours in duration for commercial vehicles used in connection with the furnishing of services and/or the routine pick-up and delivery, respectively, of materials from and to any Lot. The Association or Declarant may, at its sole discretion, grant an extension in writing to any owner on "a temporary or short term basis." An extension may be withdrawn at any time, from time to time, at the sole discretion of the Association or Declarant. Such extension may have specific restrictions attached to it as deemed necessary by the Declarant or Association. Any violation of those restrictions will be considered prima facie evidence of automatic revocation and withdrawal of permission.

_____ 8.10.5. Private Passenger Vehicles. The owner or residents of any Home may not keep vehicles parked outside any Home on a regular or recurring basis unless parked on the driveway, without the prior written consent of the Association. All vehicles parked within the Properties must be in a reasonably good appearance and good working order, and no vehicle which is unlicensed or which cannot operate on its own power may be parked on any Lot outside a Home. Any vehicle considered by the Association to be creating an unreasonable annoyance or which is in an unsightly condition may be prohibited or removed by the Association or the Association may prevent access to the Roads by the vehicle.

_____ 8.10.6. Commercial Vehicle. The term "**Commercial Vehicle**" shall mean and be defined as a truck, motor home, bus, or van of greater than three-quarter (3/4) ton capacity or as designated as such by the State of Florida Division of Motor Vehicles, and any vehicle, including a passenger automobile, with a sign displayed on any part thereof advertising any kind of business or on or within which any commercial materials and/or tools are visible.

_____ 8.10.7. Parking Rules. The Association shall be entitled and is hereby empowered to adopt additional reasonable rules and regulations governing the admission to and parking, use, and storage of private, commercial, and recreational vehicles within the Properties (the "**Parking Rules**"), and, if so adopted, the Parking Rules shall be binding upon all Lots and all Owners and their guests and invitees except for the Declarant. The Parking Rules shall prevent the parking of any vehicles at any place on a Lot other than the driveway or in the garage and shall also prevent the parking of vehicles in the Roads at all times.

8.10.8. Removal by the Association. Subject only to Governmental Regulations, any private, commercial, recreational, or other vehicle parked or stored in violation of this Declaration or the Parking Rules may be towed away or otherwise removed by or at the request of the Association and at the sole expenses of the Owner of the private, commercial, recreational, or other vehicle in violation of this Declaration or the Parking Rules. In the event of towing or other removal, the Declarant, the Association and their agents and employees shall not be liable or responsible to the Owner of the vehicle, any Lot Owner, or any other person or entity, for trespass, conversion, or damage incurred as an incident to towing or removal, or for the cost of towing or removal, or otherwise; nor shall the Declarant, the Association and their agents and employees, be guilty of any criminal act or have any civil liability by reason of towing or removal. The towing or removal of any vehicle or the failure of any Owner of the towed or removed vehicle to receive any notice of the violation of the provisions of this 8.10.8., shall not be grounds for relief of any kind.

8.12. Garbage and Trash Disposal. No garbage, refuse, trash or rubbish (including materials for recycling) may be placed outside of a Home, except as permitted by the Association. The requirements from time to time of the applicable Governmental Authority or other company or association responsible for the collection of waste must be followed. All equipment for the storage or disposal of garbage must be kept clean and sanitary. Containers may not be placed out for collection sooner than 24 hours prior to scheduled collection and must be removed within 12 hours of collection. In the event that an Owner keeps containers for recyclable materials those containers are subject to this 8.12.

8.13. No Drying. No clothing, laundry or wash may be aired or dried on any portion of The Properties.

8.14. **Waterfront Property.** As to all portions of The Properties which have a boundary contiguous to a lake or other body of water (collectively in this Article VIII, Section 14 a "water body"), the following additional restrictions and requirements apply:

8.14.1. no boathouse, dock, wharf or other structure of any kind may be erected, placed, altered or maintained on the shores of a water body unless erected by Declarant;

8.14.2. boat, boat trailer, vehicular parking, or other similar use of a water body's slope or shore area is prohibited. No boats of any type may be used on any water body which is part of the Common Areas, except those used by the Association, a Governmental Authority, or contractor for Maintenance or other lawful purposes;

8.14.3. no solid or liquid waste, litter or other materials may be discharged or thrown into any water body or on the banks thereof;

8.14.4. no landscaping (other than that initially installed or approved by Declarant) or Improvements (regardless of whether or not permanently attached to the land or to other Improvements) may be placed within any lake maintenance, access or similar easements around water bodies;

8.14.5. boats kept on The Properties are subject to 8.10;

8.14.6. no boats or watercraft may be operated on water bodies owned by, or dedicated to, any Governmental Authority or by the Association; and

8.14.7. WITH RESPECT TO WATER LEVELS AND WATER QUALITY AND OTHER WATER BODY-RELATED MATTERS, ALL PERSONS ARE REFERRED TO **ARTICLE EIGHTEEN** HEREOF.

8.15. **Air Conditioner Units and Reflective Materials.** No air conditioning units may be mounted through windows or walls of Homes. No Home may have any aluminum foil placed in any window or glass door or any reflective substance or other materials (except standard window treatments) placed on any glass, except as may be approved for energy conservation purposes in accordance with **Appendix B**.

8.16. **Renewable Resource Devices.** Nothing in this Declaration prohibits the installation of energy devices based on renewable resources (e.g., solar collector panels); provided, however, that they shall be installed only in accordance with the reasonable standards adopted from time to time by the Declarant. Those standards will comply with Florida Statute 163.04 (1994) and be reasonably calculated to maintain the aesthetic integrity of The Properties without making the cost of the devices prohibitively expensive.

8.17. **Driveway and Sidewalk Surfaces.** No Owner may install any sidewalk or driveway which has a surface material or color different than the material and color originally used or approved by the Declarant. Further, no Owner may change any existing sidewalk or driveway in any manner unless approved in accordance with **Appendix B**.

8.18. **Conservation Area and Conservation Easement.** NOTICE TO OWNERS. Owners are hereby notified that their Lot(s) may contain or be adjacent to a Conservation Area protected under a Conservation Easement, or similar plat dedication. Conservation Areas shown and dedicated on the Plat of Worthington Commerce Park, and on any subsequent plats of Additional Property added to The Properties by Supplemental Declaration, are areas which, except for mitigation activities, may not be altered in any way from their natural state, in accordance with Section 704.06, Florida Statutes. Activities prohibited within Conservation Area and within Conservation Easement areas, include, but are not limited to; construction or placing buildings on or above the ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation, except exotic vegetation; excavation, dredging, or soil removal; diking or fencing and other activities detrimental to drainage, flood control, water conservation, erosion control or fish and wildlife habitat conservation and preservation. The use of rear yard docks and gas powered boats is prohibited. Conservation Areas and Conservation Easement areas are Maintenance

Common Areas. Maintenance of Conservation Areas and Conservation Easement areas is the perpetual duty of the Association.

8.19. Gate and Roving Patrols. All Owners are responsible for complying with procedures and restrictions adopted by the Board, if any, for controlling access to the Roads and The Properties through the gate serving The Properties, as those procedures and restrictions are adopted and amended from time to time.

8.19.1. All Owners, and their families, guests, invitees and tenants are advised that any gate staff and system, as well as any roving patrol personnel serving The Properties, if any, are not law enforcement officers and are not intended to substitute for or perform the duties and functions of law enforcement officers; those persons are employed, if at all, only for the purpose of monitoring access to The Properties and observing activities therein readily observable to them.

8.19.2. THE FOREGOING IS SUBJECT AT ALL TIMES TO THE DISCLAIMER OF DUTIES AND LIABILITIES AS SET FORTH IN **ARTICLE EIGHTEEN** OF THIS DECLARATION.

8.20. **Drainage.** Filling or grading on a Lot that will adversely affect the drainage pattern is prohibited. No grass clippings, plant trimmings or other landscape or other debris may be deposited in a swale, ditch, lake, pond or any other drainage, detention or retention facility within The Properties, whether or not part of the Surface Water Management System or any stormwater management system. Any Owner that causes or permits alteration of the contours of land or drainage or otherwise interferes with the Surface Water Management System or stormwater management system is liable for any damage caused thereto or to other parts of The Properties. THE FOREGOING IS SUBJECT AT ALL TIMES TO THE DISCLAIMER OF DUTIES AND LIABILITIES AS SET FORTH IN **ARTICLE EIGHTEEN** OF THIS DECLARATION. **The Declarant has no liability whatsoever to any person or entity for inadequate drainage or water retention as long as Declarant complies with its Governmental Approvals.**

8.21. Restriction on Right to Withdraw Water. No Owner has the right to withdraw or use water from any lake, pond, retention facility or drainage ditch forming a part of the Surface Water Management System without the prior written approval of the Board and Declarant. The necessity for Declarant consent terminates five (5) years after the turnover date. The right if granted, exists exclusively for irrigation. Any approval may be given unconditionally or conditioned upon terms and limitations as the Board or Declarant determines to be appropriate, in its sole discretion, including but not necessarily limited to the Imposition of a charge to withdraw water. Any approval once given may be revoked or suspended by the Board or Declarant if it, in its sole discretion, determines that the right has been abused or that circumstances have changed so that it is in the best interest of the Association that authorization be withdrawn. Likewise, the Board or Declarant may impose additional conditions or alter those already imposed. Nothing contained herein imposes any obligation upon the Board or the Declarant to permit the withdrawal and use of water by any Owner and the Board and Declarant may be arbitrary in reaching any determination hereunder; provided, however, those in substantially similar situations shall be treated in a uniform, fair and reasonable manner. If, however, the Board or Declarant determines there are a limited number of Owners who may withdraw water from any given source, the Board and Declarant may limit the number who **may so** withdraw and use the water, and establish priorities as they determine to be appropriate.

8.22. Radio Transmission Equipment. Radio, microwave, or other electronic transmission equipment, including ham radios, citizens band radios, outside antennas, satellite dishes, outside sending devices, and the like, shall not be permitted on any Lot. The Association may approve, in writing, the use of small dish type receiving devices so long as the operation of that equipment does not interfere with ordinary radio and television reception or communication equipment and so long as the placement of the equipment is not visible from any street or road and is deemed aesthetically acceptable by the ARC.

8.23. Prohibited Structures. No prefabricated or modular type homes shall be constructed or located upon any Lot. No mobile home shall be permitted on any Lot. No trailer, shack, tent, garage or other

outbuilding shall be used as a permanent or temporary residence on any Lot. No basketball goals or similar playground or sports equipment may be placed in the front or side yards of Lots.

8.24. Fences, Walls and Hedges. Except as otherwise expressly provided in this provision, no fence, wall or hedge more than four (4) feet in height shall be erected or maintained on a Lot. Fences must be of an open style and constructed of a material as approved by the Association. No chain link fencing is allowed. Notwithstanding the foregoing, the Association may permit up to six (6) foot high privacy fences along side property lines provided that: (a) the fence is constructed with the style and material as designated by the Association; (b) the fence is necessary to provide rear yard privacy for a deck, lanai, pool or spa; and (c) the fence is confined to a line no greater than from the rear corner of the house to a point 20 feet from the rear property line. All air conditioning equipment, pool equipment, pumps, filters, and water conditioning equipment shall be screened from the view of adjoining Homes, streets, Common Areas, Conservation Areas and Lakes by privacy walls, fences, or hedges. Although the Association, from time to time, will specify acceptable fence types and materials, all fences, hedges, walls, and other boundary structures or improvements shall at all times be subject to Architectural Review according to Appendix B. No fences shall be located within any easement.

8.26. Trees. No tree shall be removed from any Lot without the prior written consent of the ARC. Approval shall be reasonably given, however, if removal is necessary in connection with the location of the Home on a particular Lot where the preservation of any tree would result in a hardship or require extraordinary design measures in connection with the location of the Home on the Lot. As used herein, the term "tree" shall mean and be defined as any tree having a caliper of one inch (1") or greater in diameter as measured four feet above ground level.

8.27. Rules and Regulations. The Board may adopt and amend Rules and Regulations governing the maintenance and use of The Properties. The Board will make reasonable efforts to publicize the Rules and Regulations, including any amendments thereto, which the Board makes from time to time, but is not required to record them in the public records of the County. Any Rules and Regulations must be either: (i) in furtherance of specific provisions of this Declaration; or (ii) reasonably calculated to enhance the orderly and peaceful appearance, use and operation of Common Areas; in either case, they may not conflict with any provision of this Declaration, the Articles or By-Laws. Subject to the foregoing standard, the Rules and Regulations may prohibit (as opposed to simply regulate) certain uses notwithstanding that prohibition of those uses is not expressly set forth herein. In addition to this Declaration and Amendments hereto, Declarant may add Additional Property to The Properties by Supplemental Declaration. A Supplemental Declaration may vary from this Declaration as to the Additional Property added thereby, in accordance with the Development Plan and the location, topography and intended use of the Additional Property. Nothing contained in this Article **Eight** requires the Declarant to impose uniform restrictions, or to impose restrictions of any kind on all or any part of additions to The Properties except as expressly provided herein or as required by Governmental Approvals or Governmental Requirements.

