

**AMENDED AND RESTATED DECLARATION  
OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR  
GLENDEVON**

*SUBSTANTIAL AMENDMENT OF DECLARATION. See the existing Declaration of Covenants, Restrictions and Easements for Glendevon recorded in O.R. Book 1411, Page 1584 et seq., of the Public Records of Collier County, Florida for present text.*

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR GLENDEVON (the "Declaration"), is made this 21<sup>st</sup> day of February, 2002, by Glendevon Association, Inc., a Florida corporation not for profit ("Association").

**W I T N E S S E T H**

WHEREAS, that certain Declaration of Covenants, Restrictions and Easements for Glendevon, was recorded January 24, 1989 in Official Records Book 1411, Page 1584 et seq., of the Public Records of Collier County, Florida (the Original Declaration); and

WHEREAS, certain real property (the "Neighborhood") described on Exhibit A of the Original Declaration was submitted to the covenants, conditions and restrictions of the Original Declaration; and

WHEREAS, the Owners (as herein defined) have approved this Amendment and Restatement of the Original Declaration at a duly organized meeting called therefor in order to comply with recent laws and regulations governing homeowners' associations; and

WHEREAS, the Owners desire that the real property described on Exhibit A of the Original Declaration be subject to the terms and conditions of this Amended and Restated Declaration; and

WHEREAS, the Original Declaration is hereby amended and restated in its entirety.

NOW, THEREFORE, the Owners hereby declare that the real property as described on Exhibit A of the Original Declaration now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Amended and Restated Declaration as covenants running with the land enforceable as aforesaid.

## 1. DEFINITIONS

The terms used in this Declaration and its exhibits shall have the meanings stated below, unless the context requires otherwise.

**1.1 Articles of Incorporation.** Articles of Incorporation (the "Articles") shall mean and refer to the Articles of Amendment to Articles of Incorporation of Glendevon Association, Inc., as same may be amended from time to time, attached hereto as Exhibit B and incorporated herein by reference.

**1.2 Assessment.** Assessment shall mean and refer to the Regular, Special and Individual Assessments, collectively.

**1.3 Association.** Association shall mean and refer to Glendevon Association, Inc., a Florida corporation not for profit, whose purpose is to administer the Common Areas, as hereinafter defined, in accordance with the provisions of this Declaration and the Governing Documents of the Association.

**1.4 Association Property.** Association Property shall mean and refer to all property, real or personal, which is owned or leased by the Association for the use and benefit of the Owners.

**1.5 Board of Directors or Board.** Board of Directors or Board shall mean and refer to the representative body that is responsible for the administration of the Association's affairs.

**1.6 Bylaws.** Bylaws shall mean and refer to the Amended and Restated Bylaws of Glendevon Association, Inc., a Florida corporation not for profit, as same may be amended from time to time, attached hereto as Exhibit C and incorporated herein by reference.

**1.7 Common Area.** Common Area shall mean and refer to those areas of land within the Property which are dedicated to or owned by the Association, or any other property which is dedicated, conveyed, leased or licensed to the Association, and which are intended to be devoted to the common use and enjoyment of the Members. The term "Common Area" shall also include any personal property acquired by the Association if said property is designated as Common Area in the bill of sale or instrument transferring same or subsequently declared by the Association to be Common Area. Any land or personal property leased by the Association shall lose its character as Common Area upon the expiration of such lease. **Common Areas shall include, but not be limited to, lighting, landscaping and entry features.**

**1.8 Common Expenses.** Common Expenses shall mean and refer to those actual and estimated common expenses incurred by the Association to benefit primarily the Owners of Lots or Dwelling Units.

**1.9 Community.** Community shall mean and refer to Glendevon, as defined herein.

**1.10 Country Club.** Country Club shall mean and refer to Wyndemere Country Club, Inc., a Florida corporation not for profit, which owns and operates the golf course, clubhouse and attendant facilities and improvements located within Wyndemere. Pursuant to the Master Declaration, all Owners shall be members of the Country Club and must be accepted for membership in the Country Club as a condition of ownership.

**1.11 Declaration.** Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Restrictions and Easements for Glendevon, as may be amended from time to time.

**1.12 Dwelling Unit or Unit.** Dwelling Unit or Unit shall mean and refer to the residential structure that is constructed on a Lot in Glendevon, and is to be occupied as a single family residence or household.

**1.13 Glendevon.** Glendevon shall mean and refer to that land on which all of the residential Lots within Glendevon and all of the Association facilities and structures shall be located, more particularly described in the Original Declaration.

**1.14 Golf Course.** Golf Course shall mean and refer to the land owned by Wyndemere Country Club, Inc., designated as the Golf Course on the Development Plan and utilized as such pursuant to membership in the Wyndemere Country Club.

**1.15 Governing Documents.** Governing Documents shall mean and refer to the Declaration, Bylaws and Articles of Glendevon and the Master Association Documents

**1.16 Guest.** Guest shall mean and refer to any person who is not the Owner, lessee or a member of the Owner's or lessee's family, who is physically present in, or occupies the Unit on a temporary basis at the invitation of the Owner or other legally permitted occupant, without the payment of consideration.

**1.17 Individual Assessments.** Individual Assessments shall mean and refer to all monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the association documents, or any expense incurred by the Association for the care of maintenance of high-need or exotic vegetation on a Lot, shall be an Individual Assessment and shall become a lien against such Lot which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Individual Assessments shall be sent to the Owner subject to such Assessment.

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

**1.19 Land.** Land shall mean and refer to the land more particularly described in the Original Declaration, which is committed by this Declaration to the provisions hereof, and any additional real estate which may hereafter be declared to be subject to this Declaration.

**1.20 Lease.** Lease shall mean and refer to the grant by the Owner of a temporary right of use of the Dwelling Unit for valuable consideration. Further, Lessee or Tenant shall mean a person who holds a lease of a Dwelling Unit and all persons occupying the Dwelling Unit therewith.

**1.21 Lot.** Lot shall mean and refer to any platted lot within the Property upon which an attached single family residence or Dwelling Unit may be constructed. The term "Lot" includes lots improved by the construction of a Dwelling Unit and Lots that have not been improved by the construction of a residence, as long as it is likely that a Dwelling Unit will be constructed upon it in the future. If more than one Lot has been used for the construction of Dwelling Unit, such Lots shall be considered as one Lot for purposes of this Declaration.

**1.22 Master Architectural Review Committee or Master ARC.** Master Architectural Review Committee or Master ARC shall mean and refer to the Architectural Review Committee as defined by Article VI of the Master Declaration.

**1.23 Master Articles.** Master Articles shall mean and refer to the Articles of Incorporation of the Wyndemere Homeowners Association, Inc., a Florida non-profit corporation, as such instruments exist from time to time.

**1.24 Master Association.** Master Association shall mean and refer to Wyndemere Homeowners Association, Inc., the Florida non-profit corporation responsible for the ownership, control, management and operation of the areas located within the property submitted to the Master Declaration, as set forth in the Master Declaration.

