PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, the Declarant, the Association, and others within or adjacent to the community.

OR2909 PG0886

Article XI Easements

11.1. Easements in Common Area.

The Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) The Governing Documents, the Covenants to Share Costs, and any other applicable covenants;

(b) Any restrictions or limitations contained in any deed conveying such property to the Association;

(c) The right of the Board to adopt Rules and Regulations governing the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(d) The right of the Board to suspend the right of an Owner to use any recreational areas within the Common Area (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;

(e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;

(f) The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational areas situated upon the Common Area;

(g) The right of the Board to permit use of any recreational areas situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board;

(h) The right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property, or pledge its stream of income, as security for money borrowed or debts;

(i) The right of the Board or its designee to establish Rules and Regulations for the use of any recreational areas; and

(j) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Areas," as described in Article XII.

11.2. Easements of Encroachment.

The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area, between adjacent Units, or between any Unit and any Private Amenity due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) The Declarant reserves, so long as the Declarant owns any property described on Exhibit "A" or "B" of this Declaration, the following easements throughout all of the Properties, on behalf of itself, and its nominees, successors and assigns:

(i) installing, operating, maintaining, repairing and replacing infrastructure to serve the Properties, including, without limitation, roads, walkways, pathways and trails, the Surface Water Management System, recreational facilities, areas to comply with Environmental Permit obligations, street lights, and signage, such easements shall be exclusive to the Declarant unless and until granted or conveyed to the Association or third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(ii) installing, operating, maintaining, repairing and replacing utilities to serve the Properties and each Unit, including, without limitation, gas, electricity, security and similar systems, such easements shall be exclusive to the Declarant unless and until granted or conveyed to a third party, which may be perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iii) installing, operating, maintaining, repairing and replacing pipes and systems to transport and distribute potable water, irrigation water, and treated effluent, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats;

(iv) installing, operating, maintaining, repairing and replacing telephone, cable television, telecommunications, and other systems for sending and receiving data and/or other electronic signals, to serve the Properties and each Unit, such easements shall be exclusive to the Declarant until granted or conveyed to a third party, which may be exclusive, perpetual and irrevocable, at which point such easements or interests may be more particularly described in the instrument granting or conveying such easements or interests or on the recorded plats.

(b) Declarant also reserves for itself the exclusive right and power to enter into contracts for the construction, installation, and provision of any of the items addressed in Section 11.3(a) and to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits "A" and "B." Any such contract, agreement, or easement may, in the Declarant's sole discretion, grant the exclusive right to access or use of such system, including the portions of the systems installed on or in the Units, dwellings, and other structures constructed on Units and Common Areas within the Properties.

(c) Any such contract, agreement, or easement entered into by Declarant may require that the Board enter into a bulk rate service agreement for the provision of services offered to all Units within the Properties. In such case, the cost shall be a Common Expense of the Association and shall be assessed as a part of the Base Assessment regardless of whether the Owner of a Unit desires or uses such service. If the service provides additional services or benefits to certain Owners or Units at their request, such additional services or benefits shall be paid directly by the Owner to the service provider, or become a Neighborhood Assessment or Specific Assessment, as appropriate and specified in the agreement between the Association and the service provider.

(d) All work associated with the exercise of the easements described in Section 11.3(a) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property.

The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, as well as for any private water company or public or private utility company, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, connecting and installing utilities, and connecting and installing cabling and telecommunications systems on such property.

OR2909 PG0888

Declarant agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5. Easements for Maintenance, Emergency and Enforcement.

The Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforcement of the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easements for Lake and Pond Maintenance and Flood Water.

The Declarant reserves for itself and its authorized designee, which may be a private water company, their successors, assigns, and designees, the exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps, equipment, and outfall structures to draw upon the surface water and to supply irrigation water both within and outside of the Properties; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Declarant, any private water company, public or private utility company, the Association, Community Development District, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section and this Declaration.

The Declarant further reserves for itself, the Association, a Community Development District, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area adjacent to or within 100 feet of bodies of water and wetlands within the Properties, in order, at their option and sole discretion, to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to hurricanes, heavy rainfall, or other natural occurrences.

11.7. Easements for Golf Course.

(a) Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls unintentionally to come upon such areas, and, unless restricted by the Association, for golfers at reasonable times and in a reasonable manner to come upon the Common Area, Neighborhood Common Area, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacities as such); Long Bay Partners, L.L.C., its successors, successors-in-title to the golf course, or assigns; any Builder, or a contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

(b) Any portion of the Properties immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(c) Any portion of Shadow Wood immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owner of any golf course within or adjacent to any portion of Shadow Wood, its successors and assigns, shall have a perpetual, exclusive easement of access over Shadow Wood for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

11.8. Easement for Community Development Districts.

The Declarant hereby grants, and every Unit, the Common Area, and Neighborhood Common Area is hereby burdened with, perpetual, non-exclusive easements to the extent reasonably necessary for ingress, egress, and access to properties and facilities of one or more Community Development Districts which may be created and for the installation, maintenance, repair and replacement thereof. However, this easement shall not include a right to enter any enclosed structure on a Unit or to unreasonably interfere with the use of any Unit. Any damage resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement.