8.28. Variances. The Board of Directors of the Association has the right and power to grant variances from the provisions of this Article Eight, except those required by Governmental Approvals and Governmental Requirements, and from the Association's Rules and Regulations, for good cause shown, as determined in the reasonable discretion of the Board. No variance alters, waives or impairs the operation or effect of the provisions of this Article Eight in any instance in which the variance is not granted.

ARTICLE IX Declarant's Additional Rights

9.1. The Declarant will undertake the construction of Improvements on the Lots and Improvements on the Common Areas. The completion of that work and the sale, rental and other disposal of Lots is essential to the establishment and welfare of The Properties. As used in this Article **Nine** the words "Its successors or assigns" specifically do not include purchasers of completed Homes. As used in this Article

Nine, the word Declarant includes its successors or assigns, agents and contractors, unless the context expressly provides otherwise. In order that the work may be completed and The Properties established as a fully occupied community as rapidly as possible, neither the Owners nor the Association will do anything which interferes with the Declarant's activities. Without limiting the generality of the foregoing, nothing in this Declaration, the Articles, the By-Laws or the Rules and Regulations shall:

9.1.1. Prevent the Declarant from doing on any Lot or other property owned by it or **on any** Common Areas whatever Declarant determines necessary or advisable in connection with the completion of the work, including without limitation, the alteration of its construction plans and designs or the Development Plan as the Declarant deems advisable in the course of development (all models or sketches showing plans for future development of The Properties may be modified by the Declarant at any time and from time to time, without notice); or

9.1.2. Prevent the Declarant from erecting, constructing and maintaining on any Lot, Parcel or other property owned or controlled by the Declarant, or on any Common Areas, structures and Improvements as may be reasonably necessary for the conduct of its business of completing the work **and** establishing The Properties as a community and disposing of the Lots by sale, lease or otherwise; or

9.1.3. Prevent the Declarant from conducting on any Lot, Parcel, and other property owned or controlled by the Declarant as may be reasonably necessary to conduct its business of developing, subdividing, grading and constructing improvements within The Properties and of disposing of Lots therein by sale, lease or otherwise; or

9.1.4. Prevent the Declarant from determining, in its sole discretion, the nature of **any type** of Improvements to be constructed as part of The Properties.

9.2. Any or all of the special rights and **obligations** of the Declarant may be transferred **to other** persons or entities, provided the transfer does not reduce an obligation or enlarge a right beyond that contained herein, and provided further, no transfer is effective unless it is in a written instrument **signed by** the Declarant and duly recorded in the Public Records of the County. Nothing in this Declaration requires Declarant to develop any of The Properties in any manner whatsoever.

9.3. The Declarant expressly reserves the right to grant easements and rights-of-way over, **under**, across and through the Common Areas as long as the Declarant owns any Lot or Parcel in or adjacent **to The** Properties; provided, no easement may structurally weaken or otherwise interfere with the Owner's use **of the** Common Areas.

9.4. Notwithstanding any provisions contained in this Declaration to the contrary, **as long as** construction and initial sales of Lots continue, it is expressly permissible for Declarant to maintain and carry on upon portions of the Common Areas, Lots and Parcels owned by Declarant, facilities and activities **as, in** the sole opinion of Declarant, is reasonably required, convenient, or incidental to the construction or **sale of** Lots , including, but not limited to, business offices, signs, model Homes, and sales offices and the Declarant has an easement for access to those facilities. The right to maintain and carry on those facilities and activities includes the right to use any Lot and Parcel owned by the Declarant, as models and sales offices, **and to** utilize those facilities exclusively from time to time.

9.5. Each Owner on his, her or its own behalf, and on behalf of the Owner's heirs, personal representatives, successors, mortgagees, lienors and assigns acknowledges and agrees that the completion of the development of The Properties may occur over an extended period of time and that incident **to that** development and the construction associated therewith the quiet use and enjoyment of The Properties **and** of each Lot therein may be temporarily interfered with by the development and construction work occurring on The Properties. Each Owner, on behalf of the Owner's family and their heirs, assigns, personal representatives, successors, mortgagees, lienors and **assigns**, waives all claims for interference **with quiet** enjoyment and use as a result of the development and construction of the balance of The Properties. Each

Owner, on behalf of the Owner's family and their heirs, personal representatives, successors, mortgagees, lienors and assigns agrees that the development, construction and completion of the balance of The Properties may interfere with the Owner's original and existing views, light and air and diminish them and each Owner on that Owner's behalf and on behalf of that Owner's family and their heirs, assigns, personal representatives, successors, mortgagees, lienors and assigns releases the Declarant and its successors and assigns from all claims that they may have in connection therewith.

9.6. COVENANT SETTING DEADLINE FOR LOT OWNER OBTAINING BUILDING PERMIT AND COMPLETING CONSTRUCTION OF HOME; LOT OWNER'S GRANT OF EXCLUSIVE AND IRREVOCABLE OPTION TO DECLARANT.

9.6.1. Grant of Option to Declarant. By acceptance of the deed conveying a vacant Lot within DANIELS PRESERVE, each purchaser automatically grants the Declarant an exclusive, irrevocable option to repurchase the Lot (to be exercised or not in the Declarant's sole discretion) according to the terms and conditions of **Appendix B** (hereinafter the "**Declarant's Option**"). **Appendix B** is incorporated herein by this reference as if fully set forth herein.

ARTICLE X

Construction Requirements and Restrictions; Architectural Control.

10.1. **Construction Restrictions and Requirements and Architectural Control Established.** To establish and maintain consistent design and construction of Homes compatible with the DANIELS PRESERVE Development Plan, to preserve the value of Homes and Lots in DANIELS PRESERVE, and to promote the general welfare of the residents of DANIELS PRESERVE, the Declarant establishes the conditions, procedures, requirements, restrictions, enforcement powers and remedies described in **Appendix C**. **Appendix C** is incorporated herein by this reference as if fully set forth herein.

ARTICLE XI

Resale, Lease and Occupancy Restrictions.

11.1. **Estoppel Certificate; Documents. No** Owner, other than Declarant, may sell or convey his interest in a Lot unless all sums due the Association are paid in full and an estoppel certificate in recordable form confirming payment in full (the "**Certificate**") is received by the Owner. If all those sums are paid, the Association will deliver the Certificate to the Owner within five (5) days of the Owner's request. The Owner requesting the Certificate may be required by the Association to pay to the Association a reasonable sum not to exceed ten dollars (\$10,00), to cover the costs of examining records and preparing the Certificate.

11.1.1. Owners are obligated to deliver the documents originally received from Declarant, containing this and other Development Documents, to the grantee of that Owner.

11.2. **Leases. No** portion of a Home, other than an entire Home, may be leased or rented. All leases must be written and provide, or are deemed to provide, that the Association has the right to terminate the lease in the name of and as agent for the lessor upon default by tenant in observing any of the provisions of this Declaration, the Articles of Incorporation, the By-Laws, the Rules and Regulations, or other applicable provisions of any agreement, Development Document, or instrument governing The Properties, or administered by the Association. Leasing a Home is subject to the prior written approval of the Association, which approval may not be unreasonably withheld and is deemed **given** if the Association does not deny approval within fifteen (15) days of its receipt of a request for approval together with a copy of the proposed lease and all supporting information reasonably requested by the Association. Approval of a lease may not be denied on the basis of its duration if the duration is at least one year.

11.2.1. An Owner leasing his Home may not transfer any Common Area use rights, except access rights over Common Area for ingress and egress, unless the Owner first delivers to the Association:

(i) a reasonable transfer fee in an amount established by the Board; and (ii) a completed transfer application in the form prescribed by the Board. Any transfer of rights may be made for a term of no less than thirty (30) days and may only be made four (4) times per year (even if to the same party more than once per year). Further, no transfer is valid for a period of more than twelve (12) months. A transfer of rights hereunder vests in the tenant non-exclusive use rights in and to the Common Areas as are appurtenant to the Lot leased and divest the Owner of those rights for the period for which the transfer is effective. Accordingly, any and all rights afforded Owners and Owner's Designees under this Declaration with respect to the Common Areas (other than access) is subject to the requirements of 11.2. and the limitations of Article Five, Section Two.

11.2.2. The Owner is jointly and severally liable with the tenant to the Association for any amount required by the Association to repair or to pay any claim for injury or damage to property caused by the negligence of Owner's tenant, its family, guests, invitees and agents.

11.3. **Occupancy.** No Home may be occupied by any person other than the Owner and his family. The term "Permitted Occupant" when used in this Declaration means and refers to the following person and his family, provided that the Owner or other Permitted Occupant must reside with his family: (i) an individual Owner; (ii) an officer, director, stockholder or employee of a corporate Owner; (iii) a partner in or employee of a partnership Owner; (iv) a fiduciary or beneficiary of an ownership in trust; or (v) occupants named or described in a lease, if approved in accordance with this Declaration. The provisions of 11.3 do not apply to Homes used by Declarant as models, sales offices, management service offices or otherwise.

11.3.1. In no event shall occupancy of a Home (except for temporary occupancy by guests) exceed two (2) persons per bedroom and one (1) person per den (as defined by the Association for the purpose of excluding from such definition living rooms, dining rooms, family rooms, country kitchens and the like). The Board of Directors has the power to authorize occupancy of a Home by persons in addition to those set forth above. The provisions of this 11.3.1. is not applicable to any Home used by Declarant as a model home, sales office, management service office or otherwise.

11.3.2. The word "family" as used in this Article **Eleven** includes a spouse, children, parents, brothers, sisters, grandchildren, grandparents and other persons related to the Owner permanently living in the Home together with the Owner or permitted occupant thereof. The word "guest" as used in this **Article Eleven** means those persons who have a principal residence other than the Home. Unless otherwise determined by the Board, a person occupying a Home for more than one (1) month is not a guest but, rather, is a tenant for the purpose of this Declaration (regardless of whether a lease exists or rent is paid) and is subject to the provisions of this Declaration which apply to leases and tenants. The purpose of this 11.3 is to prohibit the circumvention of the provisions and intent of Article **Eleven** and the Board will enforce, and the Owners will comply, with this 11.3 with due regard for this purpose.

A R T I C L E X I I

Enforcement; Arbitration; Litigation.

12.1. **Compliance.** Every Owner, Member, guest, and tenant, (for the purposes of this Article Twelve, collectively referred to in this Article 12 as "Owner") shall comply with this Declaration, the Articles, the By laws, the Rules and Regulations, and other Development Documents.

12.2. **Violations.** An Owner's failure to comply with 12.1 is adequate grounds for immediate action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof, all to the extent of the Owner's (hereafter "Defaulting **Owner**") liability under this Declaration and applicable Governmental Requirements. The Association has the right to suspend the Defaulting Owner's rights to use Common Areas.

12.3. **Remedies.** In the event of a violation by any Owner, or any person residing with them, or their guests or invitees, of any of the provisions of this Declaration (other than the non-payment of any

Assessment), the Articles, the Bylaws or the Rules and Regulations of the Association, the Association shall notify the Owner of the violation, by written notice. If the violation is not cured as soon as practicable and in any event by the date and time stated in the written notice of violation, or if any similar violation is thereafter repeated, the Association may, at its option:

- (1). Fine the Owner as provided below and/or suspend, for a reasonable period, the Owner's rights to use the Common Area (but suspension shall not impair the Owner's vehicular and pedestrian access to and from the Owner's Lot, including, but not limited to, the right to park); and/or
- (2). Commence an action to enforce the Owner's performance, or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or
- (3). Commence an action to recover damages; and/or
- (4). Take any and all actions reasonably necessary to correct the Owner's violation, which action may include, where applicable, but is not limited to, removing any addition, alteration, improvement or modification which has not been approved by the Association, or performing any maintenance required to be performed by this Declaration.

All expenses incurred by the Association in connection with the the enforcement of the foregoing remedies, plus a service charge of ten percent (10%) of those expenses, and all expenses incurred by the Association in connection with any legal proceedings to enforce this Declaration, including reasonable attorneys fees whether or not incurred in legal proceedings, shall be assessed against the applicable Owner as an Individual Assessment, and shall be due upon written demand by the Association.