**1.25 Master Association Documents.** Master Association Documents shall mean and refer to any and all documents, instruments and agreements creating and governing the Master Association, including, but not limited to, the Master Declaration, the Articles of Incorporation and Bylaws of the Master Association, and any procedures, rules, regulations or policies adopted by the Master Association, as amended from time to time. The Owner's property is subject to the Master Association Documents, which shall be enforced by the Master Association and may be enforced by the Board of Directors.

**1.26 Master Association Expenses.** Master Association Expenses shall mean and refer to the expenses of administration, maintenance and operation of the Master Association and the Master Association Property.

**1.27 Master Association Property.** Master Association Property shall mean and refer to those tracts of land, together with any improvements thereon, which are owned from time to time by the Master Association. Master Association property shall also include non-owned land for which the Master Association has maintenance responsibilities.

**1.28 Master Bylaws.** Master Bylaws shall mean and refer to the Bylaws of the Master Association as such instruments exist from time to time.

**1.29 Master Declaration.** Master Declaration shall mean and refer to the Second Amendment and Restatement of Covenants, Conditions and Restrictions of Wyndemere, as recorded in Official Records Book 2570, Page 2109 of the Public Records of Collier County, Florida, as may be amended from time to time.

**1.30 Members.** Members shall mean and refer to any person or entity holding memberships in the Association. All Owners of Lots shall be Members; provided, however, that there shall be no more than one (1) Member for each Lot.

**1.31 Neighborhood Architectural Review Committee or Neighborhood ARC.** Neighborhood Architectural Review Committee or Neighborhood ARC shall mean the Architectural Review Committee for Glendevon established in accordance with Article VI of the Master Declaration. The Neighborhood ARC shall be composed of the Board of Directors.

**1.32 Owner.** Owner shall mean and refer to the record Owner, whether one or more persons or entities, of the fee simple title to any Lot upon any portion of the properties subject hereto, but, notwithstanding any applicable theory of mortgage, shall not mean or refer to any holder of a mortgage encumbering a Lot unless and until such

holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

**1.33 Purchase Money Mortgagee.** Purchase Money Mortgagee shall mean and refer to either an Institutional Mortgagee, as hereafter defined, or a private lender which holds a mortgage encumbering a Lot which was extended for the purpose of purchasing the Lot, and which has notified the Association in writing that it holds the same.

**1.34 Privacy Wall.** Privacy Wall shall mean any and all privacy walls or fences erected along the Lot boundary lines around a Lot. The mere fact that such wall or fence is found not to be on the Lot line shall not preclude such wall or fence from being a Privacy Wall. Any such privacy wall or fence shall be an appurtenance to the Lots which it serves.

**1.35 Regular Assessments.** Regular Assessments shall mean a charge against all Lots and the Owners thereof for payment of the Common Expenses of the Association, as determined by the Board of Directors from time to time.

**1.36 Rules and Regulations.** Rules and Regulations shall mean and refer to those Rules and Regulations promulgated by the Board of Directors governing the use of the Common Areas, common structural elements, and the operation of the Association.

**1.37 Special Assessments.** Special Assessments shall mean a charge against all Lots and the Owners thereof, or upon one or a group of Owners, equal to the cost incurred by the Association pursuant to this Declaration, and shall also mean the cost of any construction or reconstruction, or unexpected repair or replacement of a capital improvement upon the Common Areas, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association.

**1.38 Voting Interest.** Voting Interest shall mean and refer to the arrangement established in the Governing Documents by which the Owners of each Lot collectively are entitled to one vote in Association matters.

**1.39 Wyndemere.** Wyndemere shall mean a residential golf course community developed upon the property described in the Master Declaration.

## 2. OWNER'S PROPERTY RIGHTS AND EASEMENTS

**2.1 Members' Easement of Enjoyment.** Subject to the provisions of this Declaration, the Association and every Member of the Association shall have a non-

exclusive right, license, privilege, and easement of use and enjoyment in and to the Common Area, and such rights shall be appurtenant to and shall pass with the title of every Lot in the Community. An Owner is entitled to use the Common Area and common structural elements in accordance with the purposes for which they are intended, but no use of the Lot, Common Area, or the common structural elements may unreasonably interfere with the rights of other Owners or other persons having rights to use the Association Property. No Lot or Unit may be subdivided. The use of the Lot, Unit, Common Area and common structural elements shall be governed by the Governing Documents and by the Rules and Regulations adopted by the Board of Directors.

**2.2 Easements for Construction and Utilities.** Every Owner shall have the same easements, and shall also have a five (5) foot easement along the abutting Lot for the purpose of construction access for the construction, maintenance and repair on each Lot. The Owner shall be responsible for restoration of the easement area on the abutting Lot prior to or not later than the completion of construction on the Owner's Lot.

**2.3 Shrubbery Abutting Property Lines.** The Board of Directors in its sole discretion, upon application by any Owner, may require an adjoining Owner to trim any vegetation that encroaches or is so close as to cause maintenance problems on the complaining Owner's property.

**2.4 Encroachments.** If any portion of the Common Areas or any encroachment shall hereafter occur as the result of (1) construction of any building or other improvements; (2) any alteration or repair to the Common Areas or any other portion of the real property subjected to this Declaration; (3) any repair or restoration of any improvements or any of the Common Areas after damage by fire or other casualty; (4) any taking by condemnation or eminent domain proceedings of all or any portion of Common Areas; (5) any shifting or settling of improvements; (6) any Privacy Wall, as a result of minor inaccuracies in survey, construction or reconstruction or due to settlement or movement, then in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the structure causing said encroachment shall stand.

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

**2.6 Pipes, Wires, Cables, Conduits, Public Utility Lines, etc.** Each portion of Glendevon shall have an easement in common with all other portions thereof to use,

maintain, repair, alter and replace all pipes, wires, vents, cables, conduits, public utility lines, and similar related facilities located in Glendevon and serving such portion thereof. Each portion of Glendevon shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace the pipes, wires, vents, cables, conduits, public utility lines and other similar or related facilities located in such portion of Glendevon and serving other portions thereof, provided that such easements do not unreasonably interfere with the Owners use of their Lots.

**2.7 Easements for Public Service.** In addition to the foregoing easements over the Common Areas, there shall be reserved for Owners within Glendevon, easements and the right to grant same for public services, including, but not limited to, utilities service, emergency medical and fire service, and the right of the police to enter upon any part of the Common Areas for the purpose of enforcing the law.

**2.8 Easements of Support.** Whenever any structure included in the Common Areas adjoins any structure included in any other portion of Glendevon, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure. Any structure or building erected upon the Common Areas shall have an easement of support and necessity upon that portion of the Common Area where the structure or building is located.

**2.9 Association Easement for Maintenance.** There is hereby reserved for the benefit of the Association, a blanket easement over the Lots and Dwelling Units for the purpose of the performance of the services, obligations or duties set forth in this Declaration. No agreement on the part of the Association consenting to a request by an Owner concerning the timing of performance of such services shall operate as a waiver or amendment of this easement, nor in any way limit or restrict the rights of the Association to access Lots or Dwelling Units for the performance of services at any time or times deemed necessary by the Association.

