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DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS
CALOOSA TRACE, A RESIDENTIAL DEVELOPMENT

2810725

KNOW ALL MEN BY THESE PRESENTS, THAT:

Caloosa Group, Inc., a Florida corporation ("Developer"), hereby subjects to the provisions, restrictions, reservations, covenants, conditions and easements hereinafter set forth (the "Declaration"), all of the land and all improvements now existing thereon (the "Property" or "Development Property"), except the pipes, conduits, electric lines, cable television lines, telephone lines, sewer and water lines, lift stations, pumps and other portions of water, sewer, cable television, telephone, electrical and other utility systems, and except for certain land designated as Tract "A" in the Plat hereinafter referenced, located in Lee County, Florida, and shown on the Plat of Caloosa Trace Unit 1, according to plat thereof recorded in Plat Book 44, pages 81 and 82, of the public records of Lee County, Florida, all of which shall constitute covenants running with the land, binding upon owners and lessees of any part of the Property, and their heirs, successors, personal representatives and assigns.

ARTICLE I

DEFINITIONS

1. Lot(s) Lot means a lot shown on the Plat.
2. Owner. Owner means the person or entity owning a Lot in fee simple.
3. Development Property. Development Property means all of the property subjected to this Declaration.
4. Member. Member means any person entitled to membership in the Association.
5. (a) Common Elements. Common Elements means all of the Development Property not dedicated to others on the Plat except the Lots and shall include but not be limited to:
 - (i) drainage swales, drainage and utility easements hereby granted in favor of the Association, and each Owner, for drainage and utilities; and parts of the Development Property not included within any Lot or which do not serve a particular Lot and that have not heretofore or hereafter dedicated to others;

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BY: J. NEAL, D.C.

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(ii) Areas shown on the Plat for stormwater drainage and retention, if any; and

(iii) All tangible personal property, if any, required for the maintenance and operation of the Development Property and for the common use and enjoyment of the Owners.

6. Common Expenses. Common Expenses are:

(a) Expenses of administration, insurance, maintenance, operation, repair and replacement of the Common Elements, and costs of carrying out the powers and duties of the Association, including professional fees and expenses.

(b) Expenses declared Common Expenses by provisions of this Declaration or by the Bylaws of the Association.

(c) Any valid charge against the Development Property as a whole.

7. Conservation Area. Conservation Area means those lands, if any, within and lying adjacent to the Development Property that are below the jurisdictional lines of the U.S. Corp of Army Engineers shown on the Plat.

8. Common Surplus. Common Surplus means all amounts held by the Association in excess of estimated current operating expenses and common reserve funds.

9. Association. The Association means Caloosa Trace Homeowner's Association, Inc., a Florida non-profit corporation, organized to manage the Development Property.

10. Board of Directors. The Board of Directors means the Board of Directors of the Association.

11. Plat. The Plat means the recorded plat of Caloosa Trace Unit 1 recorded in Plat Book 44, pages 81 and 82, public records of Lee County, Florida.

ARTICLE II

LOTS AND APPURTENANCES

1. Membership in the Association. Ownership of a Lot shall automatically make the Owner a member of the Association and an owner of an undivided 1/72nd interest in the funds and assets of that corporation. In the event additional Lots are made subject to this Declaration pursuant to Section 4 of Article

VIII, then such Owner shall own an undivided percentage interest in the funds and assets of that corporation, which undivided percentage interest shall be equal to the number of Lots owned by such Owner divided by the total number of Lots in the Development Property as expanded by Developer.

2. Easements. The Association shall have the right to grant permits, licenses and easements over the Common Elements for utilities, roadways, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Development.

3. Minimum Lot Size. All Lots shall at a minimum be 80 x 105 feet, or as otherwise set forth in the Plat, and no Lot shall be subdivided if it will result in a Lot which is smaller than the stated minimum.

ARTICLE III

DEVELOPER'S LOTS AND PRIVILEGES

1. Right to Own and Sell. The Developer, its assigns or designees shall have the right to transact on the Development Property any business necessary to consummate the sale, lease or rental of Lots, including but not limited to the right to maintain models, have signs, maintain an office and employees on the Property and use the Common Elements to show Lots. A sales and rental office, signs and all items pertaining to sales and rentals shall not be considered Common Elements and shall remain the property of the Developer or its assigns.