12.4. Fines and Suspensions. The length of any suspension and/or the amount of any fine shall be initially determined by the Board, and in the case of a fine shall not exceed \$500.00 per violation, or another amount as is permitted by the law. Notwithstanding the foregoing, if any violation of this Declaration or the Rules and Regulations is of a continuing nature, and if the Defaulting Owner fails to cure any continuing violation after written notice of the violation, a daily fine may be imposed until the violation is cured in an amount not to exceed the greater of \$1,000.00 or as otherwise prescribed by law. Prior to the Association imposing any suspension or fine, the Owner shall be given written notice of the fact that the Board is considering the imposition of the suspension or fine, including (i) a statement of the provisions of the Declaration, Bylaws or Rules and Regulations which the Owner has allegedly violated, (ii) the proposed length of the suspension or amount of the fine, and (iii) the right of the Owner to request a hearing. If the Owner desires to contest the suspension or fine, the Owner may demand a hearing by written notice to the Board within any applicable statutory period after the notice of the suspension or fine or if no statutory period is applicable within the period designated by the Board, and in that event the Owner shall have the right to a hearing, which shall be held in accordance with the law. The hearing shall be conducted in accordance with any applicable statutory provisions. At the hearing, the Owner shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the suspension or fine previously imposed may be approved, disapproved or modified. If the Owner fails to request a hearing, or fails to attend the hearing, the Owner shall be deemed to have admitted the allegations contained in the notice. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested within ten (10) days after written notice of the decision at the hearing. Any fine levied against an Owner shall be an Individual Assessment. In any event, the Association shall not have the right to impose any suspension or fine against Declarant. The Board may, and to the extent required by law shall, delegate the right to impose suspension or fines, set the amount thereof, and/or conduct hearings pursuant to this paragraph, to a Committee of the ASSOCIATION.

_____ 12.5. Responsibility of an Owner for Occupants, Tenants, Guests, and Invitees. To the extent otherwise provided by law, each Owner shall be responsible for the acts and omissions, whether negligent

or willful, of any person residing in the Owner's Home, and for all the Owner's guests, invitees, or resident, and in the event the acts or omissions of any of the foregoing shall violate the provisions of this Declaration, or result in any damage to the Common Area, or any liability to the Association, or the Declarant, the Owner shall be assessed for the liability as an Individual Assessment. Furthermore, any violation of any of the provisions of this Declaration, the Articles, the Bylaws, or the Rules and Regulations by any Owner or resident of any Lot, or any guest or invitee of an Owner or any resident of a Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if the violation was committed by that Owner.

_____ 12.6. Right of Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any Home or any part of The Properties, other than an Owner and the members of his or her immediate family permanently residing with the Owner in the Owner's Home, if that person shall materially violate any provision of this Declaration, the Articles, the Bylaws, or the Rules and Regulations, or shall create a nuisance or an unreasonable and continuous source of annoyance to the residents of The Properties, or shall willfully damage or destroy any Common Area and/or personal property of the Association, then upon written notice by the Association that person shall be required to immediately leave The Properties and if that person does not do so, the Association is authorized to commence an action to evict the tenant or compel the person to leave The Properties and, where necessary, to enjoin that person from returning. The expense of any of the foregoing, including attorneys' fees, shall be assessed against the applicable Owner as an Individual Assessment. The foregoing shall be in addition to any other remedy of the Association.

_____ 12.7. No Waiver. The failure of the Association to enforce any right, provision, covenant or condition which may be granted by this Declaration, the Articles, the Bylaws, or the Rules and Regulations, shall not constitute a waiver of the right of the Association to enforce the right, provision, covenant or condition in the future.

12.8. Other Rights. The rights and remedies set forth herein shall be in addition to any other rights of enforcement set forth in this Declaration or otherwise provided by law. This Article Twelve does not authorize suspension or the imposition of a fine against any Owner because of the Owner's failure to pay Assessments when due. The Association may not suspend an Owner's voting rights.

_____ 12.9. Precedence over less Stringent Governmental Regulations. In those instances where the covenants, conditions, and restrictions set forth in this Declaration set or establish minimum standards or limitations or restrictions on use in excess of Governmental Regulations, the covenants, conditions, and restrictions set forth in this declaration shall take precedence and prevail over less stringent governmental regulations.

12.10. Arbitration of Claims. Warranty, negligence or other claims against the Declarant, Builder, or any person or entity having a right of contribution from, or being jointly and severally liable with, the Declarant or Builder (collectively the "Claim") relating to the design, construction, furnishing or equipping of The Properties, must be adjudicated pursuant to binding arbitration, rather than civil litigation, as permitted by the Florida Arbitration Code (the "Code"), Chapter 682, Florida Statutes; arbitration must be conducted only in the manner described in Appendix D. Appendix D is incorporated herein by this reference as if fully set forth herein.

12.11. Litigation. While it is Declarant's intent that 12.10. above (and **Appendix D**) be given full effect in every possible case, in the event that it does not apply to a particular circumstance then this 12.11. controls. No judicial or administrative proceeding may be commenced or prosecuted by the Association, or any other association, unless approved by a vote of eighty-five percent (85%) of all of the Owners, including the Declarant, if the Declarant owns any Lot. Notwithstanding anything in this Declaration, the Articles of Incorporation, the By-Laws, or the Development Documents to the contrary, the aforesaid votes must be cast by the Owners themselves at a special meeting thereof and not by their Voting Members or by proxy, and the required percentage must be of all of the Owners rather than just those attending the meeting or voting. This 12.11. does not apply, however, to: (a) actions brought by the Association against persons or entities other than the Declarant to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens and the imposition of fines and suspension); (b) the imposition and collection of Assessments as provided in Article **Six**; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims

brought by the Association, or any other association or in proceedings instituted against it except those brought by Declarant.

12.12. Waiver of Jury Trial. By an Owner's acceptance of a deed to property within The Properties, the Owner and all of his successors and assigns knowingly, voluntarily, and intentionally waive the right to a trial by jury with respect to any litigation arising out of this Declaration, any Development Document, or out of any course of conduct, course of dealing, statements (either verbal or written), or actions of any affected party.

12.13. Amendment. 12.10., 12.11., 12.12., and this 12.13., may not be amended unless the amendment is made by the Declarant, or is approved by the percentage of votes required in 12.11 above, and pursuant to the same procedures, necessary to institute proceedings as required therein.

ARTICLE XIII

Damage or Destruction to Common Areas

Damage to or destruction of all or any portion of the Common Areas will be addressed in the following manner, notwithstanding any provision in this Declaration to the contrary:

13.1. In the event of damage to or destruction of the Common Areas, if available insurance proceeds are sufficient to totally restore the damage or destruction, then the Association will restore those portions of the Common Areas to substantially the same condition as they existed prior to the damage or destruction.

13.2. If available insurance proceeds are within One Hundred Thousand Dollars (\$100,000.00) or less of being sufficient to totally restore the damage or destruction, then the Association will restore those portions of the Common Areas to substantially the same condition as they existed prior to the damage or destruction, and the difference between the available insurance proceeds and the cost of the repair and restoration will be levied as a Special Assessment against each Owner in equal shares, on an overall basis as appropriate, in accordance with the provisions of Article Six of this Declaration.

13.3. If available insurance proceeds are insufficient by more than One Hundred Thousand Dollars (\$100,000.00) to totally restore the damage or destruction, then by written consent or vote of a majority of the Owners, they will determine whether: (1) to restore those portions of the Common Areas to substantially the same condition as they existed prior to the damage or destruction and to raise the necessary funds in excess of the insurance proceeds by levying Special Assessments against all Owners; (2) to restore those portions of the Common Areas in a manner which is less expensive than restoring the Common Areas to substantially the same condition as they existed prior to the damage or destruction; or (3) subject to the approval of the Board, to not restore those portions of the Common Areas, unless otherwise required by Governmental Approvals, and to retain the available insurance proceeds.

13.4. Each Owner is liable to the Association for any damage to the Common Areas which may be sustained by reason of the negligence or willful misconduct of an Owner, Owner's Designee, or their family, guests, invitees, agents, tenants and contractors. Notwithstanding the foregoing, the Association reserves the right to charge that Owner an Assessment equal to the increase, if any, in the insurance premium directly attributable to that damage. In the case of joint ownership of a Lot, the liability of the Owners is joint and several. The cost of correcting the damage is an Individual Assessment against the Owner (or Owners jointly and severally) and may be collected as provided in Article Six for the collection of Assessments.

ARTICLE XIV

Insurance

14.1. Common Areas. The Association will keep all Improvements (other than foundations, landscaping and other components not usually insured) and facilities located within the Common Areas insured against loss or damage by fire or other casualty for the full insurable replacement value thereof (with

reasonable deductibles and normal exclusions for land, foundations, excavation costs and similar matters), and may obtain insurance against other hazards and casualties as the Board deems desirable. The Association may also insure any other property, whether real or personal, owned or maintained by the Association against loss or damage by fire and other hazards as the Board deems desirable, with the Association as the Owner and beneficiary of insurance for and on behalf of itself and all Owners. The insurance coverage with respect to the Common Areas must be written in the name of, and the proceeds thereof will be payable to, the Association. Insurance proceeds must be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the Assessments made by the Association.

14.1.1. To the extent obtainable at reasonable rates, insurance policies maintained by the Association must contain provisions, or be accompanied by endorsements, for: agreed amount and inflation guard, demolition costs, contingent liability from operation of building laws and increased costs of construction.

14.1.2. All insurance policies must contain standard mortgagee clauses, if applicable.

14.1.3. The Association shall also maintain flood insurance on the insurable Improvements within the Common Areas in an amount equal to the lesser of 100% of the replacement costs of all customarily insurable Improvements within the Common Areas or the maximum amount of coverage available under the National Flood Insurance Program, in either case if the insured Improvements are located within a flood zone as to which mortgage lenders customarily require flood insurance.

14.2. **Replacement or Repair of Property.** Subject to the provisions of **Article Thirteen**, the Association will repair damage to or destruction of any portion of the Common Areas using the insurance proceeds available.

14.3. **Waiver of Subrogation.** As to each policy of insurance maintained by the Association which will not be voided or impaired thereby, the Association waives and releases all claims against the Board, the Declarant and their agents and employees, with respect to any loss covered by insurance, whether or not caused by the negligence or breach of any agreement by those persons, but only to the extent that insurance proceeds are received in compensation for a loss.

14.4. **Liability and Other Insurance.** The Association has the power to and will obtain and maintain comprehensive public liability insurance, including medical payments and malicious mischief, with coverage of not less than \$1,000,000.00 (if available at reasonable rates and upon reasonable terms) for any single occurrence, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to the Common Areas and any property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Owner against liability to each other Owner and to the Association and vice versa and coverage for legal liability resulting from lawsuits related to employment contracts. The Association will also obtain Worker's Compensation insurance and other liability insurance as required by Governmental Requirement or as it determines to be necessary or desirable, insuring each Owner, the Association, and its Board of Directors and officers, from liability in connection with the Common Areas. The Association may also obtain and maintain other insurance as the Board determines to be necessary or desirable. All insurance policies must be reviewed at least annually by the Board of Directors and the limits increased in its discretion. All premiums for insurance policies authorized or required herein are Common Expenses.

14.5. The Board may also obtain errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it determines to be advisable, insuring the Board or any management company engaged by the Association against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or any committee thereof. At a minimum, however, there must be blanket fidelity bonding of anyone (compensated or not) who handles or is responsible for funds held or administered by the Association, with the Association to be an obligee thereunder. The bonding will cover the maximum amount of funds to be in the hands of the Association or management

company during the time the bond is in force. In addition, the fidelity bond coverage must at least equal the sum of three (3) months' of regular Assessments, plus all reserve funds.

14.6. "Blanket" Insurance. The requirements of this Article Fourteen may be met byway of the Association being an insured party under any coverage carried by the Declarant or under coverage obtained by the Association together with any other association(s) as long as the coverage complies with the requirements of this Article Fourteen.

14.7. Owners' Duties. Each Owner is responsible for obtaining and maintaining in effect all casualty, liability and other insurance with respect to the Owner's Lot (including any Exclusive Common Areas used exclusively by a Lot Owner) as the Owner may from time to time reasonably determine to be necessary. The Association shall not obtain any insurance on behalf of an Owner, nor shall the Association insure the Lots in any manner.

14.7.1. Destruction of Improvements. The following provisions apply to damage or destruction to Improvements located on a Lot.

(1) If any Improvement on a Lot is substantially damaged or destroyed, it is the obligation of the Owner to repair, restore or reconstruct the Improvement as soon after the casualty as may be practical. All repair, restoration and reconstruction requires Architectural Review.

(2) Notwithstanding damage to or destruction of the Improvements on a Lot, the Owner shall remain liable to the Association for all Assessments in connection with his Lot. Liability shall continue unabated, even though the Lot is not fit for occupancy or habitation, and even though Improvements are not reconstructed. In addition to liability for Regular Assessment, the Lot and its Owner may be liable for Special and Individual Assessments in connection with the Lot, including those in accordance with 14.7.

(3) As soon as practical after damage or destruction, the Owner will remove all debris and portions of the Improvements that cannot be preserved for incorporation into the replacement structure. The Owner must remove all dangerous conditions immediately after the casualty occurs. The Owner must remove all other debris Lot no later than thirty (30) days after the casualty occurs.