### **3. ASSOCIATION**

**3.1 Association.** The Association shall be a nonprofit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles of Incorporation, the Bylaws and this Declaration. Neither the Articles nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be Members of the Association.

**3.2 Board of Directors.** The Association shall be governed by the Board of Directors which shall be appointed, designated or elected, as the case may be, as set forth in the Articles. A Board of Directors of the Association, and such officers as the Board may elect or appoint, shall conduct the affairs of the Association in accordance with this Declaration, the Articles and the Bylaws.

**3.3 Membership.** Every Owner shall be a Member of the Association, and no Owner shall have more than one membership in the Association with respect to any Lot. Memberships in the Association shall not be assignable, except to the successor-in-interest of the Owner's Lot, and every membership of any Owner in the Association shall be appurtenant to and inseparable from ownership of the Lot. Ownership of such Lot shall be the sole qualification for membership of an Owner in the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot that is subject to Assessment by the Association. Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. Members' rights, powers, duties and privileges shall be as set forth in the Articles of Incorporation, Bylaws, this Declaration and any Amendment thereto.

**3.4 Voting Rights.** The voting rights of Members shall be as set forth in the Articles and the Bylaws, and votes shall be cast as set forth in said documents.

**3.5 Acts of the Association.** Unless the approval or affirmative vote of the Owners is specifically made necessary by some provision of the Governing Documents or Florida law, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors without a vote of the Owners. The officers and Directors of the Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for the Association by reason of being an Owner.

**3.6 Powers and Duties of Association.** The Association, acting through the Board, shall have all the powers of a non-profit corporation organized under the laws of the State of Florida, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws or this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, assigned, required or permitted to be done by the Declaration, the Articles and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration, and improvements of the Common Areas.

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

**3.8 Acquisition of Property.** The Association has the power to acquire title to property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided the Glendevon

Documents, the power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the total Voting Interests.

**3.9 Disposition of Property.** The Association has the power to dispose of property, whether real, personal or mixed. The power to dispose of ownership interests of personal property shall be exercised by the Board of Directors. Except as otherwise provided the Governing Documents, the power to dispose of ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the total Voting Interests.

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

**3.11 Limitation on Liability.** Notwithstanding its duty, if any, to maintain and repair the Common Area, the common structural elements, or the Association Property, the Association shall not be liable to any individual Owners for personal injury or property damage caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or Owners or other persons.

**3.12 Member Approval of Certain Litigation.** Notwithstanding any other provisions in the Governing Documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the Owners (at a duly called meeting of the Association at which a quorum is present) prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- a. Collection of assessments;
- b. Collection of other charges which Owners are obligated to pay;
- c. Enforcement of the use and occupancy restrictions contained in the Governing Documents;
- d. Enforcement of any restrictions on the sale, lease and other transfer of Lots;
- e. In an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- f. Filing a compulsory counterclaim.

#### 4. ASSESSMENTS

4.1 **Affirmative Covenant to Pay Assessments.** There is hereby imposed upon each Owner and their Lot, the affirmative covenant and obligation to pay to the Association all Regular, Special and Individual Assessments, together with any other assessments imposed by the Association. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Lot, whether or not it is so expressed in such deed or instrument, shall be obligated and agrees to pay all Assessments provided for in this Declaration.

4.2 **Creation of Regular Assessments.** There are hereby created Regular Assessments for payment of the Common Expenses of the Association, as determined by the Board of Directors from time to time.

4.3 **Payment of Regular Assessments.** Regular Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors which may include, without limitation; acceleration of the Regular Assessments for the entire fiscal year for delinquent Owners. Unless the Board otherwise provides, the Regular Assessment shall be paid on a quarterly basis, in advance.

4.4 **Computation of Regular Assessments.** The Board of Directors of the Association shall prepare an annual budget covering the estimated Common Expenses to be allocated equally among all Owners of Lots, except as otherwise set forth herein. The Board of Directors shall cause a copy of such budget and notice of the amount of the Regular Assessment to be levied on each Lot for the coming year to be delivered at least fourteen (14) days prior to the beginning of the fiscal year to each Owner of a Lot. The Regular Assessment to be levied for the coming year against each Lot subject to Assessments shall be computed by dividing the budgeted Common Expenses by the total number of Lots then subject to Assessment and reasonably anticipated to become subject to Assessment during the fiscal year.

4.5 **Special Assessments.** In addition to the Regular Assessments, the Board of Directors may levy a Special Assessment in any Assessment year without the requirement of a Member vote. Notice in writing of the amount of any Special Assessment and the time for payment thereof shall be given promptly to the Owners. Special Assessments pursuant to this section shall be payable by the Owners in such a manner and at such times as determined by the Board, and may be payable in installments extending beyond the Assessment year in which the Special Assessment is approved if the Board so determines. Special assessments shall be paid in installments or in a lump sum, as the Board may determine from time to time. Special Assessments may be levied by the Board in the following circumstances, among others:

- a. Upon all Lots and the Owners thereof, upon Board action alone in cases of:
  - (1) Operating shortfalls, including shortfalls to cover delinquencies of the Member;
  - (2) Insurance coverage shortfalls;
  - (3) Repairs and replacements not covered by reserves;
  - (4) Casualties not covered by insurance;
  - (5) Necessary capital purchases not covered by capital funds;
  - (6) Other emergencies; or
  - (7) Increases in Master Association assessments, or special assessments of the Master Association.
- b. Upon all Lots and the Owners thereof, for desired capital improvements or additions to the Common Areas.
- c. Upon one or a group of Owners, upon Board action alone, in such cases where:
  - (1) Only one or a group of Owners will benefit from the expenditure; or
  - (2) Where the Special Assessment is to compensate the Master Association or Association, or both, for costs incurred in self help, or correcting violations or as otherwise provided in the Governing Documents.

**4.6 Individual Assessments.** All monetary fines assessed against an Owner pursuant to the Governing Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Governing Documents, or any expense incurred by the Association for the care of maintenance of high-need or exotic vegetation on a Lot, shall be an Individual Assessment and shall become a lien against such Lot which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Individual Assessments shall be sent to the Owner subject to such Assessment.

**4.7 Reserve Budget.** The Board of Directors may, but is under no obligation, to annually prepare a reserve budget to take into account the number and nature of

replaceable assets, owned, controlled or maintained by the Association, the expected life of each such asset, and the expected repair or replacement cost thereof.

**4.8 Statement of Status of Assessments.** Upon ten (10) days' written notice to the Treasurer of the Association or the manager, any Owner or Institutional Mortgagee of a Lot may request confirmation from the Association setting forth:

- a. The amount of any unpaid Assessments (whether Regular, Special, or Individual), interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Lot;
- b. The amount of the current periodic installments of the Regular Assessment and the date through which they are paid; and
- c. Any other information deemed proper by the Association.

The information contained in such statement, when signed by an officer of the Association, shall be conclusive upon the Association as to the person or persons to whom such statement is issued and who rely on it in good faith. Prior to the issuance of such a statement, the Association may request the name of any proposed transferee of the Lot and the scheduled closing date, so as to permit the records of the Association to accurately identify Members.