2. Right to Divide or Combine Lots. The Developer reserves the right to divide or combine one or more Lots or portions thereof at any time prior to the sale of such Lots by the Developer and make any necessary changes to the Plat as required by such action. In the event that Developer divides or combines Lots, the membership in the Association shall be increased or decreased so that the Association shall be comprised of all Owners. Only the Developer shall have the right to so divide or combine Lots, and in no event shall any Owner or other party have the right to divide or combine Lots without the express written consent of Developer (which consent may be withheld by Developer in its sole and absolute discretion).

3. Prohibited Actions. So long as the Developer is the owner of record title to any Lot, and holds that Lot for sale in the ordinary course of business, none of the following actions may be taken without approval in writing from the Developer:

(a) Assessment of the Developer as a Lot Owner for capital improvements;

(b) Any action that would be detrimental to the sale of Lots by the Developer; provided, that a uniform increase in assessments for Common Expenses without discrimination against the Developer shall not be deemed detrimental.

ARTICLE IV

MANAGEMENT OF THE DEVELOPMENT

The administration and management of the Development Property shall be conducted by the Association. The Association shall administer and manage the Development Property, and shall maintain and repair the Common Elements. The Association has all of the rights and powers available to a non-profit association under the laws of the State of Florida, and in addition, the rights, powers and duties accorded to it by this Declaration. All expenses of the Association shall be assessed as a Common Expense of the Owners as provided in the Bylaws of the Association.

The Association shall at all times maintain a register setting forth the names of the Owners. In the event of the sale or transfer of any Lot to a third party, the purchaser or transferee shall notify the Association in writing of his interest in the Lot together with the recording information for the instrument by which such purchaser or transferee has acquired his interest. The Owner shall notify the Association of any mortgages encumbering any Lot, stating the name and address of the mortgagee and the amount of such mortgage or mortgages and the recording information. The holder of any mortgage encumbering any Lot may notify the Association of the existence of any mortgage held by such party and upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to it.

ARTICLE V

MAINTENANCE, ALTERATION AND REPAIR

The responsibility for the maintenance and repair of the Development Property shall be as follows:

1. Maintenance by the Association. The Association shall maintain, repair and replace:

(a) All Common Elements, including, but not limited to any drainage swales, perimeter berms, ditches and all other related stormwater drainage components (but not including any swales, berms, ditches or other stormwater drainage components maintained by the East Mullock Drainage District or other governmental agency).

(b) All other items which the Board of Directors of the Association determines shall be maintained, repaired or replaced by the Association, in accordance with uniform policies, consistently applied.

The Association shall have an easement over, across and under and access to each Lot during reasonable hours as may be necessary for repair or maintenance of any Common Elements located therein or accessible therefrom and shall have such rights of access in emergencies as are reasonably necessary to prevent damage to a Lot or to the Common Elements.

2. Maintenance by Owner. The Owner shall:

(a) Maintain, repair and replace, when necessary, the exterior of each Lot and all structures and improvements thereon including, but not limited to, any sidewalk crossing such Lot. The areas to be maintained by the Owners for which the Association shall have right to undertake such maintenance in the event of Owner's failure to do so shall be limited to:

i. The exterior appearance of any structure located on the Lot, which shall be maintained in a neat and attractive manner; and

ii. The yard and landscaping of the Lot, including all shrubs, hedges, lawns, fences and other parts thereof which shall be maintained in a neat and attractive manner.

(b) Not install any mechanical equipment which causes annoyance to the occupants of other Lots.

(c) Promptly report to the Association any defects or need for repairs for which the Association is responsible.