(4) Within thirty (30) days of the date of the casualty, the Owner must notify the Board in writing of his intention to restore the Improvements. Failure to timely notify the Board is evidence of the Owner's intention not to restore the improvements. Owner shall initiate Architectural Review within ninety (90) days of notification, and shall commence restoration and reconstruction (the "work") within sixty (60) days after approval of his plans and specifications and perform the work diligently to completion.

(5) If an Owner elects not to restore the Improvements, within sixty (60) days the Owner will: (i) remove all portions of the improvements remaining, except underground utility lines, which shall be secured; (ii) remove all parts of the Improvements then remaining, including the slab and foundation; and (iii) provide fill and install sod to give the appearance of a landscaped open space.

(6) If an Owner fails to comply with any of the provisions of this 14.7.1., the Association may (but is not required to) perform any of these acts as are the responsibility of the Owner and the cost will be charged against the Owner and his Lot as an Individual Assessment in accordance with Article **Six**.

(7) Upon written application of an Owner, the Board may extend any of the time periods set forth in this 12.7 for good cause.

(8) The duties of the Association hereunder shall be performed by the Board.

ARTICLE XV

Mortgagee Protection

15.1. The following provisions are included herein for the purpose of complying with various requirements relating to mortgage loans for Lots To the extent these provisions conflict with any other provisions of the Declaration, these provisions control, As used in **Article Fifteen** the word "**Mortgagee**" means the holder of **an** institutional first mortgage encumbering a Lot within The Properties.

15.2. The Association will make available for inspection to all Owners, Mortgagees, and to insurers and guarantors of any first mortgage, upon request, during normal business hours or under other reasonable circumstances, current copies of: (1) this Declaration (with all Amendments and Supplemental Declarations); (2) the Articles; (3) the By-Laws; (4) the Rules and Regulations; and (5) the books and records of the Association. Furthermore, those persons or entities are entitled, upon written request, to: (i) receive a copy of the Association's financial statement for the immediately preceding fiscal year; (ii) receive notices of and attend the Association meetings; (iii) receive notice from the Association of an alleged default by an Owner in the performance of the Owner's obligations under this Declaration, the Articles of Incorporation, the By-Laws, Rules and Regulations, or other Development Document not cured within any applicable cure period; and (iv) receive notice of any substantial damage to the Common Areas.

15.3. A Mortgagee, and a holder, insurer or guarantor of a mortgage on a Lot has, if requested in writing, the right to timely written notice of: (1) any condemnation or casualty loss affecting a material portion of the Common Areas; (2) a sixty (60) day delinquency in the payment of the Assessments on a mortgaged Lot ; (3) the occurrence of a lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (4) any proposed action which requires the consent of a specified number of Mortgagees.

15.4. Unless at least two-thirds (2/3rds) of Mortgagees (based upon one vote for each mortgage owned), and the Owners holding at least two-thirds (2/3rds) of the votes entitled to be cast by them, have given prior written approval, neither the Association nor the Owners will:

15.4.1. by act or omission seek to sell or transfer the Common Areas or any Improvement thereon except for: (1) granting easements for utilities or for other purposes consistent with the intended use of Common Areas; (2) the transfer of the Common Areas to another similar association including the Owners in accordance with this Declaration; or (3) the dedication of that property to the public;

15.4.2. change the method of determining Assessments or other charges which **may be** levied against a Lot , except as provided herein with respect to future Lots;

15.4.3. by act or omission waive or abandon the requirements of Articles **Eight, Nine, or Ten**;

Areas ; or

15.4.4. fail to maintain fire and extended insurance on Insurable portions of the Common

15.4.5. use hazard insurance proceeds for losses to any Common Areas for other than the repair, restoration, or reconstruction of those Improvements.

ARTICLE XVI **Special Covenants**

In recognition of the fact that certain special types of platting or construction require special types of covenants to accurately reflect the maintenance and use of the affected Lots , the Declarant reserves the right to amend this Declaration to add provisions applicable to zero-lot line homes, condominiums, or other similar residential housing, within The Properties, However, nothing set forth in this Article **Sixteen suggests**, implies, or requires Declarant to construct or not to construct the following types of improvements.

ARTICLE XVII
General Provisions

17.1. **Duration.** The covenants, conditions and restrictions of this Declaration run with and bind The Properties, inure to the benefit of and are enforceable by the Association, the Board of Directors, and the Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time the covenants and restrictions will be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of 75% of all the Lots within The Properties, and of 100% of the mortgagees thereof has been recorded, revoking this Declaration; provided, however, that no agreement to revoke this Declaration is valid unless made and recorded in advance of the effective date of revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any signatures being obtained.

17.2. **Notice.** Unless otherwise provided, any notice required to be given by the provisions of this Declaration is considered properly given when personally delivered or mailed by certified mail, return receipt requested, to the last known address of the person or entity shown on the records of the Association.

17.3. **Severability.** Invalidation of any one of the covenants, conditions or restrictions or any Article, Section, or sub-section, (hereinafter "provision") or the application thereof in specific circumstances, by judgment or court order will not affect any other provision or its application in other circumstances, all of which remains in full force and effect.

17.4. **Amendment.** In addition to any other manner herein provided for the amendment of this Declaration, the covenants, conditions, restrictions, easements, charges and liens of this Declaration may be amended, changed, deleted or added to at any time and from time to time: upon the execution and recordation of an instrument executed by Declarant alone, for so long as it or its affiliates holds title to any Lot within The Properties or otherwise subject to this Declaration, provided any Amendment: must be consistent with the Development Plan of The Properties or be required by a governmental agency, such as, but not limited to FNMA/FHLMC, VA or FHA or the like; or alternatively by approval of not less than 66 2/3% votes of the entire membership of the Association cast by their Voting Members, provided, that as long as Declarant owns any Lot or Parcel, Declarant's written consent must be obtained. No Amendment which affects the Surface Water Management System, the Deed of Conservation Easement, or any Conservation Area or Buffer Zone Area may be made without the approval of the South Florida Water Management District and other necessary Governmental Authority.

17.5. **Effective Date.** This Declaration is effective and DANIELS PRESERVE is created on the date this Declaration is recorded in the Public Records of the County.

17.6. **Conflict.** This Declaration takes precedence over conflicting provisions in the Articles of Incorporation, By-Laws, Rules and Regulations, and any other Development Document; and the Articles take precedence over the By-Laws, Rules and Regulations, and any other Development Documents; and the By-Laws take precedence over the Rules and Regulations, and any other Developments Documents.

17.7. **Easements.** If the intended creation of any easement provided for in this Declaration fails by reason of the fact that at the time of creation there is no grantee in existence having the capacity to take and hold the easement or no separate ownership of the dominant and servient estates, then the grant of easement is nevertheless considered granted directly to the Association as agent for the intended grantees, or to be a "springing **easement**" for the purpose of allowing the original party or parties to whom, or the original party to which, the easements are originally intended to have been granted the benefit of the easement, and the Owners designate the Declarant and the Association (or either of them) as their lawful

attorney-in-fact to execute any instrument on the Owners' behalf as may hereafter be required or be necessary for the purpose of later creating the easement as it is intended to be created herein. Formal language of grant or reservation with respect to those easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not recited in any provision.

17.8. **Covenants Running With The Land.** Anything to the contrary in this Declaration notwithstanding and without limiting the generality (and subject to the limitations) of 17.1., it is the intent of all parties affected hereby (and their respective heirs, personal representatives, successors and assigns) that these covenants, conditions and restrictions run with the land and with title to all Lots and other parts of The Properties. If any provision of this Declaration prevents this Declaration from running with the land as aforesaid, that provision and or its application will be judicially modified, if at all possible, to achieve as close as possible the intent of that provision and be enforced in a manner which allows these covenants, conditions, and restrictions to run with the land; but if that provision cannot be modified, that provision and its application is unenforceable and null and void in order that the paramount intent of the parties that these covenants, conditions and restrictions run with the land is achieved.

17.9. **Use of Name.** All persons and entities are notified that the name "DANIELS PRESERVE" and any other names used by Declarant in connection with The Properties are the sole property of Declarant. Accordingly, no person acquiring title to or any interest in any portion of The Properties acquires any right to use that name or any similar names in any manner. Declarant may, however, license or otherwise grant permission to use any of those or similar names, but the fact the Declarant may do so, or does so, does not change the foregoing and is effective only to the extent permitted by license or other grant of permission.

17.10. **Obligation to Accept Deed.** The Association Is obligated to accept deeds from the Declarant or others upon the direction of Declarant conveying any property within The Properties. The Association is also obligated to maintain any areas within The Properties assigned to it for maintenance by Declarant.

ARTICLE XVIII **DISCLAIMERS**

18.1. **ALL BOUND.** EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO A LOT) AND EACH OTHER PERSON OR ENTITY HAVING AN INTEREST IN OR LIEN UPON, OR MAKING ANY USE OF OR ENTERING UPON A LOT, THE COMMON AREAS, OR ANY PORTION OF THE PROPERTIES (BY VIRTUE OF ACCEPTING AN INTEREST OR LIEN, MAKING USE THEREOF, OR ENTERING UPON) IS BOUND BY THIS ARTICLE EIGHTEEN AND AUTOMATICALLY WAIVES ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE DECLARANT, BUILDER, THE ASSOCIATION, AND THOSE OTHER PERSONS AND ENTITIES DESCRIBED, ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY IS DISCLAIMED IN THIS ARTICLE 18.

18.1.1. THE PURCHASE, OCCUPANCY AND USE OF A LOT, THE COMMON AREAS, AND ANY PORTION THEREOF, IS MADE AFTER CAREFUL READING, CONSIDERATION AND WITH AN UNDERSTANDING OF ALL OF THE TERMS, DISCLAIMERS, CONDITIONS AND WAIVERS SET FORTH IN THIS ARTICLE 18.

18.1.2. EACH PURCHASER, OCCUPANT, AND USER ACKNOWLEDGES AND AGREES THAT THIS ARTICLE 18 IS A MATERIAL INDUCEMENT TO DECLARANT AND/OR BUILDER TO SELL AND CONVEY A LOT AND THE COMMON AREAS APPURTENANT THERETO.

18.1.3. THE PROVISIONS OF THIS ARTICLE EIGHTEEN IS FOR THE BENEFIT OF DECLARANT AND BUILDER, WHICH WILL BE FULLY PROTECTED HEREBY.

18.2. NOTICES AND DISCLAIMERS CONCERNING OTHER CONSTRUCTION ACTIVITIES.

ALL OWNERS, OCCUPANTS AND USERS OF LOTS AND COMMON AREAS ARE HEREBY PLACED ON NOTICE THAT DECLARANT AND/OR BUILDER, AND THEIR AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES WILL, FROM TIME TO TIME, CONDUCT CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO THE PROPERTIES. BY ACCEPTANCE OF A DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USE OF ANY PORTION OF A LOT OR COMMON AREAS, EACH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES: (1) THAT NONE OF THE AFORESAID ACTIVITIES ARE NUISANCES, NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY; (2) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO THE PROPERTIES WHERE THE ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS); (3) DECLARANT, BUILDER, AND THE OTHER AFORESAID RELATED PARTIES ARE NOT LIABLE FOR ANY LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES; (4) ANY PURCHASE OR USE OF ANY PORTION OF A LOT OR COMMON AREAS, IS MADE WITH FULL KNOWLEDGE OF THE FOREGOING; AND (5) THIS ACKNOWLEDGMENT AND AGREEMENT IS A MATERIAL INDUCEMENT TO DECLARANT AND/OR BUILDER TO SELL, CONVEY, LEASE AND ALLOW THE USE OF A LOT AND THE APPLICABLE PORTION OF THE COMMON AREAS AND THE PROPERTIES.

18.3. NOTICES AND DISCLAIMERS CONCERNING WATER BODIES.

18.3.1. THE DECLARANT, BUILDER, THE ASSOCIATION AND THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") ARE NOT LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE SAFETY, WATER QUALITY OR WATER LEVEL OF A LAKE OR OTHER WATER BODY WITHIN THE PROPERTIES, EXCEPT AS THAT RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY, OR CONTRACTED FOR WITH, AN APPLICABLE GOVERNMENTAL AUTHORITY; AND UNDER THOSE CIRCUMSTANCES ONLY THE ENTITY RESPONSIBLE WILL BE LIABLE TO THE GOVERNMENTAL AUTHORITY. FURTHER, NONE OF THE LISTED PARTIES ARE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY OR DEATH OCCURRING IN, OR OTHERWISE RELATED TO, ANY WATER BODY, ALL PERSONS USING THEM DO SO AT THEIR OWN RISK.

18.3.2. ALL OWNERS AND USERS OF A LOT LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE WATER BODIES AGREE BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF A LOT , TO RELEASE THE LISTED PARTIES FROM ALL CLAIMS FOR ANY AND ALL CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN THOSE WATER BODIES.