**4.9 Rights of Owners and Institutional Mortgagees Regarding Financial Matters and Insurance.** The Association shall make available for inspection upon request, during normal business hours or under reasonable circumstances, the Governing Documents and the books, records and financial statements of the Association to the Owners and Institutional Mortgagees. In addition, evidence of insurance shall be issued to each Owner and Institutional Mortgagee upon written request to the Association.

- a. Upon written request to the Association, identifying the name and address of the Institutional Mortgagee and the legal description of the subject Lot, the Association shall provide such Institutional Mortgagee with timely written notice of the following:
  - (1) Any condemnation loss or any casualty loss which affects any material portion of the Common Area;
  - (2) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
  - (3) Any proposed action which would require the consent of mortgagees holding a mortgage encumbering a Lot;

- (4) Any failure by an Owner encumbered by a mortgage held, insured or guaranteed by an Institutional Mortgagee to perform the Owner's obligations under the Governing Documents, including, but not limited to, any delinquency in the payment of Regular, Individual or Special Assessments, or any other charge owed to the Association by said Owner when such failure or delinquency has continued for a period of sixty (60) days. Any failure of the Association to send any such notice to any Institutional Mortgagee shall have no effect on any meeting, act or thing which was to have been the subject of such notice nor affect the validity thereof, and the Association shall not be liable for damages which may be caused by or arise from the failure to send such notice.
- b. Any Institutional Mortgagee that receives a written request from the Association 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 Institutional Mortgagee within twenty (20) days of the date of the Association's request.

**4.10 Exempt Property.** Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Assessments:

- a. Common Areas;
- b. All property (if any) dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks, if any; and
- c. All property owned, leased, managed, maintained and/or controlled by the Master Association.

**4.11 Assessments Levied by the Master Association.** The Association may collect Assessments from Owners and other monies owed to the Master Association. The Association shall remit this amount to the Master Association within ten (10) days of its receipt along with an accounting of the Owners who have made payments and the amounts thereof. In the event any amount owed the Master Association is not timely paid to the Master Association, the Master Association shall have the right to enforce its rights against the Owner(s) whose payment is not received by the Master Association, or against the Association. The Association shall have no right of set-off, diminution or abatement with respect to Assessments collected on behalf of the Master Association.

**4.12 Working Capital Contribution.** A working capital contribution in such amounts as the Board may from time to time determine per Lot shall be collected by the Association at the time of the transfer of title of any Lot to the purchaser thereof. This contribution may be used by the Board for any purpose it deems necessary or appropriate, including the funding of the day-to-day operational expenses of the Association or the acquisition of additional equipment and/or services. Amounts paid into this fund are not Assessments and shall not be considered as an advance payment of Assessments or a reserve.

**4.13 Non-Waiver.** No Owner may waive or otherwise exempt itself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of any Common Area, or by abandonment of the Lot. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution, abatement of Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required or to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

## 5. FINES; SUSPENSIONS

**5.1 Compliance by Owners.** Every Owner and Owner's tenants, guests and invitees are governed by and shall comply with the applicable law and the Governing Documents of Glendevon and any and all Rules and Regulations which from time to time may be adopted by the Board of Directors of the Association.

**5.2 Procedure.** Any Owner who wishes to report a violation of these restrictions or of the Rules and Regulations shall do so in writing to the Board of Directors. The Board of Directors shall investigate the complaint, and if it is determined to be well founded, the Board shall write a letter to the offending Owner or tenant, guest or invitee and such letter shall set forth the infraction and a time period within which such Owner or tenant, guest or invitee shall comply with these restrictions and/or rules and regulations. In the event the Owner, or tenant, guest or invitee, does not comply by the date set forth in the Board's letter, the Board may take any of the enforcement actions set forth herein.

**5.3 Enforcement.** Failure of an Owner or tenant, guest or invitee to comply with such covenants and restrictions or Rules and Regulations shall be grounds for action by any Owner or the Association which may include, without limitation, any action to recover sums due for damages, injunctive relief, or any combination thereof. In addition to the rights of the Association to enforce the provisions of this Declaration, the South Florida Water Management District shall have the right to enforce, by a

proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation and repair of the surface water or stormwater management system. The Association shall have the right to suspend the voting rights and the use of Common Area by the Owner and/or tenant as it shall determine.

**5.4 Suspension and Fines.** In addition to the means for enforcement provided in the Declaration, Bylaws or Rules and Regulations of this Association, or by law, in the sole discretion of the Board of Directors of the Association, suspension of use rights to use Common Areas and facilities as provided by law, and suspension of voting rights, and the levy of a fine or fines may be imposed upon an Owner for failure of an Owner, the Owner's family, guests, occupants, licensees, invitees, tenants or employees, or both, to comply with any covenant, restriction, rule or regulation in accordance with the following procedures:

- a. Notice. A fine or suspension may not be imposed without notice of at least fourteen (14) days to the person or entity sought to be fined or suspended, and the Association shall notify the Owner of the infraction or infractions. Included in the Notice shall be the date and time of the next Board of Directors meeting at which time the Owner shall present reasons why penalties should not be imposed.
- b. Hearing. The non-compliance shall be presented at a hearing before a committee of at least three (3) Members appointed by the Board of Directors who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee, after which the Board shall hear reasons why penalties should not be imposed. Any party charged shall be entitled to cross examine witnesses and may be represented by counsel. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. A written decision shall be submitted to the Owner or the Owner's family, tenants, guests, or invitees, or both, not later than twenty-one (21) days after the Board of Directors' meeting. The requirements contained herein do not apply to the imposition of suspensions or fines upon any Member because of the failure of the Member to pay assessments or other charges when due as authorized by this Declaration.
- c. Fines. The Board of Directors may impose a fine in the nature of a special assessment against the Dwelling Unit owned by the Owner as follows:
  - (1) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

- (2) Second non-compliance or violation: a fine not in excess of Five Hundred Dollars (\$500.00).
  - (3) Third and subsequent non-compliance or violation or violations which are of a continuing nature: a fine not in excess of One Thousand Dollars (\$1,000.00) for each such occurrence.
- d. Payment of Fines. Fines shall be paid not later than thirty (30) days after notice of the imposition or assessment of the penalties.
  - e. Collection of Fines. Fines shall be treated as a special assessment and a lien subject to the provisions for the collection of assessments and enforcement of liens as set forth herein.
  - f. Application of Fines. All monies received from fines shall be allocated to the reserve for replacement funds for the Association.
  - g. Non Exclusive Remedy. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled.

## 6. EFFECT OF NON-PAYMENT OF ASSESSMENTS; REMEDIES OF THE ASSOCIATION

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

**6.2 Acceleration.** If any Special Assessment or installment of a Regular Assessment as to a Dwelling Unit is unpaid thirty (30) days after the due date, and a claim of lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Unit's assessments for that fiscal year. The due date for all accelerated amounts shall be the date the claim of lien was recorded in the public records. The Association's claim of lien shall secure payment of the entire accelerated

obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law and said claim of lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate shall be exercised by sending to the delinquent Owner a notice of the exercise, which notice shall be sent by certified or registered mail to the Owner's last known address, and shall be deemed given upon mailing of the notice, postpaid.