3. Maintenance of Lot by Association. If the Owner shall fail to commence and diligently pursue the maintenance and repair required by this Article within fifteen (15) days after written notice, by certified mail, return receipt requested, to do so has been deposited by the Association in the U.S. mail, postage paid, addressed to the last known address of Owner, the Association shall have the right to make such repairs, maintenance or replacement at the expense of the Owner. If the Owner fails to

reimburse the Association for such expenses within five (5) days of the date demand therefore is placed in the U.S. mail, postage paid addressed to the last known address of the Owner, the Association shall have a lien against that Owner's Lot for such expenses as set forth below. Each Owner hereby irrevocably appoints the Association as its agent and attorney-in-fact to contract for and make any such repairs or maintenance on behalf of Owner, it being agreed that such appointment is coupled with an interest. The Association, upon effecting any such repairs, maintenance or replacement shall be entitled to place a lien against the Lot under Florida's Mechanic's lien laws or otherwise. The Association shall also be entitled to collect from such Owner the costs and attorneys' fees incurred by the Association in collecting any amounts hereunder and said lien shall also secure payment of such costs and attorneys' fees.

4. Alteration and Improvements to Common Elements. No alterations or additions to the Common Elements shall be made except upon the approval of 2/3 of the votes of the Board of Directors.

5. Reconstruction or Repair After Casualty.

(a) In the event of any damage to the Common Elements, the Association shall promptly reconstruct the same substantially as they existed prior to the casualty. To the extent that the cost of reconstruction exceeds any insurance proceeds and other funds on hand, the Association may assess the Lot Owners for such cost in the manner set forth herein, provided, however, that such assessment shall not affect any right of the Association to seek damages against any Lot Owner responsible for such casualty.

(b) Damage to Lots. If any part of any Lot shall be damaged by casualty, the Lot Owner shall either reconstruct the improvements on such Lot in such a manner as to render the improvements habitable, or shall raze any structures and clear the Lot. Any reconstruction shall be made in conformity with the architectural controls set forth herein. In the event the Lot Owner fails or refuses to either reconstruct or raze the improvements, the Association may, at its sole and absolute option, either reconstruct or raze the improvements after notice to the Lot Owner as set forth in Subparagraph 3 above and shall have a lien as set forth therein.

(c) Eminent Domain.

i. If part of the Common Elements are taken, all awards attributable to such taking shall be distributed to the Association which shall use such awards to repair or replace the Common Elements to the extent possible. If the award exceeds the cost of repair or replacement, the excess shall be retained by the Association and become a part of the Common Surplus.

ii. The Lot Owners hereby appoint the Association as their attorney-in-fact for purposes of any proceedings, negotiations, settlements, or agreements relating to or arising from condemnation, destruction, or liquidation of the Development Property.

ARTICLE VI

ASSESSMENTS AND LIENS

The Board of Directors of the Association shall approve annual budgets of projected expenses for each fiscal year and assess each Lot Owner for his pro rata share, which pro rata share shall be the amount of such expenses multiplied by a fraction, the numerator of which shall be the number of Lots owned by such Owner and the denominator of which shall be the number of Lots in the Development Property as reflected by the Plat.

Each Owner's assessment for his Lot shall be due and payable to the Association annually in advance in the second day of January unless some other payment schedule is adopted by the Board of Directors. If necessary to cover unanticipated expenditures which may be incurred during the fiscal year, the Board of Directors may levy special assessments against Owners in proportion to their share of the Common Expenses. In addition, the Board of Directors may assess Owners for certain expenses attributable solely to their Lot. Such special levies may be for costs specifically provided herein (such as reconstruction or repair after casualty) or may be solely in the discretion of the Board of Directors.

Any assessments, including special assessments, provided for in this Declaration which are not paid when due shall bear interest from the due date until paid at the rate of eighteen (18) percent per annum or such lower rate as the Board of Directors shall determine, shall be subject to a late charge as may be set and uniformly applied by the Board of Directors and shall entitle the Association to reimbursement of attorneys' fees incurred by the Association incident to the collection of any such delinquent assessment. The Association shall have a lien on each Lot for any unpaid assessment, including special assessments, together with interest thereon, and for reasonable attorneys' fees incurred by the Association incident to the collection of the assessment or enforcement of the lien. Such liens shall not attach until a claim of lien is recorded in the public records of the County in which the Property is located and shall be subordinate to the lien of an institutional mortgage recorded prior to the time of recording of the claim of lien. In addition, the Association shall have all other remedies provided

by applicable laws for the collection of the above, or the enforcement of its lien. The liability for assessments may not be avoided by waiver of the use or enjoyment of any Common Elements or by abandonment of the Lot for which the assessment is made.