18.3.3. ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE INHABIT AND ENTER INTO WATER BODIES WITHIN OR NEARBY THE PROPERTIES AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT OR INSURE AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY WILDLIFE.

18.4. NOTICES AND DISCLAIMERS CONCERNING DECLARANT: CONSTRUCTION, DEVELOPMENT AND SALE.

EXCEPT AS DECLARANT AND/OR BUILDER MAY OTHERWISE EXPRESSLY PROVIDE BY WRITTEN CONTRACT, THE CONSTRUCTION, DEVELOPMENT, AND SALE BY DECLARANT AND/OR BUILDER OF ANY LOT, COMMON AREAS OR OTHER PROPERTY OR IMPROVEMENTS WITHIN THE PROPERTIES IS WITHOUT WARRANTY, AND NO WARRANTIES OF FITNESS,

HABITABILITY, OR MERCHANTABILITY AS TO ANY PORTION OF ANY LOT, COMMON AREAS OR THE PROPERTIES, OR IMPROVEMENTS CONSTRUCTED BY DECLARANT AND/OR BUILDER THEREON OR IN CONNECTION THEREWITH, IS IMPLIED. EXCEPT AS DECLARANT AND/OR BUILDER MAY OTHERWISE EXPRESSLY PROVIDE BY WRITTEN CONTRACT. DECLARANT AND BUILDER EACH EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY COMMON LAW IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, HABITABILITY AND CONFORMITY OF ANY IMPROVEMENTS WITH PLANS AND SPECIFICATIONS FILED WITH ANY GOVERNMENTAL AUTHORITY. DECLARANT AND BUILDER MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE EXISTENCE OR LEVELS OF LOW FREQUENCY ELECTROMAGNETIC FIELDS, RADON, RADON PROGENY, TOXIC MOLD, OR ANY OTHER POLLUTANT WITHIN THE PROPERTIES OR WITH RESPECT TO ANY PROPERTY OR IMPROVEMENTS CREATED FOR, CONVEYED TO, DEDICATED TO, OR MADE AVAILABLE FOR THE USE OF THE ASSOCIATION OR ANY OWNER PURSUANT TO THIS DECLARATION OR ANY OTHER INSTRUMENT.

18.5. DISCLAIMER CONCERNING ASSOCIATION.

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BY-LAWS, ANY RULES OR REGULATIONS OF THE ASSOCIATION, OR ANY OTHER DEVELOPMENT DOCUMENT GOVERNING, BINDING ON, OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION IS NOT LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH, SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER THE COMMON AREAS, OF ANY PORTION OF THE PROPERTIES, INCLUDING, WITHOUT LIMITATION, OWNERS AND THEIR FAMILIES, GUESTS, INVITEES, TENANTS, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS, OR FOR ANY PROPERTY OF ANY OF THOSE PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

18.5.1. IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING

AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

18.5.2. THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR GUARANTIES COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, THE COUNTY OR ANY OTHER JURISDICTION FOR THE PREVENTION OF TORTUOUS ACTIVITIES;

18.5.3. ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH, SAFETY AND WELFARE WILL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S) OR ENTITIES; AND

18.5.4. AS USED IN THIS ARTICLE EIGHTEEN, "ASSOCIATION" INCLUDES WITHIN ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

18.6 NOISE DISCLOSURE.

EACH OWNER, IS HEREBY NOTIFIED, AND BY ACCEPTING A DEED TO A LOT OR ANY OTHER PORTION OF THE PROPERTIES, THAT: (1) ALL OR ANY PORTIONS OF THE PROPERTIES ARE WITHIN THE LIMITS OF THE SOUTHWEST FLORIDA INTERNATIONAL AIRPORT NOISE OVERLAY ZONE(S) AS ESTABLISHED BY THE LEE COUNTY LAND DEVELOPMENT CODE CHAPTER 34-1006; (2) THE LOT OR OTHER PORTION OF THE PROPERTIES PURCHASED BY OWNER MAY BE SUBJECT, NOW OR IN THE FUTURE, TO AIRCRAFT NOISE AND AIRCRAFT OVERFLIGHT, NOW AND IN THE FUTURE, INCLUDING SUCH NOISE AND OVERFLIGHT ASSOCIATED WITH A PLANNED FUTURE RUNWAY. OWNER AGREES TO NOTIFY ALL PROSPECTIVE BUYER'S OF OWNER'S PROPERTY OF THE POTENTIAL FOR OBJECTIONABLE AIRCRAFT NOISE AND AIRCRAFT OVERFLIGHTS. IN THE ABSENCE OF SPECIFIC REGULATIONS BY LEE COUNTY, OWNER SHOULD CONTACT A RELIABLE ENGINEER, REGISTERED IN THE STATE OF FLORIDA, TO DETERMINE IF ACCEPTED ENGINEERING PRACTICES FOR REDUCTION OF NOISE IN STRUCTURES INDICATE THE INCLUSION OF SOUND **INSULATION IS APPROPRIATE. THE OWNER ALONE IS RESPONSIBLE FOR PROVIDING ANY SOUND INSULATION.**

ARTICLE XIX **Declarant's Reserved Rights**

19.1. Anything herein to the contrary notwithstanding, prior to the turnover date, Declarant reserves the right to amend this Declaration, the Articles, the By-Laws and the Rules and Regulations in any manner whatsoever; provided, however, that Declarant may not delete or convey to another party any Common Areas designated, submitted or committed to common use, if deletion or conveyance would materially and adversely change the nature, size or quality of the Common Areas. So long as Declarant owns any Lot, Parcel or other property within The Properties, it may establish licenses, reservations, easements and rights-of-way in favor

APPENDIX A

(Reference: Article 3)

DEFINITIONS AND INTERPRETATIONS

1. **Definitions.** The following words and terms when used in this Declaration, any Amendment hereto and any Supplemental Declaration (unless the context prohibits or unless defined by applicable law on the date of recording this Declaration) have the following meanings. Note: the capitalization of a word or term not normally capitalized indicates the word or term is defined in this Appendix A and has that meaning when used in this Declaration, in any Amendment hereto, and in any Supplemental Declaration.

1.1. **"Additional Property"** means and refers to all or any portion of real property which may be added to The Properties in accordance with **Article Two**.

1.2. **"Architectural Review Committee"** or "ARC" means and refers to a committee appointed pursuant to Appendix B to exercise the powers and duties set forth therein and other duties, if any, as may be delegated to it by the Association from time to time.

1.3. **"Architectural Review"** means and refers to the requirement that an Owner's (excluding Declarant's) plans and specifications be reviewed in accordance with **Appendix C**. Where the context indicates, Architectural Review means the administrative process of Appendix C.

1.4. **"Articles" or "Articles of Incorporation"** means and refers to the Articles of Incorporation of the Association, as amended from time to time; a copy of the original Articles of Incorporation is attached hereto as **Exhibit 2**.

1.5. **"Assessment"** means and refers to a charge against a particular Owner and his Lot made by the Association in accordance with Article Six..

1.6. **"Association" or " Association"** means and refers to DANIELS PRESERVE Community Association, Inc., a Florida corporation not for profit, and its successors and assigns. Association or Association, as used in this Declaration, does not mean or refer to any condominium association.

1.7. **"Board" or "Board of Directors"** means and refers to the Board of Directors of the Association.

1.8. **"Buffer Zone Area"** means and refers to any existing or future area set aside as a buffer zone pursuant to any Governmental Requirement or Governmental Approval.

1.9. **"Builder"** means and refers to Mercedes Homes, Inc., its successors and assigns. It is the Declarant's plan, subject to change in the Declarant's sole discretion, that the Declarant shall convey Lots to Builder, and Builder shall construct Homes on the Lots for sale to purchasers. Builder shall therefore have the rights of the Declarant granted in this Declaration by the following provisions, and as otherwise granted to the Builder by the Declarant, in Declarant's sole discretion: 5.5,5.9., 5.12., 5.16., 6.9., 8.1., 8.2., 8.6., 8.7., 8.10.7., Article IX and Article XVI. Declarant may also, in its sole discretion convey Lots to a third party Builder. Declarant shall have the right in its sole discretion, to assign any or all of its rights as Declarant to a third party Builder, by written assignment.

1.10. **"By-Laws"** means and refers to the By-Laws of the Association, as amended from time to time; a copy of the By-Laws Is attached hereto as **Exhibit 3**.

1.11. **"Common Areas"** means and refers to the real and personal property maintained by the Association, whether or not owned by or dedicated to it, for the general benefit of the Owners and The Properties. The Common Areas will be conveyed to the Association as provided in Article 5, Section 11, of this Declaration. The Common Areas consist of the portions of The Properties within the following categories:

1.11.1. "Exclusive Common Areas" - are those Common Areas which are for the exclusive use and benefit of one or more, but not all, Owners.

1.11.2. "General Common Areas" - are those Common Areas which are for the general use and benefit of all of the Owners.

1.11.3. "Maintenance Common Areas" - are those Common Areas owned by or dedicated to the Association, and those areas within or outside The Properties not owned by or dedicated to the Association but maintained and administered by it pursuant to an easement, license or agreement, the County or any other person or entity, which maintenance and administration affords benefits to the Owners. The Maintenance Common Areas include, but are not limited to those areas as applicable described on the Plot Plan and/or the Plat of Worthington Commerce Park, as: Tract R-1; Tract O-1 (open space tract); Utility Easement; Public Utility Easement (PUE); Preservation Area; Lake Maintenance, Access, and Drainage Easement; Lake Maintenance Easements (L.M.E.); Drainage Easements (D.E.); Access Easements (A.E.); and Buffer Easements (B.E.). Any of the foregoing not within Tract A of the Plat of Worthington Commerce Park shall not be included in the Maintenance Common Areas, unless expressly provided to the contrary in this Declaration or in the Shared Maintenance Agreement.

1.12. "**Conservation Areas**" means and refers to the Conservation Areas (or portions of thereof as in the case of CA-5) located within The Properties and shown on the Plat of Worthington Commerce Park as Conservation Area Tracts CA-2, CA-3, and CA-5.

1.13. "**Common Expenses**" means and refers to the estimated or actual cost of;

1.13.1. administration and management of the Association;

1.13.2. maintenance, ownership and operation of the Common Areas;

1.13.3. any item designated by the Board as a Common Expense; and

1.13.4. any service, tax, premium, assessment or charge reasonably or necessarily incurred by the Association arising from its ownership, operation, maintenance, management, administrative or other duties set forth herein, in the Articles, By-Laws, or Rules and Regulations, in furtherance of the purposes of the Association, or incurred in discharge of any duty expressly or impliedly imposed on the Association by this Declaration or by Governmental Requirement.

1.14. "Conservation Easement" means and refers to any existing or future easements granted to a Governmental Authority or made in a dedication in the Plat of Worthington Commerce Park, pursuant to any Governmental Requirement for the purpose of conserving certain property.

1.15. "County" means and refers to Lee County, Florida, either as a geographical area or as a political subdivision and government of the State of Florida, as the context requires.

1.16. "**Declarant**" means and refers to DANIELS PRESERVE COMMUNITY DEVELOPERS, INC. a Florida corporation, its successors and those of its assigns to which the Declarant's rights are expressly assigned by a written instrument recorded in the Public Records of the County. Declarant may assign all or a portion of its rights hereunder, or all or a portion of its rights in connection with specific portions of The Properties. In the event of a partial assignment of Declarant's rights, the assignee is not deemed the Declarant, but may exercise only those rights of Declarant expressly assigned to it. Any assignment may be made on a nonexclusive basis. "Original Declarant" means and refers to only DANIELS PRESERVE COMMUNITY DEVELOPERS, INC.

1.17. "Declaration" means and refers to this Declaration and all Exhibits hereto, including any Amendment and Supplemental Declaration recorded in the Public Records of the County.

1.18. "Development Documents" means and refers to the following if recorded in the Public Records of the County: this Declaration, any declaration of covenants, and restrictions; declaration of condominium, homeowners' or property owners' declaration; association articles and by-laws; deed restriction or covenant affecting the use and occupancy of all or any part of The Properties; and any subdivision, condominium or other plat, survey, plot plan or graphic description; if in accordance with the Development Plan, Governmental Approvals or other Development Documents.

1.19. "Development Plan" means and refers to the Declarant's overall uniform general plan for development of The Properties, as it now exists, and as Declarant may from time to time amend it. Development Plan includes the terms of Governmental Approvals.

1.20. "Exhibit" means and refers to an exhibit attached to this Declaration. Each Exhibit attached hereto is incorporated herein.

1.21. "Governmental Approvals" means and refers to development orders, site plan approvals, governmental stipulations, conditions, permits, requirements and building permits, as they may be amended from time to time, authorizing the development of The Properties as DANIELS PRESERVE.