OR2909 PG0890

Article XII Environmental Areas and Issues

12.1. Assignment of Responsibilities.

Within and adjacent to Shadow Wood there are various types of property such as wetlands, drainage areas, Conservation Areas, open spaces and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by local, state, federal or other governmental agencies. The Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association and/or a Community Development District(s), which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, the Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, tax-exempt foundation, or similar type entity with which the Association shall cooperate, perform the responsibilities and obligations as set forth therein, and share in the costs pursuant to a covenant to share costs or contributions from transfer fees collected by the Association as provided in Section 8.11.

Any of the properties and responsibilities within, adjacent to, or benefiting Shadow Wood such as wetlands, drainage areas, Conservation Areas, open spaces, signage, landscaping, and buffers may be included within the jurisdiction of one or more Community Development District(s). If one or more Community Development District(s) are established, the Association shall cooperate with and perform the responsibilities delegated to it by such Community Development District(s).

12.2. Surface Water Management System.

(a) No structure of any kind shall be constructed or erected, nor shall an Owner in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the Surface Water Management System reserved for, or intended by Declarant to be reserved for, drainage ways, sluiceways or for the accumulation of runoff waters, as reflected in any permits therefor, or plat or instrument of record, without the specific written permission of the Association and the Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant, the Association or Community Development Districts to such Surface Water Management System and drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefor are hereby specifically reserved and created in favor of the Declarant, the Association, Community Development Districts, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the

established Surface Water Management System without the prior written consent of the Association and the Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall Surface Water Management System for the Properties. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall Surface Water Management System requirements and permits for the Properties and meet with the approval of the Declarant and the Community Development Districts.

(e) Lakes and spillways in any Neighborhood or Unit are part of a functioning water management system and any use by an Owner or Neighborhood Association shall be on a non-interfering basis only. Additional on-site stormwater treatment areas may be required and constructed in the future.

(f) The use of any lake or wetland within the boundary of a Neighborhood or Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) No boats or other watercraft powered by gasoline or diesel fuel shall be permitted on any body of water within Properties except as may be required by the Association, the Community Development Districts, or the Declarant.

(h) The use of pesticides in any lake or wetland is prohibited, excepting only any such use by the Association, the Community Development Districts, and the Declarant.

(i) No wells may be drilled, dug or installed within any Unit or Neighborhood except by the Declarant or with the Declarant's written consent.

12.3. Conservation Areas.

Any portions of the Common Area designated as a Conservation Area shall be maintained and preserved by the Association in accordance with the rules and regulations of Lee County, Florida and the South Florida Water Management District. The Association shall not, and it shall not allow any Person to, undertake or perform any activity or improvements to a Conservation Area, or remove any native vegetation, without the prior approval of the foregoing agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a Conservation Area.

12.4. Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or Conservation Area on any plat, permit, or other document recorded in the Public Records, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that

OR2909 PG0892

diminishes or destroys the open space, buffers, preserve area or Conservation Areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

Any landscape buffer installed and maintained in the Common Area under requirements of Lee County, Florida, ordinances or any other governmental entity and which is located in an easement area shall be permanently maintained by the Association. In the event that any portion of the landscaping consisting of trees and shrubs in such easement areas are removed, the Association shall replace the trees and shrubs with like size and species as a Common Expense of the Association and without expense to Lee County, Florida or such other governmental entity with jurisdiction over the buffer.

12.5. Effluent Disposal & Water Supply.

By the act of purchasing or occupying a Unit within the Properties, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area and other areas within the Properties with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction.

All Units and Neighborhoods within the Properties shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all spigots on the exterior portion of a structure shall be connected to the potable water line. Each Owner and Neighborhood Association shall be required to connect the water lines on his Unit or Neighborhood Common Area to the lines of the utility provider(s) providing service within the Properties. The Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water resources of the Properties for any legal purpose, including the distribution and use of such water beyond the Properties. The conveyance of any Unit to an Owner or parcel to a Builder by Declarant does not include the right to develop or utilize the ground or surface water resources within such Unit or parcel.