ARTICLE VII

USE RESTRICTIONS AND EASEMENTS

The use of the Development Property shall be in accordance with the following provisions:

1. Use of Common Elements. The Common Elements shall be used only for the purposes for which they are intended for the exclusive benefit of the Owners, occupants of the Lots, and their guests. Retention ponds may not be used for any recreational use whatsoever.

2. Association Regulations. Reasonable regulations concerning the use of the Development Property may be made and amended from time to time by the Board of Directors of the Association.

3. Single Family Residence Only; Two Story Limit; Minimum Square Footage. No structure shall be erected, altered or permitted to remain on any Lot other than single family residential dwellings. Lots shall be used for residential purposes only, and businesses or commercial uses, including, but not limited to, doctors, dentists, accountants, hair-dressers, etc., are specifically prohibited. No structure shall be erected which is greater than two stories in height or has less than 1,400 square feet of heated and air conditioned enclosed living space exclusive of screened or unscreened porches and garages. All structures are to be of concrete, brick or masonry construction. No wood frame structure shall be permitted without approval of the Developer. No aluminum siding shall be permitted on any structure without approval of the Developer.

4. Building Setback Lines. All residential dwellings shall be located within the building restriction lines dictated or otherwise established by the Lee County Building Department or other governmental agency having jurisdiction over the Development Property, but in no event shall any such building encroach upon the six (6) foot utility easement provided for in paragraph 23 of this Article or upon the Conservation Area (jurisdictional area), if any, shown on the Plat.

5. Other Structures. Without the prior written consent of the Association, no buildings, structures, pens, yards and houses

for pets, above-ground storage, clothes racks and lines, washing and drying equipment, laundry rooms, tools and workshops, garbage and trash cans, detached garages, hothouses, greenhouses, guest houses, bathhouses, summerhouses, outdoor fireplaces, barbeque pits, or any other structure or objects of any unsightly nature or appearance may be constructed or permitted to remain upon a Lot. Air conditioning units may be installed at the side of the residence provided the noise from same will not disturb their neighbors. Each such unit must be adequately and ornamentally screened.

6. Architectural Review. For the purpose of further insuring the development of the Development Property as a residential area of consistent quality and standards, and in order that all improvements on each Lot shall present an attractive and pleasing appearance from all sides of view, the Developer reserves the exclusive power and discretion to control and approve all of the buildings, structures and other improvements on each Lot in the manner and to the extent set forth herein. No residence or other building, and no building, fence, wall driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main residence shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any additions to or exterior change or alteration thereto be made, unless and until building plans and specifications covering same, showing the nature, kind, shape, height, size, materials, exterior color schemes, location and orientation on the Lot, together with the approximate square footage, construction schedule and such other information as the Developer shall require, (including, if so required, plans for the grading and landscaping of the Lot showing any changes proposed to be made in the elevation or surface contours of the land) have been submitted to and approved by the Developer in writing. The Developer shall have the absolute and exclusive right to refuse to approve any such building plans and specifications and Lot-grading and landscaping plans which are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons. In passing upon such building plans and specifications and Lot-grading and landscaping plans, the Developer may take into consideration the suitability and desirability of proposed constructions and the materials of which the same are proposed to be constructed and the quality of the proposed workmanship as the Developer shall specify or require. In the event Developer fails to approve or disapprove the plans, specifications and other items required under the terms of this paragraph within thirty (30) days after the same have been submitted to Developer in writing, such approval shall not be required and the provisions of this paragraph shall be deemed to have been complied with. The Developer's rights hereunder shall pass to the Association at such time as a residence has been constructed on each Lot or at such earlier

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time as the Developer may assign its rights hereunder to the Association; provided, however, that no such transfer shall affect or negate any prior approval or disapproval of the Developer. In no event shall Developer be liable with respect to any claims or alleged damages arising from or in connection with any approval, or withholding of approval, as to any matter addressed in this paragraph 6.