**6.3 Establishment of Lien.** Any and all Assessments, together with interest at a rate not to exceed the lesser of the highest rate allowed by applicable usury law, or eighteen percent (18%) per annum, as computed from the date the delinquency first occurs, and such late charges and fines as may be established by the Board of Directors and costs and reasonable attorney's fees incurred by the Association in enforcing its rights hereunder, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which such Assessment is made. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time the Assessment arose, and the Owner's heirs, successors and assigns. Each claim of lien recorded against a Lot shall secure both all unpaid sums due the Association as of the time of its recordation, and also such other Assessments and other sums as may thereafter be due the Association. Upon recording of a claim of lien on any Lot, there shall exist a perfected lien for unpaid Assessments prior and superior to all other liens, except: (1) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (2) the lien or charge of any mortgage of record (meaning any recorded Mortgage with first priority over other mortgages) made in good faith, for value, and prior to the date of recordation of the claim of lien, with an Institutional Mortgagee. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure in the same manner as a mortgage. The Association, acting on behalf of its Members, shall have the power to bid for the Lot, as applicable, at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a Lot is owned by the Association following foreclosure, the following shall apply: (1) no right to vote shall be exercised on its behalf; (2) no Assessments shall be levied on it; and (3) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

**6.4 Foreclosure of Lien.** The assessment lien set forth herein may be foreclosed in the same manner as mortgages are foreclosed under Florida law. The Association, through duly authorized agents, shall have the power to bid on any Lot at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

**6.5 Curing of Default.** Upon the timely curing of any default for which a Notice of Claim of Lien was filed by the Association, the officers thereof shall record an appropriate release of lien, upon payment by the defaulting Owner of a fee, to be

determined by the Association, to cover the cost of preparing and recording such release. A certificate executed by an officer or agent of the Association stating the indebtedness secured by the liens upon any Lot created hereunder shall be conclusive upon the Association and the Owners as to the amount of such indebtedness as of the date of the certificate, in favor of all persons who rely thereon in good faith. Such certificate shall be furnished to any Owner upon request upon payment of a reasonable fee.

**6.6 Cumulative Remedies.** The assessment liens and the right to foreclosure and sale thereunder shall be in addition to and not in substitution for all other rights and remedies which the Association and its assigns may have hereunder and by law, including a suit to recover a money judgment for unpaid assessments, as above provided.

**6.7 Subordination of the Lien to Mortgages.** The lien securing the assessments provided for herein shall be to the extent provided by Florida Law, subordinate to the lien of any Purchase Money Mortgagee (meaning any recorded purchase money mortgage of an Institutional Lender or private lender) made in good faith and for value and recorded prior to the date on which a Notice of Claim of Lien, pursuant to such Notice of Claim of Lien is recorded. The sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to the foreclosure or deed in lieu thereof of a Purchase Money Mortgagee, shall extinguish the lien of such Assessments as to installments which became due prior to such sale or transfer. However, no sale or transfer shall relieve such Lot from liability for any installments of Assessments thereafter becoming due or from the lien thereof.

## 7. EXTERIOR MAINTENANCE AND MAINTENANCE ENFORCEMENT

**7.1 Association's Responsibility for Common Area Maintenance.** The Association, subject to the rights and obligations of the Owners set forth in this Declaration, shall be responsible for the management, operation, maintenance and control of the Common Areas (unless the same have been transferred or assigned to the Master Association). The foregoing obligations include, but are not limited to, the following:

- a. Maintenance, repair, and replacement of landscaping and entry features on all Common Areas;
- b. Maintenance, repair and resurfacing of all roads within Glendevon;
- c. Painting of any improvements located within the Common Areas;
- d. Maintenance, repair and replacement of all drainage and irrigation facilities (unless said responsibilities have been transferred to the Master Association); and

- e. Maintenance, repair and replacement of any and all other improvements located within a Common Area;
- f. The cost of repairing any Privacy Wall which is damaged or destroyed by any persons validly exercising their utility and governmental services easement rights.

In the event the Association fails to maintain a Common Area or any Unit in accordance with its obligations hereunder, any Owner of any interest in a Unit or holder of a first mortgage on a Unit shall have the right to seek specific performance in a court of equity to compel the Association to do so. In the event of emergency repairs that are the responsibility of the Association, the Owner of an interest in any Unit may give the Association twenty-four (24) hours notice to repair same, and if it is not done, said Owner may proceed to contract in the Owner's own name to make such repairs, and the Association shall be obligated to reimburse said Owner for the reasonable value of the repairs which are necessary and for which the Association has financial responsibility. For purposes of this provision, "emergency repairs" shall mean repairs that are otherwise the responsibility of the Association and that are required to fix breaches in the building envelope that causes exposure of the interior of a Unit to the elements of the weather.

**7.2 Association's Responsibility for Lot Maintenance.** In addition to maintenance of the Common Areas as described above, the Association shall provide exterior maintenance upon each Lot which is subject to assessment hereunder. Said maintenance obligation shall be deemed to include trimming and care of trees, shrubs, grass, walks, swales, berms and other landscaping, as well as to provide general cleanup, and removal of debris which in the opinion of the Association detracts from the overall beauty and setting of the community. The Association shall be responsible for the maintenance of lawns and landscaping on all Lots, excluding the installation and/or replacement of annuals, perennials, or specialized or exotic vegetation. The Association shall also be responsible for the maintenance, repair and replacement of all irrigation facilities, including but not limited to, sprinkler pumps, piping, and sprinkler heads. It is intended that the Association be responsible for the general care and maintenance of all landscaping on all Lots, except as excluded herein. The Owner shall be responsible for the maintenance of his or her residence and any other improvements constructed upon the Lot, and all components thereof.

**7.3 Association's Entry Rights and Liability.** It shall be the affirmative duty of each Owner at all times to keep and maintain the improvements and landscaping in good and presentable condition and repair, consistent with the approved plans and specifications therefor. The Association shall have the right, but not the obligation, for itself, its designee, or any agent or employee, to provide exterior maintenance upon any

Lot and the improvements thereon in the Community in the event of default by any Owner of that Owner's duties hereby imposed subject, however, to the following provisions. Prior to performing any such maintenance on an Owner's property, the Board of Directors of the Association, or a committee appointed by the Board, shall determine that same is in need of repair or maintenance and the condition of the Lot or Unit is detracting from the overall appearance of the Community. Except in the event of an emergency, prior to commencement of any maintenance work, the Board shall furnish prior written notice to the Owner at the last address listed in the Association's records for said Owner, notifying the Owner that unless certain specified repairs or maintenance are commenced within a reasonable period of time, and thereafter diligently pursued to completion, the Association may procure said repairs or maintenance and charge same to the Owner. Upon the failure of the Owner to act within said period of time and to thereafter diligently pursue repairs or maintenance, the Association shall have the right to enter in or upon any Lot and the exterior of any improvements located thereon, or to hire personnel to do so, to make such necessary repairs, or maintenance as is specified in the written notice. The Association, or its agents or employees, shall not be liable to the Owner for any trespass or damages or injury to the property or person of the Owner or the occupants or invitees of the affected Lot or improvements thereon unless caused by gross negligence or intentional wrongdoing, and each Owner of a Lot agrees for itself, its family members, tenants, guests and invitees, to hold the Association harmless from any action undertaken pursuant to this section.