12.6. Environmental Permits and Reporting.

The Association may be responsible for monitoring, maintaining, repairing, reporting and performing obligations arising out of any Environmental Permits as may be designated by Declarant from time to time. Declarant may notify Association in writing of the applicable Environmental Permit along with a copy thereof or summary of the monitoring, maintenance, repair, reporting or other performance obligations. An Owner shall in no way deny or prevent ingress and egress by the Declarant, the Association, or Community Development District(s) to areas necessary for the performance of such obligations arising under such Environmental Permits. The right of ingress and egress, and easements therefor, are hereby specifically reserved and created in favor of the Association, any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress for purposes related to any

OR2909 PG0893

Environmental Permits, and Declarant for so long as Declarant owns any property described on Exhibits "A" or "B" for development and sale in the ordinary course of business.

12.7. Disaster Management.

The Properties are located in a hurricane vulnerability zone. The hurricane evacuation time in Lee County, Florida, is high, and hurricane shelter space is limited. The Association shall have the authority to prepare disaster management plans and educational information regarding hurricane threats. The Association may, but shall not be obligated to take reasonable precautions to mitigate the hardship caused by foreseeable natural disasters through development of disaster management plans. The Board may establish preparations for the Association and its Members, budgeting, staffing, and coordination with local authorities and with contractors, suppliers, and insurers. The expense of developing, updating and implementing the disaster management plan, if any, shall be included as a Common Expense in the Association's budget.

OR2909 PG0894

Article XIII Exclusive Common Areas; Party Walls and Other Shared Structures

13.1. Designation and Use of Exclusive Common Area.

Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Exclusive Common Areas are assigned.

Initially, any Exclusive Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units and/or Neighborhoods, so long as the Declarant has a right to subject additional property to this Declaration pursuant to Section 9.1.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon approval of the Board and the vote of Neighborhood Representatives representing more than 50% of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, any such assignment or reassignment shall also require the Declarant's written consent.

The Association may, upon approval of a majority of the members of the Neighborhood Committee or board of directors of the Neighborhood Association for the Neighborhood(s) to which any Exclusive Common Area is assigned, permit Owners of Units in other Neighborhoods to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Exclusive Common Area.

13.2. Rules Regarding Party Walls.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. If the governing documents for any Neighborhood Association include any provisions regarding party walls or structures which differ or supplement these provisions, the governing documents of the Neighborhood Association shall govern.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

OR2909 PG0895

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Shadow Wood as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in the community.

OR2909 PG0896

Article XIV Dispute Resolution and Limitation on Litigation

14.1. Consensus for Association Litigation.

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without the approval at least 75% of the Neighborhood Representatives. A Neighborhood Representative representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of 75% of the total number of Units in the Neighborhood represented by the Neighborhood Representative. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.2. Alternative Method for Resolving Disputes.

The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 14.3 ("Claims") to the procedures set forth in Section 14.4 prior to filing suit in any court.

14.3. Claims.

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, the rights, obligations and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 14.4:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) (any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other equitable remedies as only a court may deem necessary in order to maintain the status quo and to preserve the Association's ability to enforce the provisions of Article III (Use and Conduct), Article IV (Architecture and Landscaping), and Article XII (Environmental Areas and Issues);

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents, or which is between Declarant and a Builder arising out of the purchase and construction of one or more Units pursuant to a contractual agreement;

(d) any suit in which any indispensable party is not a Bound Party; and

(e) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 14.4(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 14.4.

14.4. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

(i). the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(ii). the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii). Claimant's proposed remedy; and

(iv). that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i). The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may, but is not obligated to, appoint a representative to assist the Parties in negotiation.

OR2909 PG0897

(ii). If the Parties do not resolve the Claim within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of a mediation agency retained by the Association to provide such services within the community, or, if the Parties otherwise agree, to an independent agency providing dispute resolution services in the Lee County area.

(iii). If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv). Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

5. Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

(i). If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

(ii). This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Florida. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Florida.

OR2909 PG0898

14.5. Allocation of Costs of Resolving Claims.

(a) Subject to Section 14.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

14.6. Enforcement of Resolution.

If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 14.4 and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with an Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

14.7. Prerequisites to Actions Against Builders.

Prior to filing a civil action against Declarant or any Builder of any portion of Shadow Wood, the Association must notify the Declarant or Builder, participate in alternative dispute resolution, and give the Declarant or Builder an opportunity to inspect and make a settlement offer prior to instituting a suit.

14.8. Retention of Expert For Litigation Purposes.

Prior to the Association's or any Member's retaining an expert for litigation purposes related to the construction or design of any portion of Shadow Wood or any improvements thereon, including Units and Common Area, the Association or Member, as appropriate, shall notify the Declarant and any Builder involved in the design or construction of such portion of Shadow Wood.