7. No Overhead Wires; Utility Maintenance. All telephone, cable television, electric and other utility lines and connections between the main utilities lines and the residential dwelling located on each Lot shall be concealed and located underground so as not to be visible. All utility lines serving a Lot from the point of connection with a main distribution line constructed by Developer shall be constructed and maintained by the Lot Owner at its sole expense. The Owner of a Lot subject to the privileges, rights and easements referred to in this paragraph shall acquire no right, title or interest in or to any wires, cables, conduits, pipes, mains, lines or other equipment or facilities placed by others on, over or under the property which is subject to said privileges, rights and easements.

8. No Sheds, Shacks or Trailers. No shed, shack, trailer, tent or other temporary or movable building or structure of any kind shall be erected or permitted to remain on any Lot. However, this paragraph shall not prevent the use of adequate sanitary toilet facilities for workmen during the course of such construction. Likewise, any contractor or sales person authorized by Developer may maintain a trailer or portable construction shack of attractive design suitably landscaped on any Lot used in connection with the construction or sale of houses being built in this Development for no longer than twelve (12) months. The location and landscaping of the trailer shall be subject to approval by the Developer as set forth in paragraph 5.

9. Residing Only in Residence. No trailer, basement, garage or any outbuilding of any kind even if otherwise permitted hereunder to be or remain on a Lot, shall be at any time used as a residence either temporarily or permanently.

10. Signs; Mailboxes. No sign of any character shall be displayed upon or permitted to remain on any Lot except "FOR RENT" or "FOR SALE" signs, which signs may refer only to the particular premises on which displayed, and shall be of materials, size, height, and design specified by the Association.

Nothing contained herein shall prevent the Developer, or its assigns, from erecting or maintaining such commercial and display signs and such temporary dwellings, model dwellings and other structures as the Developer may deem advisable for development or

sales purposes. The Developer or its assigns shall approve of mailbox locations, size and design in conjunction with the Architectural Review provisions set forth above.

11. Aerials and Antennas. No radio or television aerial, antenna or dish antenna nor any other exterior electronic or electrical equipment or devices of any kind shall be installed or maintained on a Lot or on the exterior of any structure located on a Lot unless and until the location, size and design thereof shall have been approved by the Association.

12. No Offensive Activities. No illegal, noxious or offensive activity shall be permitted or carried on upon any part of the Development Property, nor shall anything be permitted or done thereon which is or may become a nuisance to the neighborhood. Developer and the Association shall have the unrestricted and absolute right to deny ingress to any person who, in their sole opinion, may create or participate in a disturbance or a nuisance on any of the Development Property. No trash, garbage, rubbish, debris, waste materials or other refuse shall be deposited or allowed to accumulate or remain on any part of any Lot. No fires for burning trash, leaves, clippings or other debris or refuse shall be permitted to be on any part of any Lot or road rights-of-way. No commercial uses, including home occupations, shall be allowed without the approval of the Association. No mechanical repairs of any wheeled vehicle shall be permitted on any Lot.

13. Pets. No animals other than two dogs weighing a total of no more than 90 pounds, or two cats, or four birds, may be kept on any Lot for the pleasure and use of the occupants of the residential dwelling thereon, but not for any commercial or breeding use or purpose. If, in the sole opinion of the Association, the animal or animals become dangerous or an annoyance or nuisance in the neighborhood or nearby property or destructive of wildlife, they may not thereafter be kept on the Lot. Birds shall be kept in indoor cages at all times. All pets shall be kept on a leash at all times and shall be curbed.

14. Trash. Burning of trash, rubbish, garbage, leaves, or other materials in the open, by an incinerator or otherwise, is prohibited. All garbage and trash must be stored in closed containers and be hidden from any adjacent Lot or roadway.