1.22. "Governmental Authority" means and refers to the County, the state or federal government, a public or quasi-public entity, and any division or subdivision of any of them.

1.23. "Governmental Requirement" means and refers to any law, act, statute, code, ordinance, order, rule, regulation, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any Governmental Authority now existing or hereafter enacted, adopted, promulgated, entered or issued applicable to DANIELS PRESERVE or The Properties.

1.24. "Herein," "Hereof" or "Hereunder" means and refers to this Declaration as a whole and not to any particular provision of this Declaration, unless the context otherwise requires.

1.25. "Home" means and refers to an individual single family residence constructed on a Lot; provided however, that no portion of any Community Service System, even if installed in a Home, is part of a Home unless and until it is made so, if at all.

1.26. "Improvements" means and refers to any of those Improvements defined in Appendix B, Section Two.

1.27. "Lakes" means and refers to Lake Tracts within The Properties and shown on the Plat of Worthington Commerce Park as Lake Tracts L-2, L-3, L-4, and L-5.

1.28. "Lot" means and refers to: a Lot described on any plat, or subsequent plat of Additional Property added to The Properties by Supplemental Declaration, or on any replat or resubdivision thereof; and any other property hereafter declared as a Lot by Declarant and thereby made subject to this Declaration; provided, however, that no portion of any Community Service System is part of a Lot unless and until it is so made, if at all. When a Home is constructed on a Lot any reference to a Lot shall include the Home and other Improvements constructed thereon even though the Home is not referred to and any reference to a Home shall include the Lot even though the Lot is not referred to. There shall be two types of Lots, as follows:

1.28.1, "Standard Lots" which are designated on Exhibit 4 and which are fifty feet in width.

1.28.2. "Estate Lots" which are designated on Exhibit 4 and which are sixty five feet in width.

Reference to a Lot with out reference to whether it is a Standard Lot or an Estate Lot shall mean and refer a Standard Lot or an Estate Lot. Reference to Lots with out reference to whether they are Standard Lots or a Estate Lots shall mean and refer Standard Lots or Estate Lots or both.

Standard Lots and Estate Lots may be assessed differently.

1.29. "Member" means and refers to all those Owners who are Members of the Association as provided in Article Four. A Member is an Owner and an Owner is a Member, unless otherwise expressly noted.

1.30. "Owner" means and refers to a record owner (or owners if applicable) of a Lot within The Properties. "Owner" does not mean any person or entity holding an interest in a Lot as security for the performance of an obligation. An Owner is a Member and a Member is an Owner, unless otherwise expressly noted.

1.31. "Parcel" means and refers to any portion of The Properties other than Lots and Common Areas. To the extent Declarant converts any Parcel to a Lot, to Lots, or to Common Areas, it shall cease to be a Parcel. A Parcel is typically a vacant portion of real property subject to this Declaration but planned for future development in accordance with the Development Plan, as a Lot, Lots, or Common Areas. A Parcel is not subject to Assessments.

1.32. "Plot Plan" means and refers to the Plot Plan attached hereto as Exhibit 4, as it may be amended and supplemented.

1.33. "The Properties" means and refers to all real property, and additions thereto by Supplemental Declaration in accordance with Article Two, as is now or hereafter made subject to this Declaration, except that real property withdrawn from the provisions hereof in accordance with Article Two. "The Properties" includes all Lots and Common Areas unless otherwise expressly noted. All persons and entities are advised that during the development of The Properties various portions thereof may not be platted, or may be platted as Parcels without designation of Lots or Common Areas, subject to portions thereof later being replatted with specific designations. Accordingly, prior to specific designations being made on a plat, repiat, or resubdivision those Parcels described in the foregoing sentence do not contain Lots or Common Areas unless otherwise specifically stated herein, in an Amendment hereto, in a Supplemental Declaration, or in a plat or other instrument executed by Declarant and recorded in the Public Records of the County. The Properties include all Lots, Parcels, Common Areas and Improvements thereon.

1.34. "Roads" means and refers to the road right-of-way described as Tract R-1 and dedicated on the Plat of Worthington Commerce Park or a road right-of-way described and dedicated on any plat of Additional Property added to The Properties by Supplemental Declaration. The Roads are private roads intended primarily for ingress and egress for the benefit of The Properties, the Declarant, Sub-Developers, and Owners including but not limited to their families, occupants, invitees, guests and tenants, and for the ingress and egress of Governmental Authority, service vehicles and emergency vehicles.

1.35. "Shared Maintenance Agreement" means and refers to the Agreement (including all subsequent modifications thereof) between the Association and Worthington Commerce Park Association, Inc., a copy of which is attached hereto as Exhibit 5, providing for certain shared maintenance duties for certain parcels and tracts within the property included in the Plat of Worthington Commerce Park.

1.36. "**Sub-Developer**" means and refers to any person or entity (other than the Declarant) to whom or to which the Declarant conveys any portion of The Properties for the development and sale of Lots.

1.37. "**Supplemental Declaration**" means and refers to an instrument recorded in the Public Records of the County for the purpose of adding additional real property to The Properties pursuant to **Article Two** of this Declaration.

1.38. "**Surface Water Management System**" means and refers to the natural and artificial conditions and Improvements (including lakes, canals, swale areas, retention areas, culverts, pipes, pumps, catch basins, grading, drainage structures and related appurtenances) for the management of surface water within The Properties as described in and regulated pursuant to permit number***insert SFWM D permit #*** issued by the South Florida Water Management District, as amended from time to time. The Surface Water Management System includes, but may not be limited to, those parcels (or portions of parcels as in the case of CA-5) located within The Properties and described on the Plat of Worthington Commerce Park as Lake Parcels L-2, L-3, L-4 and L-5; Lake Maintenance Easements; Drainage Easements; and Conservation Area Tracts CA-2, CA-3, and CA-5.

1.39. "**Turnover**" means and refers to the transfer of control of the Association by the Declarant voluntarily or when required by Governmental Requirement, whichever occurs first in time.

1.40. "**Voting Member**" means and refers to a Member present, in person or by proxy, at a meeting of the Association.

2. **Interpretation.** In addition to the foregoing definitions, the following applies to the construction and interpretation of this Declaration and the Development Documents.

2.1. The definitions in this **Appendix A** are stipulative definitions not lexical definitions. That is, when a word or term defined in this **Appendix A** is used in this Declaration or in any of the Development Documents, the word or term means what the definition in **Appendix A** says it means regardless if that meaning is different than its ordinary dictionary meaning.

2.2. The provisions of this Declaration, as well as those of the Development Documents, will be interpreted by the Board of Directors. The Board's interpretation rendered in good faith is final, binding and conclusive if the Board receives a written opinion of the Association's legal counsel, or the legal counsel who drafted this Declaration, that the Board's interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted by the Board.

2.3. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Development Documents will be liberally construed to effectuate the purposes herein expressed with respect to the proper operation of the Association and The Properties, the preservation of the value of Lots and the protection of Declarant's rights, benefits and privileges set forth or contemplated in this Declaration.

2.4. "**Article**" and "**Section**" references are to the articles and sections of this Declaration. Reference to an Article includes references to all of its Sections and sub-sections. Reference to a Section includes reference to its sub-sections.

2.5. Whenever in this Declaration the Declarant, the Board, the Association, an Owner, a Sub-Developer or any other person or entity is referred to, that reference includes its heirs, personal representatives, successors, nominees and assigns, unless the context expressly provides otherwise.

2.6. All the words and terms defined in this Declaration have the meaning defined in this Declaration when used in the other Development Documents, unless the context expressly provides otherwise.

2.7. Neither this Declaration nor any of its Articles, Sections, or sub-Sections will be construed against or interpreted by any court, judicial or administrative body, or Governmental Authority to the disadvantage of the Declarant, regardless of who is responsible for its drafting or preparation.

2.8. In this Declaration whenever the context requires, the neuter gender includes the feminine or masculine gender, as the case may be; and the singular number includes the plural.

2.9. Headings, captions and titles are for convenience and reference and do not limit or otherwise affect construction or interpretation of this Declaration.

Appendix B

(Reference: Article 9, Section 6)

This covenant shall only be applicable if the Declarant conveys Lots to third party purchasers other than the Builder, its successors and assigns, or any other sub-developer. This covenant shall not apply to the Builder, its successors and assigns, or any other sub-developer.

**TERMS AND CONDITIONS OF:
COVENANT SETTING DEADLINE FOR LOT OWNER OBTAINING BUILDING PERMIT AND
COMPLETING CONSTRUCTION OF HOME AND
OWNER'S GRANT OF EXCLUSIVE AND IRREVOCABLE OPTION TO DECLARANT.**

1. Conditions Precedent to Declarant Exercising Declarant's Option. The Declarant's right to exercise Declarant's Option is subject to the satisfaction of either of the following conditions precedent:

1.1. The Owner's failure to obtain a building permit (**as** well as all other permits necessary) to construct a Home on the Lot, within twenty-four (24) months of the date of the Owner's initial purchase of the Lot; or

1.2. The Owner's failure to complete the construction of a Home on the Lot, within thirty (**30**) months of the date of the Owner's initial purchase of the Lot, or within six (6) months of the date the Owner obtains its building permit if the Owner obtains a building permit (as well as all other permits necessary) to construct the Home on the Lot within twenty-four (24) months of the date of the Owner's initial purchase of the Lot.

1.2.1. For the purpose of this **Appendix B** the date of a Owner's initial purchase of the Lot means the date of recording the initial deed conveying the Lot from the Declarant to the Owner.

2. Purchase Price and Terms of Lot Repurchase Following Exercise of Declarant's Option. Following the satisfaction of either of the conditions precedent set forth in 1.1 or 1.2., the Declarant shall have the right (but not the duty) **to** exercise Declarant's Option. If the Declarant, in its sole discretion, chooses to exercise the Declarant's Option, it may do so by giving written notice of its election to exercise Declarant's **Option to** the Owner at the address shown on the deed that conveyed the Lot to the Owner. Notice shall be given by certified mail, return receipt requested. Notice shall be considered given on the date mailed by **Declarant**. Following Declarant's notice to the Owner of Declarant's election to exercise Declarant's Option, the Owner shall convey the Lot to the Declarant in accordance with the following covenants:

2.1. The sales price to be paid by Declarant and accepted by the Owner shall be calculated and paid as follows:

- 1) the sales price to be paid by the Declarant shall be eighty percent (80%) of the purchase price of the Lot paid by the Owner (the "purchase price");
- 2) the net proceeds paid to the Owner shall be the purchase price **less** the total of the following:
 - a. the amount necessary to satisfy and release all mortgages, liens, judgments and claims encumbering the Lot; and to cure any title defects or irregularities that actually impair title or could reasonably be expected to expose the grantee to adverse claims or litigation;

b. the closing costs, including but not limited to, the actual cost of a title insurance commitment and policy, document preparation, title search, closing fee, recording fees, documentary tax on the deed, pro-ration of ad valorem tax and assessments (including assessments due to DANIELS PRESERVE Homeowner's Association, Inc.) and all other costs incurred by Declarant in the enforcement of this **Appendix B**, including but not limited to attorneys' fees incurred prior to, during and after litigation and in all administrative and bankruptcy proceedings, mediations and appeals.

2.2. At closing the Owner shall execute and deliver to Declarant a statutory warranty deed in recordable form with the required witness execution and notarization and all other affidavits, instruments and documents required by Declarant to fully comply with this Appendix B. or required by the title insurer to issue an owner's title insurance commitment and policy with the deletion of all standard exceptions.

2.3. The closing shall be held within ninety (90) calendar days of the date Declarant gives notice of its election to exercise Declarant's Option.

3. Declarant's Remedies; Declarant's Reversionary Estate. In the event the Owner fails to timely or fully comply with **Appendix B** the Declarant shall have the right to specific performance. In addition, the Declarant shall have the right to tender the net proceeds (determined as described in 3.1 above) to the Owner and title to the Lot shall revert to the Declarant, upon Declarant recording an affidavit confirming the following: at least one of the conditions precedent set forth in 1.1 and 1.2 have been satisfied; the Declarant gave notice of its election to exercise Declarant's Option; the Declarant tendered to Owner the net proceeds due Owner; and the Owner refused to convey the Lot to Declarant or to otherwise fully comply with **Appendix B**. This remedy is intended to and does create and reserve a reversionary estate in Declarant and a reversionary clause is hereby incorporated by this reference into all deeds of conveyance from Declarant to a Lot purchaser unless otherwise expressly stated in the deed. The reversionary estate created herein is not of unlimited duration since the Declarant's Option shall automatically expire upon the issuance of the certificate of occupancy (or similar certificate of the governmental entity issuing the permit evidencing completion of construction of the Home on the Lot) or if Declarant does not notify the Owner of its election to exercise Declarant's Option within thirty-six (36) months of the date of the Owner's initial purchase of the Lot.