Article XV Private Amenities

15.1. General.

Neither membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. No Private Amenity is Common Area. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the

OR2909 PG0899

Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

15.2. Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of any Private Amenity, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. Further, the ownership or operation of the Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; or (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors. Consent of the Association, any Neighborhood Association, any Neighborhood Representative, or any Owner shall not be required to effectuate any change in ownership or operation of any Private Amenity, for or without consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

15.3. View Impairment.

Declarant, the Association, or the owner of any Private Amenity, does not guarantee or represent that any view over and across the Private Amenity from Units adjacent to the Private Amenity will be preserved without impairment. Owners of the Private Amenities, if any, shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping to the Private Amenities from time to time. In addition, the owner of any Private Amenity which includes a golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the trees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

15.4. Rights of Access and Parking.

There is hereby established for the benefit of the Private Amenity and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within Shadow Wood reasonably necessary to travel between the entrance to Shadow Wood and the Private Amenity and over those portions of Shadow Wood (whether

Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenity. Without limiting the generality of the foregoing, members of the Private Amenity and guests and invitees of the Private Amenity shall have the right to park their vehicles on the roadways located within Shadow Wood at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenity to the extent that the Private Amenity has insufficient parking to accommodate such vehicles.

OR2909 PG0901

15.5. Architectural Control.

Declarant, the Association, any Neighborhood Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of Shadow Wood which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

15.6. Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

15.7. Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenity shall cooperate to the maximum extent possible in the operation of Shadow Wood and the Private Amenity. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth in Exhibit "C" affecting activities on or use of the Private Amenity without the prior written consent of the owners of the Private Amenity affected thereby.

15.8. Assumption of Risk and Indemnification.

Each Owner, by its purchase of a Unit in the vicinity of any Private Amenity, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such Private Amenity, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticides, herbicides and

fertilizers, (d) use of effluent in the irrigation or fertilization of any golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls and golf clubs, and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Association nor any of Declarant's affiliates or agents shall be liable to Owner or any other person claiming any loss of damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Unit to any golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association against any and all claims by Owner's visitors, tenants and others upon such Owner's Unit.

OR2909 PG0902

Article XVI Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

16.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

16.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

16.5. Construction of Article XVI.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Florida law for any of the acts set out in this Article.

PART SEVEN: CHANGES IN THE COMMUNITY

Communities such as Shadow Wood are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Shadow Wood and its governing documents must be able to adapt to these changes while protecting the things that make Shadow Wood special.

Article XVII Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Such transfer may be subject to assessment in accordance with Section 8.10.

OR2909 PG0903

Article XVIII Changes in Common Area

18.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Neighborhood Representatives representing at least 75% of the total Class "A" votes of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

18.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

18.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Lee County, Florida, or to any other local, state, or federal governmental or quasi-governmental entity.

Article XIX Amendment of Declaration

19.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose so long as such amendment does not substantially conflict with the Master Plan; provided, however, any amendment which would affect the Surface Water Management System,

including the rights and obligations of the Association to fulfill such rights and obligations, must have the prior approval of the South Florida Water Management District. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

19.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Neighborhood Representatives representing 75% of the total Class "A" votes in the Association, and the consent of the Declarant, so long the Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

19.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of the Declarant, the Class "B" Member, or a Builder without the written consent of the Declarant, the Class "B" Member, or the Builder, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

19.4. Exhibits.

Exhibits "A," "B," and "D" are attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "C" is attached for informational purposes and may be amended as provided in Article III. Exhibit "E" may be amended as provided therein.

OR2909 PG0906

IN WITNESS WHEREOF, the Declarant, LONG BAY PARTNERS, L.L.C., a Florida limited liability company, through its undersigned managing general partner, has duly executed this Declaration and affixed its corporate seal thereto as of this____ day of _____, 199__.

DECLARANT:

LONG BAY PARTNERS, L.L.C., a Florida limited liability company

By: Bonita Bay Properties, Inc., a Florida corporation

Beverly M. Street
WITNESS Beverly M. Street

Shirley M. Thompson
WITNESS Shirley M. Thompson

By: John M. Gleeson
John M. Gleeson, Vice President and General Manager of The Brooks

Attest: _____

Its: Secretary/Treasurer

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 13th day of January, 1998, by John M. Gleeson, as Vice President and General Manager of The Brooks for Bonita Bay Properties, Inc., a Florida corporation, on behalf of such entity. He is personally known to me ~~or has produced~~ _____ ~~as identification~~ and did ~~(did not)~~ take an oath.

Given under my hand and official seal this 13th day of January, 1998.

My term of office expires on 2/10/98.

Joanne Janes [SEAL]
NOTARY PUBLIC Joanne Janes

5167.01/ShadowWood/CADocs/CCR/011298/AWO

JOANNE JANES
MY COMMISSION # CC 347518
EXPIRES: February 10, 1998
Bonded Thru Notary Public Underwriters