15. Motorist Vision to Remain Unobstructed. The Association shall have the right, but no obligation, to remove, or require the removal of any fence, wall, hedge, shrubbery, bushes, trees or other thing or material, either natural or artificial, placed or located on any Lot if the location of same, are, in the sole judgment and opinion of the Association, obstructing the vision of motorists upon any of the streets.

16. Grading. No changes in elevation of any portion of a Lot shall be made which would adversely affect any adjacent Lot or the Development Property.

17. No Parking of Wheeled Vehicles, Boats, etc. No wheeled vehicles, (excluding one automobile) of any kind, including but not limited to, travel trailers, camper trailers, motor homes, mobile homes, boats, boat trailers, or any other offensive objects shall be kept or parked on any Lot, including driveways, between the paved road and the residential structure thereon. They may be so kept if completely inside a garage attached to the residential dwelling, provided, the garage door is closed except for entry and exit. Private automobiles of the occupants of a residential dwelling on a Lot and their guests and invitees may be parked in such driveways and other vehicles may be parked in such driveways during the times necessary for pick-up and delivery service, and solely for the purpose of such services. No wheeled vehicles of any kind, trailers, boats or any other offensive objects shall be kept or parked in the grassed area or the front or side yard of any Lot. No boat, boat trailer, motor home, mobile home, or other trailer may be parked in the street in front of any Lot except for the purpose of loading and unloading.

18. Garages. Each residential dwelling on a Lot shall have an attached and enclosed two car garage. All garage doors must be kept closed when not in use. No carports are allowed on Lots.

19. Window Air Conditioners. No window airconditioning units shall be installed in any residential dwelling.

20. Completion of Commenced Construction. It is the express intent of Developer that each Owner shall promptly develop residential improvements, in accordance with the terms and conditions herein contained, on such Owner's Lot after acquiring such Lot so that a Lot does not remain vacant after being transferred by Developer to an Owner. Accordingly, construction of residential improvements shall be commenced by an Owner on a Lot within one hundred twenty (120) days after the date of recordation in the public records of Lee County, Florida, of the deed to such Lot from the Developer to such Owner. When the construction of any building is once begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. The residence and all related structures shown on the plans and specifications approved by the Developer must be completed within ten (10) months after commencement of construction, unless such completion is rendered impossible as a direct result of strikes, fires, national emergencies, or natural calamities. Prior to the completion of construction, the Owner shall install at his expense a suitable paved driveway from the paved portion of the abutting street to the garage entrance.

During the construction on any Lot, all vehicles involved in such construction, including those delivering materials and supplies (except those trucks large or heavy enough to damage said driveways) shall enter into such Lot from the street only at this location.

21. Approval of Developer. Wherever the consent or approval of the Developer or the Association is required to be obtained, no action requiring such consent or approval shall be commenced or undertaken until after a request in writing seeking the same has been submitted to and approved in writing by the Developer or the Association. Such request shall be sent by certified mail with return receipt requested. In the event that the Developer or the Association fails to act on any such written request within thirty (30) days after the same has been submitted as required above, the consent or approval to the particular action sought in such written request shall be presumed; however, no action, except as referred to in paragraph 6 of this Article, shall be taken by or on behalf of the person or persons submitting such written request which violates any of the provisions of this Declaration.

22. Legal Action on Violation. If any person, firm or corporation or other entity shall violate or attempt to violate any of the provisions of this Article it shall be lawful for the Association or any person or persons owning any Lot: (a) to prosecute proceedings at law for recovery of damages against those so violating or attempting to violate any such covenants, restrictions and easements; or (b) to maintain a proceeding in equity against those so violating or attempting to violate any such covenants, restrictions and easements, for the purposes of preventing or enjoining all or any such violations or attempted violations; PROVIDED, HOWEVER, that the Owner or occupant of any residential dwelling on any Lot shall not have any right or cause of action for damages to maintain a proceeding in equity or any claim whatsoever against any builder and/or construction company for violating Paragraph 20 of this Article. The remedies contained in this paragraph shall be construed as cumulative of all other remedies now or hereafter provided by law. The failure of the Association, its successors or assigns, to enforce any covenant, restriction or easement or any obligation, right, power, privilege, authority, or reservation herein contained, however long continued, shall in no event be deemed as a waiver of the right to enforce the same thereafter as to the same breach or violation thereof occurring prior to or subsequent thereto. Owners found in violation of any of the provisions of this Article shall pay all costs and attorneys' fee to the successful plaintiff in any action seeking to prevent, correct or enjoin such violations or in damage suits thereon. All covenants, restrictions and easements contained in this Article shall be deemed several and independent. The invalidity of one or more or

any part of one shall in no way impair the validity of the remaining covenants, restrictions and easements or any part thereof.