4. Declarant's Exceptions. Declarant reserves the right to grant exceptions to this Appendix B. Upon the repurchase of any Lot by Declarant, the Declarant shall have no time deadline within which to construct a Home on the Lot.

This Appendix C and these construction requirements and restrictions covenant and architectural controls shall only be applicable if the Declarant conveys Lots to third party purchasers other than the Builder, its successors and assigns, or any other sub-developer. This Appendix C and these construction requirements and restrictions covenant and architectural controls shall not apply to the Builder, its successors and assigns, or any other sub-developer.

APPENDIX C

(Reference: Article 10)

CONSTRUCTION REQUIREMENTS AND RESTRICTIONS: ARCHITECTURAL CONTROL

1. Purpose of Construction Restrictions and Requirements and Architectural Control Established. To establish and maintain consistent design and construction of Homes compatible with the DANIELS PRESERVE Development Plan, to preserve the value of Homes and Lots in DANIELS PRESERVE, and to promote the general welfare of the Owners in DANIELS PRESERVE, the Declarant establishes the conditions, procedures, requirements, restrictions, enforcement powers and remedies described in this **Appendix C.**

2. Construction Requirements and Restrictions.

2.1. Home Locations and Minimum Set Backs. All Homes and other approved structures shall be located in compliance with the requirements, restrictions, conditions and procedures of the subdivision plat, the Declaration and all amendments thereto, all architectural review standards, criteria and procedures, and in compliance with, Governmental Requirements and Governmental Approvals. Except as provided in 2.2 below for corner lots, the minimum set backs for all Lots shall be: twenty feet (20') front set back; fifteen feet (15') rear set back (except for an accessory structure which shall have a rear set back of five feet (5')); and five feet (5') side set back; unless otherwise approved pursuant to architectural review in accordance with 3. Notwithstanding the foregoing set back requirements, no structure of any kind is permitted within any easement. These minimum set backs shall not limit the Declarant, or its assigns from increasing the set backs of a Lot or Lots in its discretion.

2.2. Corner Lots. Those Lots described on **Exhibit C-1** attached hereto and those Lots hereafter identified by the Declarant as corner lots, shall be considered corner lots. Corner lots are deemed to have two (2) front yards with front yard set-backs observed adjacent to each street. Owners of corner lots shall also provide sidewalk ramps for wheelchair accessibility as required by any governmental authority, subject to approval in accordance with 3.

2.3. Lot Preparation. Each Lot Owner shall be solely responsible at its own expense to clear, fill and grade the Lot in full compliance with the clearing grading and drainage plan of DANIELS PRESERVE as it may be amended from time to time. Prior to commencing clearing, filling or grading, each Owner shall have prepared and shall submit to the Declarant a detailed clearing, grading and drainage plan showing proposed elevations, surface water flow and finished floor elevations of the living area of two feet two inches (2'2") above the crown of the street immediately adjacent to the Lot, consistent with the clearing, grading and drainage plan of DANIELS PRESERVE, the requirements of this Declaration and all existing permits including the SFW MD permit. An Owner's clearing, grading and drainage plan is subject to Architectural Review in accordance with 3. Any modification of the elevation of the existing grade of a Lot may only be approved in a manner that assures that the modification does not increase the surface water run-off from the Lot.

2.4. Temporary and Permanent Driveway Entrances and Driveways. In order to avoid damage to subdivision streets, curbs, sidewalks, street shoulders and pavement edges, suitable temporary and permanent driveway entrances shall be constructed by or on behalf of an Owner at its sole expense prior to any trucks or construction vehicles entering the Lot related to Lot clearing, filling, grading or construction on that Lot. The Owner shall be fully responsible to the Declarant and the Association for any and all damage caused by an Owner or its agents or contractors. In conjunction with the construction of its Home, each Owner shall install a concrete driveway a minimum of sixteen (16) feet in width from the subdivision street edge to the garage. All driveways shall be constructed only of brick pavers or other materials as may be approved pursuant to Architectural Review in accordance with 3. The Owner shall also install a driveway apron of the same material used to construct the driveway. The driveway apron must

comply with all Governmental Requirements and be designed and constructed to assure proper drainage in accordance with the clearing, grading and drainage plan of DANIELS PRESERVE as it may be amended from time to time.

2.5. Utilities Connections. Each Owner shall be solely responsible at its expense to tie in and connect its Home to the appropriate utility source for underground electric, power, phone, TV, cable, sewer, water and other applicable utilities. Each Owner shall be solely responsible at its expense to pay all applicable impact fees, hook-up fees, meter fees and other charges of the utilities providers.

2.6. Construction Completion Deadline. After an Owner (including the Lot Owner's contractors and agents) begin the construction of a Home or other approved improvements on the Owner's Lot, construction shall proceed at a reasonable rate of progress and must be completed within six (6) consecutive calendar months of the date the building permit is issued, unless a written extension is granted by the Declarant in its sole discretion.

2.7. Minimum Square Footage of Homes. The Home to be constructed on a Standard Lot must contain no fewer than 1500 square feet of enclosed air-conditioned residential floor area described herein. The Home to be constructed on an Estate Lot must contain no fewer than 1800 square feet of enclosed air-conditioned residential floor area described herein. The floor area of garages, porches, patios and similar areas shall not be included in calculating the floor area of a Home requirement for any Lot, Lots, or all the Lots in its sole discretion.

2.8. Exterior and Roof Materials: The exterior surface of a Home shall be stucco or similar cementitious product approved in accordance with 3. Trim or accent features may be wood, stone, cedar, other natural materials, or other material approved in accordance with 3. Siding materials such as T-111, and aluminum are prohibited; however aluminum soffits and fascia are allowed. Reflective glass is prohibited. The variety of a Home's exterior materials shall be kept to a minimum. Only tile roofs are allowed. Exterior and roof materials may only be used in the manner commonly accepted for that particular material. Exterior and roof materials shall be subject to Architectural Review in accordance with 3.

2.9. Exterior Home Colors: The exterior colors of Homes shall be harmonious and compatible with colors of natural surroundings, other adjacent Homes and with the colors already established in DANIELS PRESERVE. Natural materials should be protected but remain natural. Exterior Home colors shall be subject to Architectural Review in accordance with 3.

2.10. Similar Exteriors: One of the **goals** of Architectural Review is to develop and maintain a subdivision with sufficient contrast between adjacent Homes. Homes that have identical or similar elevations shall be separated by no fewer than one (1) Lot and shall not be located directly across the street from each other. Further, no Home shall be constructed with a substantially similar entry or front elevation as the Home on a contiguous Lot. Special exterior features such as, but not limited to, balconies, porches, awnings, canopies, shutters and window boxes are subject to Architectural Review in accordance with 3.

2.11. Garages. Each Home shall have a minimum two (2) car, fully enclosed garage which shall be attached to and made an integral part of the Home.

2.12. Roof Pitch and Home Height: Each Home shall have a minimum 5/12 pitched roof. Flat deck roofs shall not be permitted. The height of a Home more than one story shall be subject to Architectural Review in accordance with 3. The height of a Home shall be measured from the finished floor elevation (as defined in 2.15) to the ridge of the roof or any element of the Home including chimneys, flues and vents. The purpose of restricting the height of a Home shall be to preserve views and aesthetics for the benefit of DANIELS PRESERVE.

2.13. Construction Activity and Construction Rules and Regulations. During any construction activity by or on behalf of an Owner within DANIELS PRESERVE, the construction area shall be maintained in a neat and orderly manner. All debris shall be contained on the Owner's Lot. A container of

adequate size and construction shall be placed on the Lot and all construction debris and rubbish shall be deposited in the container not less than each day. The construction debris and rubbish shall be collected on a regular basis. No temporary trailer shall be placed on any Lot without the prior written approval of Declarant. Construction vehicles shall be parked so as not to block or interfere with the use of streets within DANIELS PRESERVE. All Owners and their contractors shall comply with the Construction Rules and Regulations, if any, as adopted and amended by the Declarant from time to time. Declarant shall have the power to promulgate, adopt and amend Construction Rules and Regulations (which may be in the form of a manual) as it deems necessary to govern construction of Homes and Improvements and activities related thereto. The Construction Rules and Regulations promulgated by Declarant may provide requirements and restrictions concerning construction activity including, but not limited to, rubbish and construction debris removal; temporary sanitary facilities; parking areas; permissible times of access and construction; outside storage; restoration of damaged property; conduct and behavior of contractors, their agents and employees, or any other person involved in the construction; conservation of landscape materials; and fire protection.

2.14. Landscaping Requirements. Within sixty days of conveyance of a Lot to an Owner, the Lot shall be landscaped in accordance with this provision; a landscaping materials approved list" furnished to the Owner by Declarant; and shall include an adequate sprinkler irrigation system (hereinafter collectively referred to as "Lot Landscaping"). Each Owner is responsible for providing and maintaining Lot Landscaping to the street pavement. Lot Landscaping requirements are established to maintain landscaping compatibility throughout DANIELS PRESERVE by preserving the natural character of the land and ensuring that new Lot Landscaping achieves the landscaping functions defined in 1.a, b, c and d below. Close attention shall be paid to the preservation and enhancement of the Lot's existing native vegetation, the preservation of the Lot's botanical and scenic features, the conservation of ground forms, and the development of a harmonious residents, pleasant paths of movement and attractive use areas. An Owner, while preserving the landscape integrity of the community, may add an individual touch to Lot Landscaping as long as additions are in conformity with the requirements of these Lot Landscaping requirements and are approved in accordance with 3.

- DANIELS PRESERVE include:
1. Landscaping Functions. The functions of landscaping within
 - a. architectural: privacy control, screening objectionable views and developing paths of movement;
 - b. engineering: erosion control, drainage, glare reduction and noise control;
 - c. climate control: heat reduction (shade) and wind protection; and
 - d. aesthetic uses: maintaining visual continuity through the enhancement and complementing of architecture using background and accent Lot landscaping.

These functions are to be achieved by Lot Landscaping.

2. Plant Restrictions. No Brazilian Pepper, Melaleuca or other exotic plants and trees shall be permitted on any Lot or within the Common Area. No tree or shrub, the trunk of which exceeds four (4) inches in diameter, shall be cut down or otherwise destroyed without prior approval in accordance with 3. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon any Lot. No rock, shell or other minerals or non-plant material shall be placed or maintained upon any Lot.

3. Lot Landscaping Plan. A Lot Owner shall submit a Lot Landscaping Plan as part of the plans and specifications requirement for Architectural Review in 3. The Lot Landscaping Plan shall at a minimum include: (1) a list of the plants describing the size of the plants at the time of planting; (2) a site plan showing the location, diameter and species of all existing trees and a designation of all trees to be removed; the proposed planting areas, sodded areas, and all shrub and tree locations; and all existing and proposed improvements, including but not limited to driveways, sidewalks, patios, pool decks, decks, porches, gazebos, and other landscape features.

4. Vacant Lot Maintenance. Each vacant Lot must be kept mowed and clear of rubbish, weeds and high grass by the Owner. If the Owner cannot or does not provide regular and adequate maintenance of its vacant Lot, the Declarant, the Association, or their authorized agent, ten (10) days after written notice to the Owner at the Owner's address set forth in records of the Association, shall have the right (but not the duty) as it deems necessary to perform Lot maintenance. In the event, pursuant to this subparagraph, the Declarant or the Association provides Lot maintenance for the Owner's Lot, it shall be repaid on demand by the Owner the actual cost thereof plus thirty percent (30%) of the cost thereof. The Association and the Declarant shall have the right, power and authority to record and enforce a claim of lien against the Owner and its Lot to recover the cost of maintenance (plus 30%) as set forth in this 2.14.4, including the right to recover additional costs, interest and attorneys' fees.

2.15. Finished Floor Elevation. The Finished Floor Elevation and Lot grading shall be according to the Development Plan or as approved in accordance with 3.

3. Architectural Review. No Home, improvement or structure, any modification thereof or addition thereto of any nature (hereinafter collectively an "Improvement") shall be constructed, built, erected, placed, altered or relocated on any Lot, or removed therefrom (hereinafter collectively "Construction"), until the construction plans and specifications (which shall at least include a plan showing the location of the improvement, a landscaping plan and a Lot clearing, grading and drainage plan), have been approved in writing by the Declarant, its successors or assigns while Declarant owns at least one Lot, and thereafter by the Board of Directors of the Association (hereafter "Board of Directors"), and Owner obtains all necessary Governmental approvals. For the purpose of this 3 the term "Declarant" shall include the Board of Directors after the Declarant has sold all of its Lots in DAN IELS PRESERVE or after Declarant assigns its rights hereunder to a Sub Developer or the Association; the term "Declarant" shall also include Declarant's successors, assigns and appointees. Each Improvement, together with landscaping, shall be Constructed only in accordance with the plans and specifications approved by Declarant and applicable Governmental Approvals and Governmental Requirements. Declarant's disapproval of plans and specifications may be based on any grounds, including purely aesthetic ones, based solely on its subjective judgment. Any change in the appearance of any Improvement and any material change in the appearance of landscaping, shall be deemed an Improvement requiring Declarant's approval; provided, however, that lights, flags and other decorations customary for holidays shall not require Declarant's approval hereunder (but may be regulated by Declarant as to size, quantity, nature and length of time they may remain in place).