**7.4 Owner's Responsibility.** Subject to the Association responsibilities outlined above, each Owner shall maintain the Lot and Dwelling Unit in good repair and in a neat and attractive condition in accordance with the Governing Documents. Said maintenance responsibilities shall include, but not be limited to, maintenance of all specialized exotic or "high need" landscaping not maintained by the Association. No Owner shall take any action which: (1) increases the maintenance responsibility of the Association; (2) causes the Association's insurance premiums to increase; or (3) interferes with the Association's maintenance or operational responsibilities.

Except as provided in Section 7.1 of this Declaration, the maintenance and repair of Privacy Walls shall be the joint responsibility of the Lot owners sharing such wall or fence. Any Privacy Wall which benefits only one Lot, and is wholly upon that Lot, shall be maintained and repaired solely by that Lot Owner.

**7.5 Assessment of Cost.** If any Owner fails to perform its maintenance responsibility in accordance with this section, the Association may perform it and assess all costs incurred against the Lot, and further assess the Owner thereof as an Individual Assessment against the Owner of the Lot or improvements upon which such maintenance is done. Said Individual Assessment shall be secured by a lien upon the affected Lot and improvements and shall also constitute a personal obligation of the Owner. The Individual Assessment shall be collectible along with interest at the highest rate allowed by law from date of expenditure to date of payment by the Owner, and

costs of collection and attorneys' fees, in the same manner as delinquent annual assessments.

**7.6 Access at Reasonable Hours.** For the purpose of performing the repairs or maintenance authorized by this section, the Association, through its duly authorized agents, contractors or employees, shall have the right to enter upon any Lot and the exterior of any improvements thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made on any day and at any hour.

**7.7 Rules and Regulations.** The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the Property, which Rules and Regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines which shall constitute a lien upon the Owner's Lot, and suspension of the right to use any recreational facilities (if any) on the Common Areas, and suspension of voting rights, and exclusion from the Property of any contractor, subcontractor, agent or other invitee who fails to comply with the provisions of such Rules and Regulations. In addition, the Board shall have the power to seek relief in any court for violations or to abate unreasonable disturbances. Imposition of sanctions shall be subject to the procedures for disciplinary action provided in the Declaration and/or Bylaws of the Association. Fines shall constitute Individual Assessments subject to the lien rights provided in this Declaration.

**7.8 Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles of Incorporation or the Bylaws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**7.9 Cooperation with Master Association.** The Board shall have the power to assist the Master Association in the performance of their respective duties and obligations under the Master Declaration, and shall cooperate with the Master Association so all can most efficiently and economically provide their respective services to the Owners. If the Association fails, neglects, or is unable to perform a duty or obligation required by the Governing Documents, including without limitation, maintenance responsibilities, then the Master Association may, after reasonable notice and an opportunity to cure given to the Association, perform such duties or obligations until such time as the Association is able and/or willing to resume such functions, and charge the Association a reasonable fee for the performance of such functions and assess the costs thereof against all of the Lots and Owners thereof.

## 8. COMMON WALLS, ROOFS AND EXTERIORS

**8.1 Common Walls of Attached Units.** The attached Dwelling Units

comprising each building are residential Dwelling Units with common walls, known as "party walls", between each Unit that adjoins another Unit. The centerline of a party wall is the common boundary of the adjoining Dwelling Unit. Each common wall in a Unit shall be a party wall, and any party to said wall, their heirs, successors and assigns, shall have the right to use same jointly with the other party to said wall as herein set forth. The term "use" shall include normal interior usage such as paneling, plastering, decoration, erection of tangent walls and shelving, but shall prohibit any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original party wall. The costs of maintaining each side of a party wall shall be borne by the Owner using said side, except as otherwise provided herein.

**8.2 Common Structural Elements.** Each duplex building contains or shall contain certain elements, features or parts which are structural elements of the Building or of more than one residence contained in said Building (hereinafter referred to as "Common Structural Elements"). The Common Structural Elements of each duplex building shall include the following:

(a) **UTILITY LINES.** All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located on or within the Land and which directly or indirectly in any way service more than one residence in the duplex building in question, all of which are collectively referred to herein as the "Utility Lines".

(b) **PARTY WALLS.** All division walls (hereinafter referred to as "Party Walls") between two residences located upon a Lot line between two Villas (hereinafter referred to as "Lot Lines", provided that the mere fact that such a division wall between two Villas is found to be not on a Lot line shall not preclude that division wall from being a Party Wall.

(c) **ROOFING.** The entire roof of the duplex building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures including, but not limited to, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "Roofing".

(d) **SIDING.** Any and all siding, finish, trim, exterior sheathings and other exterior of the duplex building, all of which are collectively referred to as the "Siding".

(e) **FLOORING.** The entire concrete floor slab, or wood floor system if utilized in lieu thereof, and all foundational and support structures and appurtenances thereto, all of which are collectively referred to as the "Flooring".

**8.2.1 Maintenance, Repair and Replacement of Common Structural Elements.** The maintenance and repair of the Common Structural Elements of any building shall be the joint responsibility of the owners of the residences within said building. Decisions respecting the repair and maintenance of the Common Structural Elements and the respective cost to be paid by each Owner, shall be made by the

Owners of the residences within said building. In the event the Owners of the residences within said building cannot agree with respect to the maintenance and repair of the Common Structural Elements of their building, or with respect to the allocation of cost, such disagreement shall be submitted to the Board for decision, and the Owners shall be bound by the decision of the Board with respect to all such questions, including the cost for which each owner shall be liable.

All maintenance, repair and replacement of the Common Structural Elements, specifically including painting of the building, must be approved by the Board.

**8.3 Liability for Property Damage Due to Negligence or Willful Acts.** To the extent not inconsistent with the provisions of this article, the general rule of law regarding liability for property damage due to negligence or willful acts or omissions of individual Owners, their agents, employees, invitees and licensees shall apply to each party wall, common roofing, party fence or other Common Structural Element which is built as part of the original construction and any replacement of improvements in the Property.

**8.4 Destruction by Fire or Other Casualty.** If a Dwelling Unit is damaged through an act of God or other casualty, the affected Owner(s) shall promptly have the Unit repaired and rebuilt substantially in accordance with the architectural plans and specifications for the building and at the sole cost and expense of the affected Owner(s). The cost of reasonable repair and maintenance of a party wall or party fence or other Common Structural Elements shall be shared equally by the Owners who make use of the same. In the event such damage or destruction of a party wall or common roof or other Common Structural Element is caused solely by the neglect or willful misconduct of an Owner or the Owner's family, guest or invitee of the Unit needing such maintenance or repair, any expenses incidental to the repair or reconstruction of such wall or common roof shall be borne solely by such wrongdoer. If such Owner refuses or fails to pay the cost of such repair or reconstruction, the Association shall have the right to complete such repair and reconstruction substantially in accordance with the original plans and specifications of the affected building, and the Association shall thereafter have the right to specially assess said Owner for the costs of such repair and reconstruction. The assessment and collection of such assessment authorized pursuant to this paragraph shall be made in accordance with the assessment powers and lien rights of the Association for Association expenses.