23. Utility Easement. Each Lot shall be subject to, and Developer hereby reserves, an easement in, over, under and upon a six (6) foot wide strip along the permimeters of the front, back and side of each Lot, for the purpose of installing, maintaining and repairing electricity lines, water and sewage lines, telephone cables, surface water drainage lines, cable television and other utilities.

ARTICLE VIII

AMENDMENTS TO DECLARATION

This Declaration may be amended as follows:

1. Subject to subsections 3, 4, 5 and 6 below, until the election of the Board of Directors by the Lot Owners at the first annual meeting, this Declaration may be amended by the unanimous vote of all of the Directors provided that the amendment does not increase the number of Lots nor alter the boundaries of the Common Elements. Amendments that cannot be adopted by the Board of Directors must be approved (1) by ninety percent (90%) of the votes of the membership; and (2) by 51 percent of the holders of mortgages encumbering Lots; regardless of whether the Owners have elected a majority of the Board of Directors.

2. Subject to subsections 3, 4, 5 and 6 below, after the election of the Board of Directors by the Owners at the first annual meeting, this Declaration may be amended at a meeting of the members of the Association. Amendments may be proposed by the Board of Directors or by individual members of the Association. Proposals shall be submitted in writing to the President of the Association who, upon receipt, shall call a meeting of the Association to consider the proposed amendment. The meeting shall be held within thirty (30) days after receipt by the President of the proposed amendment. Notice of the meeting specifying the proposed amendment shall be furnished in accordance with the Bylaws of the Association. At the meeting, the proposed amendment shall be adopted if approved by not less than (1) ninety (90%) of the votes of the entire membership of the Association; and (2) by 51 percent of the holders of mortgages encumbering the Lots.

3. Notwithstanding the above, in no event shall any provision of this Declaration be amended without the prior written consent of the Developer (which consent may be withheld

by Developer in its sole and absolute discretion) so long as Developer is the record title holder of any Lot.

4. Notwithstanding the above, Developer shall have the right to subject additional property to the terms and conditions of this Declaration, without the consent of any other party, so long as such additional property has been platted as residential lots and is adjacent to the Property. Upon subjecting such additional property to the terms and conditions of this Declaration, such additional property shall be included within the term "Development Property" as defined in Article I hereof.

5. No amendment shall change any Lot or its appurtenant share in the Common Elements unless the Owner of such Lot and all mortgagees of record of such Lot shall join in the execution of the amendment.

6. No amendment shall alter any right of Developer hereunder unless Developer shall join in the execution of the amendment.

After adoption of any amendment pursuant to this Article, the officers of the Association shall execute and record in the public records of the County in which the Property is located, a certificate certifying that the amendment was duly adopted. The amendment shall be effective when the certificate and a copy of the amendment are recorded.

ARTICLE IX

FIRST LIEN HOLDERS' RIGHTS

1. Notices of Action. A holder, insurer or guarantor of a first mortgage, upon written request to the Association, (such request to state the name and address of such holder, insurer or guarantor and the Lot number), will be entitled to timely written notice of:

(a) Any proposed amendment of the Declaration effecting a change in (i) the boundaries of any Lot or the exclusive easement rights appertaining thereto, (ii) the interests in the Common Elements appertaining to any Lot or the liability for common expenses appertaining thereto, (iii) the number of votes in the Association appertaining to any Lot or (iv) the purposes to which any Lot or the common elements are restricted;

(b) Any condemnation loss or any casualty loss which affects a material portion of the Development Property or which affects any Lot on which there is a first mortgage held, insured or guaranteed by such eligible holder;