3.1. Application for Architectural Review and Plan Submittal. Prior to the Construction of an Improvement on a Lot, the Owner shall submit to the Declarant two (2) sets of the plans and specifications described above.

3.2. Improvement Requiring Approval. In addition to Homes, other Improvements requiring Declarant approval under this 3 include, but are not limited to, fences, walls, hedges and other boundary structures, driveways, sidewalks, pools, pool decks, gazebos, Jacuzzis, screen enclosures, decks, patios or extensions, exterior paint or finish, exterior or roof materials, awnings, shutters, hurricane protection, outside storage sheds, play apparatus and similar structures, swales, sidewalk/ driveway surfaces or treatments, antennas and satellite dishes or other Improvements of any kind, even if not permanently affixed to the Lot or to other Improvements.

3.3. Approval or Disapproval. The Declarant shall approve plans and specifications submitted for its approval only if it determines in its sole discretion that the Improvement meets the purpose of architectural control complies with the construction requirements and restrictions, and the procedures of this 3. The Declarant may condition its approval of plans and specifications as it deems appropriate, and may require submission of additional detail in plans and specifications, other information, or additional plans and specifications, including without limitation, floor plans, plot plans, site plans, drainage plans, elevation drawings and descriptions or samples of exterior materials and colors. Declarant's final written approval must be obtained prior to the Owner, its agent or contractor applying to the Governmental Authority for a building permit. If, following Declarant's review of the plans and specifications, Declarant disapproves the plans and specifications, Declarant shall notify the Owner of the items thereof which were objectionable. In the event the Owner corrects the objectionable portions, the Owner may resubmit the plans and specifications, as corrected, for approval. Upon Declarant's approval of an Owner's plans and specifications either as originally submitted or resubmitted, Declarant shall indicate its approval in writing on the plans and specifications. After Declarant's approval, Declarant shall return one set of the plans and specifications to the Owner and Declarant shall retain the other set.

3.4. Approval or Disapproval Deadline. Except as otherwise provided herein, the Declarant shall act on submissions to it within thirty (30) days after receipt of the plans and specifications, and all further documentation required by Declarant, or else the request shall be deemed approved. Until receipt of all required plans and specifications, and all further documentation required by Declarant, the Declarant may postpone review of any plans and specifications submitted or resubmitted for its approval. No request for approval shall be valid or require any review or response unless and until the Lot Owner has paid all Assessments on the Lot (and any interest, costs and attorneys' fees due thereon) or while any other violation of this Declaration or the Association's Rules and Regulations remains uncured.

3.5. Consent of Other Owners. The Declarant may, but shall not be obligated to, require any request for its approval under 3 be accompanied by the written consent of the Owners of the Lots [up to five (5)] adjoining or nearby the Lot proposed to be improved.

3.6. No Liability for Approval or Disapproval. Declarant's approval of plans and specifications shall not constitute or be implied or construed to constitute Declarant's warranty as to plans and specifications. Neither the Declarant, its representatives, agents or any member, representative or agent of the Association, its Board of Directors, or an Architectural Review Committee, shall be liable for, the approval or disapproval of plans and specifications, for design of plans and specifications, or for the safety, soundness, materials or usefulness for any purpose of any improvement, or as to compliance with governmental or industry codes or standards. By submitting a request for the approval of plans and specifications hereunder, the requesting Owner shall be deemed to have automatically agreed to hold harmless and indemnify the aforesaid persons and entities from and for any loss, claim or damages connected with the aforesaid aspects of the Improvements.

3.7. No Waiver of Future Disapprovals. Declarant's approval of plans and specifications, or of any other matter requiring Declarant's approval under 3, shall not constitute or be implied or construed to constitute a waiver of Declarant's right to disapprove any similar plans and specifications or matters, whatsoever subsequently or additionally submitted to Declarant for approval under 3.

3.8. Architectural Review Committee. Declarant shall have the right (but not the duty) to appoint an Architectural Review Committee and to vest in it all or any portion of Declarant's powers under this Article 3. If the Declarant appoints an Architectural Review Committee and assigns to it all or a portion of Declarant's powers under this 3, then the Association's Board of Directors shall establish reasonable procedures to govern that committee.

3.9. Variance. Declarant may authorize variances from compliance with any of the provisions of this Appendix C when Declarant in its sole discretion determines circumstances including, but not limited to, topography, natural obstructions, hardship, aesthetic, environmental or other considerations

require. The variance shall be evidenced in writing and shall be signed by the Declarant in order to be valid. If Declarant grants a variance, no violation of this Declaration shall be deemed to have occurred with respect to the specific matter for which the variance is expressly granted. The Declarant's grant of a variance shall not, however, operate to waive any of the terms, provisions, restrictions, requirements, or conditions of this Declaration for any purpose, except as to the particular Lot, and particular matter expressly addressed in the variance, nor shall the variance affect in any way the Owner's obligation to comply with all Governmental Requirements and Governmental Approvals affecting the Owner's use of its Lot, including but not limited to, zoning ordinances, set-backs or requirements imposed by any governmental or municipal authority.

4. Remedies. In the event of any Lot Owner violation of this **Appendix C**, and after giving the Owner fifteen (15) calendar days' prior written notice of the violation, the Declarant (its agents, assigns and designees) shall have all rights and remedies lawfully available to it as well as the specific right (including an easement and license) to enter upon the applicable Lot and remove or otherwise remedy the violation. The Declarant's cost of removal or remediation of the violation plus a surcharge of a minimum of \$25.00 (but in no event more than thirty percent (30%) of the cost) shall be an Individual Assessment against the Lot (and Lot Owner), which Individual Assessment shall be payable upon demand and secured by the lien for Assessments provided for in this Declaration. In the event any Improvement for which approved plans and specifications is required under this Appendix C is not completed in substantial compliance with approved plans and specifications or within governing time deadlines for completion, the Declarant may proceed in accordance with the remedies set forth herein.

5. Appendix C Not Applicable to Declarant. Without limiting the generality of this **Appendix C**, the foregoing provisions of **Appendix C** shall not be applicable to Lots and the Improvement of Lots owned by Declarant, Builder, or their designees. That is, the Declarant, Builder, and their designees shall be exempt from the provisions of **Appendix C** with respect to construction of Improvements on Declarant-owned or Builder-owned Lots and Declarant and Builder shall not be obligated to obtain approval for any construction of Improvements which Declarant or Builder may elect to make at any time on its Lots.

6. Independent Builders. DANIELS PRESERVE is being developed by the Declarant. Homes constructed within DANIELS PRESERVE may be constructed by the Declarant (or its designated contractor), or if approved by Declarant, by an independent contractor with which an Owner contracts. The Declarant reserves the right to approve or disapprove contractors in Declarant's sole discretion. If a Home is constructed by a contractor other than the Declarant (or its designated contractor), the Declarant shall have no liability whatsoever for the contractor's construction of the Home or construction activities.

7. No Amendment Without Declarant's Approval. As long as Declarant owns any Lot within DANIELS PRESERVE or any other land subject to this Declaration, Appendix C may not be amended without the Declarant's written consent which may be withheld by Declarant in its sole discretion.

APPENDIX D

(Reference: Article 12, Section 4)

ARBITRATION OF CLAIMS

Builder, its successors and assigns shall have all of the same rights as Declarant as to Claims against the Builder

1. **Arbitration of Claims.** Warranty, negligence or other claims against the Declarant, Builder, or any person or entity having a right of contribution from, or being jointly and severally liable with, the Declarant and/or Builder (collectively the "Claim") relating to the design, construction, furnishing or equipping of The Properties, must be adjudicated pursuant to binding arbitration, rather than civil litigation, as permitted by the Florida Arbitration Code (the "Code"), Chapter 682, Florida Statutes; arbitration must be conducted only in the following manner:

1.1. The person or entity making the Claim, including, but not limited to, the Association, any Sub-Developer, or any Owner (collectively the "**Claimant**"), must give the Declarant written notice of the Claim. The Claimant's notice must specify with particularity the basis of the Claim and include a true and complete copy of each study, survey or other document supporting or forming the basis of the Claim.

1.2. Within thirty (30) days of Declarant's receipt of the Claimant's notice of the Claim, the Declarant will hire, at its own expense, a duly licensed engineer or architect, as appropriate (the "Arbitrator") to serve as the arbitrator of the Claim pursuant to the Code. The Arbitrator must be independent of the Declarant and the Claimant, not having any then current business relationship with the Declarant or Claimant, other than by virtue of being the Arbitrator. Upon selecting the Arbitrator, the Declarant must notify the Claimant in writing of the name and address of the Arbitrator.

1.3. Within thirty (30) days after the Declarant notifies the Claimant of the name and address of the Arbitrator, the Claimant and the Declarant are permitted to provide the Arbitrator with pertinent materials to assist the Arbitrator in rendering his findings.

1.4. If the Claimant or Declarant requests that a conference be held to discuss the Claim, the conference will be held, and the Arbitrator will establish reasonable procedures, guidelines and ground rules for the conduct of the conference. At the conference the Claimant and the Declarant are entitled to representation by a member in good standing of the Florida Bar and any other expert witness. In the event a conference is held, the sixty (60) day time period referenced in 1.5 will be extended as the Arbitrator deems warranted. At the conference, the Arbitrator will notify the Declarant and Claimant of the date when the Arbitrator will issue the Final Report.

1.5. Within sixty (60) days from the date of his appointment, the Arbitrator will review the Claim and supporting materials, the relevant portions of The Properties and all appropriate plans, specifications and other documents relating thereto, and render a written report (the "**Final Report**") to the Declarant and the Claimant setting forth, on an item by item basis, his findings with respect to the Claim and the suggested method of correction of those items of the Claim he determines valid. If the Declarant requests, by written notice to the Arbitrator, the Arbitrator will specify the estimated cost of the correction of each item of the Claim he determines valid and will offset therefrom costs reasonably attributable to the Claimant, as the case may be, for failure to maintain or mitigate or to any contributory or comparative negligence, in all cases whether chargeable to the Claimant or to persons or entities other than Declarant.

1.6. The Declarant has one hundred eighty (180) days after receipt of the Final Report in which to: (i) correct the items of the Claim the Arbitrator determines valid; or (ii) pay to the Claimant the amount estimated by the Arbitrator to be the cost of correction of any item of the Claim the Arbitrator determines valid less the offset referred to in 1.5 above; or (iii) any combination of (i) and (ii).

1.7. As to those items of the Claim the Declarant elects to correct, upon completion of all corrective work the Declarant will notify the Arbitrator in writing (with a copy of the notice to the Claimant) and the Arbitrator will inspect the corrected items and render a written report (the "Remedial Report") to the Declarant and the Claimant confirming those items of the Claim have or have not been corrected. The procedure may be repeated as often as necessary until all items of the Claim have been corrected.

1.8. For all purposes, the Arbitrator's Final Report and Remedial Report constitute binding and enforceable arbitration awards as defined in Section 682.09 of the Code and any person or entity affected by either or both of those reports has the right to seek the enforcement of either or both of them in a court of competent jurisdiction. Moreover, no Claimant (or potential Claimant) has the right to seek separate judicial relief with respect to warranty, negligence or other claims, or to seek to vacate the aforementioned arbitration awards, except in accordance with the Code, and then only upon the specific grounds and in the specified manner for the vacation of awards as established by Section 682.13 of the Code.

1.9. The Arbitrator is not liable to the Claimant or the Declarant by virtue of the performance of Arbitrator's services hereunder.

1.10. The procedures set forth in this Appendix D are the only means by which disputes as to Association finances (including, without limitation, the Declarant's payment of assessments, deficit funding obligations, if any, the handling of reserves and the keeping of accounting records), will be addressed. In the event of Claims related to Association finances, the Arbitrator must be a Certified Public Accountant who: (i) is a member of the Community Associations Institute; and (ii) meets the independence test set forth in 1.2.

1.11. In the event of any dispute as to the legal effect or validity of any Claim (e.g., as to standing, privity of contract, statute of limitations or laches, failure to maintain or mitigate, existence of duty, foreseeability, comparative negligence, the effect of disclaimers or the interpretation of this Declaration or any Development Document as it applies to the Claim), those disputes must be submitted to Arbitration, as herein provided; the Arbitrator must be a member in good standing of The Florida Bar chosen by the Declarant, which Arbitrator must be independent of the Declarant and the Claimant as set forth in 1.2. In that event, all time deadlines which cannot be met without the resolution of disputed matters will be suspended for that time as the Arbitration provided for in this 1.11. continues until final resolution.