**8.5 Exterior Maintenance and Repair.** No Owner shall authorize the painting, refurbishing or modification of the exterior surfaces of the Owner's Unit or of the building without the prior written consent of the ARC as defined in Section 9 hereof.

## 9. ARCHITECTURAL CONTROL; NEIGHBORHOOD ARCHITECTURAL REVIEW COMMITTEE

**9.1 Purpose.** There is hereby established the Glendevon Neighborhood Architectural Review Board or Neighborhood ARC, which is contemplated by Section 1(B) of Article VI of the Master Declaration. Neighborhood ARC shall be the Board of Directors. The Neighborhood ARC shall be responsible for the adoption and administration of the design and development guidelines specific to Glendevon. The Neighborhood ARC shall review, study and either approve or reject proposed alterations to improvements to the Lots or Dwelling Units, all in compliance with this Declaration and as further set forth in any Rules and Regulations and the Association construction standards as shall be adopted and established and may be amended from time to time by the Board of Directors. The Neighborhood ARC shall exercise its best judgment to see that all improvements conform and harmonize with any existing buildings as to external design, quality and type of constructions, materials, color, plot plan, height, grade and finished ground elevation, and all aesthetic considerations and landscaping approvals herein set forth. These guidelines shall be in addition to the standards adopted by the Master Association and the Master Architectural Review Committee (Master ARC). These guidelines may impose additional or stricter requirements than those of the Master ARC; however, they may not be wholly inconsistent with the Master ARC standards. The Neighborhood ARC as well as the Master Association shall enforce all decisions of the Master ARC.

**9.2 Approval Required.** No improvement or modification subject to review pursuant to Article VI of the Master Declaration shall be deemed approved until both the Neighborhood ARC and the Master ARC have approved or failed to approve or disapprove the plans and specifications therefor.

**9.3 Method of Obtaining Board Approval.** In order to obtain the approval of the Neighborhood ARC, a complete set of plans and specifications for proposed construction and any and all other reasonably requested information and materials related thereto (the "Plans") shall be submitted to the Neighborhood ARC for its review. The Plans shall include, as appropriate, the proposed location, grade, elevations, shape, dimensions, exterior color plans, landscaping plans, approximate costs, and nature, type and color of materials to be used. The Neighborhood ARC may also require the submission of additional information and materials as may be reasonably necessary for the Neighborhood ARC to evaluate the proposed construction or alteration. The Neighborhood ARC shall evaluate all Plans utilizing standards of the highest level as to the aesthetic quality of materials and workmanship to be used and as to suitability and harmony of location, structure and external design in relation to surrounding topography and structures. Any modification, alteration, or replacement or improvements shall be subject to the provisions hereof if such Lot is within the Land.

**9.4 Criteria.** The Neighborhood ARC may prepare and, on behalf of the Board of Directors, promulgate design and development guidelines, performance standards, and application and review procedures. Copies shall be available from the Neighborhood ARC for review. The guidelines and procedures shall be as promulgated

by the Association, and the Neighborhood ARC shall have sole and full authority to prepare and to amend them. The Neighborhood ARC shall make the guidelines and procedures available to Owners, builders or developers who seek to engage in development of or construction upon all or any portion of the Property.

**9.5 Standards for Modifications, Additions or Alterations to Existing Structures.** The Neighborhood ARC may also promulgate detailed standards and procedures governing modifications, additions or alterations made on or to existing structures located on the Property. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, shall be submitted to the Neighborhood ARC for approval as to quality workmanship and design and as to harmony of external design with existing structures, location in relation to surrounding structures, topography, and finished grade elevation. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of their residence.

**9.6 Approval or Disapproval by the Neighborhood ARC.** In the event the Neighborhood ARC falls to approve or to disapprove in writing any proposed Plans within thirty (30) days after their submission to the Neighborhood ARC, then said Plans shall be deemed to have been approved by the Neighborhood ARC. In this event, the Owner shall forward the proposed plans and specifications to the Master ARC for consideration within ten (10) days of the expiration of the period for the Neighborhood ARC to approve or disapprove the Plans.

**9.7 Appeal to Master ARC.** As provided in the Master Documents, if the Neighborhood ARC disapproves the Plans, the proposed improvement or modification shall stand disapproved and shall not be considered by the Master ARC. If it is approved, the Neighborhood ARC shall within ten (10) days of its decision forward it to the Master ARC for consideration.

**9.8 Right to Inspect.** Any member of the Neighborhood ARC or their representative shall have the right during reasonable hours and after reasonable notice, to enter upon any of the Property under construction to inspect for the purposes of ascertaining whether construction is proceeding or was accomplished in accordance with the Declaration and the approved plans of the improvements. Such person or persons shall not be deemed guilty of trespass by reason of such entry. Members of the Neighborhood ARC and their representatives shall comply with applicable safety rules for each job site and shall not be authorized to interfere with ongoing construction activities or to enter upon any job site unless accompanied by a construction superintendent or foreman.

**9.9 Variances.** The Neighborhood ARC may authorize, subject to the

approval of the Master ARC, variances from compliance with any of the construction standards and their procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate. No variance shall: (1) be effective unless in writing; (2) be contrary to the restrictions set forth in the Governing Documents; or (3) prevent the Neighborhood ARC from denying a variance in other circumstances. For purposes of this section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

**9.10 Membership.** The Neighborhood ARC shall be composed of the members of the Board of Directors.

**9.11 Organization and Operation of Committee.** The affirmative vote of a majority of the members of the Neighborhood ARC present at a meeting at which a quorum is present shall govern its actions and may be the act of the Neighborhood ARC. A quorum shall consist of a majority of the members. The Neighborhood ARC may avail itself of technical and professional advice and consultants as it deems appropriate.

**9.12 Removal of Non-Conforming Improvements.** The Association, upon request of the Neighborhood ARC and after reasonable notice to the offender and to the Owner, may remove any improvements constructed, reconstructed, refinished, altered, or maintained in violation of these covenants, and the Owner thereof shall forthwith reimburse the Association for all expenses incurred in connection therewith.

**9.13 Compliance.** Any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms and provisions of the Association's construction standards and the procedures promulgated by the Neighborhood ARC may be excluded by the Board from the Property without liability to any person, subject to the notice and hearing procedures contained in the Bylaws.

**9.14 Exception.** This section shall not apply to any of the improvements or modifications to the Common Areas by or on behalf of the Association.

**9.15 Enforcement.** The Neighborhood ARC is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy, and in the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved improvements, the prevailing party in such litigation shall be entitled to recover all court costs, expenses and reasonable attorneys' fees in connection therewith. The Association shall indemnify and hold harmless the Neighborhood ARC from all costs, expenses and liabilities, including attorney's fees incurred by virtue of any members of the Neighborhood ARC's service as a member of the Neighborhood ARC. The Neighborhood ARC shall also have the

right to go upon any Lot to remove any unapproved improvement or condition, provided such can be done without breaching the peace.

**9.16 Limitation of Liability.** The Neighborhood ARC shall use reasonable judgment in its approval or disapproval of all plans and specifications submitted to it. Neither the Neighborhood ARC, nor any individual member thereof, shall be liable to any person for any official act of the Neighborhood ARC in connection with submitted plans and specifications, except to the extent the Neighborhood ARC or any individual member thereof acted with malice or wrongful intent. Approval by the Neighborhood ARC does not necessarily assure approval by the appropriate governmental authority. Notwithstanding that the Neighborhood ARC has approved plans and specifications, neither the Neighborhood ARC nor any of its members shall be responsible or liable in any way to any Owner or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval or failure to approve. Neither the Board, the Neighborhood ARC or any agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the Governing Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events, the Association shall defend and indemnify the Neighborhood ARC in any such suit or proceeding.

**9.17 Expenses.** Except as hereinafter provided; the Association shall pay all expenses of the Neighborhood ARC. The Neighborhood ARC shall have the right to charge a reasonable filing fee for each application submitted to it for review, in an amount established by the Neighborhood ARC from time to time, which amount is designed to cover the costs of the Neighborhood ARC. The filing fees shall be collected by the Neighborhood ARC and remitted to the Association to help defray the expenses of the Neighborhood ARC's operation.

## 10. USE RESTRICTIONS

The use of all Lots and Common Area in the Community shall be subject to the following restrictions and conditions which shall be binding upon each and every Owner and its heirs, personal representatives, tenants, invitees, successors and assigns.

**10.1 Residential Use.** All Lots shall be used only for residential purposes as permitted by applicable law and in accordance with the Governing Documents. The Association may add to, delete or modify these use restrictions pursuant to an amendment to this Declaration, or any Rules and Regulations. The use restrictions contained herein are in addition to those use restrictions contained within the Master Declaration.

**10.2 Partition.** No part of a Lot, Dwelling Unit or Common Area may be partitioned or separated from any other part thereof except as provided herein. Whether

partitioned, combined, or unchanged, each Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered, or otherwise disposed of, as the case may be, with all appurtenant rights, obligations and interests created by law or by this Declaration, including the Owner's membership in the Association and the liability for all Assessments. No Lot may be subdivided into two (2) or more Lots and no Lot may be combined with one (1) or more additional Lot to form one (1) or more Lots without the written consent of the Board of Directors and after full compliance with all zoning and subdivision regulations.

**10.3 Vehicles and Repair.** No inoperative automobiles, motorcycles, trucks or other types of vehicles shall be allowed to remain either on or adjacent to any Lot in the Community. No repairs or restoration of any such vehicle shall be permitted on the Property except for emergency repairs thereto, and then only to the extent necessary to enable movement of such vehicle to a proper repair facility.

**10.4 Parking.** No commercial vehicles, campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, boats, campers, boat trailers, house trailers, golf carts, vans (other than minivans) or pick-up trucks (other than sports utility vehicles) shall be permitted to be parked or to be stored on any portion of the Property unless stored and fully enclosed in a Unit's garage or areas, if any, designated by the Association for that purpose. For purposes of this section, commercial vehicles shall mean those which are not designed and used for customary personal or family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained above in this section shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. At no time shall guests or Owners park in or block access to driveways, nor shall parking on sidewalks, lawns, yards, green spaces or wetlands be permitted. No vehicle shall be parked anywhere but on paved areas intended for that purpose, garages or as approved by Association for construction purposes. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing. Once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

**10.5 Garbage and Trash.** Each Owner shall provide suitable receptacles for the temporary storage and collection of refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbances. Trash and garbage containers shall not be permitted to remain on a Lot in public view except on days of trash collection and for a period not to exceed 24 hours. No incinerators shall be kept or maintained upon the Property, except that the

Association may cause trash receptacles to be placed on Common Areas when it deems such to be in the best interest of the Owners.

**10.6 Obnoxious or Offensive Activity.** No obnoxious or offensive activity or nuisance shall be allowed upon the Property, nor shall any use or practice be allowed which is a source of annoyance, embarrassment or discomfort to Owners or their tenants, invitees or occupants, or which interferes with the peaceful possession and proper use and enjoyment of the Property, nor shall any improper, unsightly, offensive or unlawful use be made of any Lot or any improvements thereon or of the Common Area. All laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

**10.7 Annoying Lights, Sounds or Odors.** No light, sound or odor shall be emitted from any Lot which is obnoxious or unreasonably offensive to others. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices or lights, other than devices used exclusively for security, fire prevention or fire control purposes, shall be permitted.

**10.8 Pools.** No above-ground pools shall be erected, constructed or installed on any Lot.

**10.9 Window Coverings.** Window tinting as a method of energy conservation is permitted provided that the type and method of tinting is first approved by the Neighborhood ARC. Reflective or foil window coverings are prohibited. No awnings, canopies or shutters shall be permanently installed on the exterior of any building unless first approved by the Neighborhood ARC.

**10.10 Flags, Lawn Ornaments and Decorations.** No flags, lawn ornaments, sculptures or other outside decorations shall be displayed on any Lot, with the exception of the flag of the United States of America and temporary holiday decorations; provided that such holiday decorations shall not, in the determination of the Association, be excessive or create a nuisance.

**10.11 Mailboxes.** Mailboxes shall be placed only in areas designated for that purpose, and shall be of uniform design compatible with the Units and approved by the Neighborhood ARC. No newspaper tubes or other non-uniform receptacles shall be permitted without the express written consent of the Neighborhood ARC.

**10.12 Leasing.** The Owner of a Lot shall have the right to lease such Lot or Dwelling Unit subject to the terms contained in this Declaration, the terms of any Association rules and regulations and subject to the following conditions:

- a. All leases shall be in writing;
- b. No lease shall be for less than thirty (30) days in duration;

- c. The lease shall be specifically subject to the Governing Documents and any failure of the tenant to comply with the Governing Documents shall be a default under the lease; and
- d. The Owner shall be liable for all losses and any violation of the Governing Documents committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid from the tenant.

**10.13 Hazardous Materials.** Each Owner shall comply with all federal, state and local statutes, regulations, ordinances, or other rules intended to protect the public health and welfare as related to land, water, groundwater, air or other aspects of the natural environment. Environmental laws shall include, but are not limited to, those laws regulating the use, generation, storage or disposal of hazardous substances, wastes and materials. No Owner or their tenants, guests, invitees, licensees or permittees shall knowingly use, generate, manufacture, store, release, dispose of or knowingly permit to exist in, on, under or about their Lot any hazardous materials except in compliance with the environmental laws.

**10.14 Signs.** No sign or advertisement of any kind, including, without limitation, those of Realtors®, contractors and subcontractors, shall be erected on any Lot unless the same complies with the standards and guidelines established by the Association, except as may be required by legal proceedings. The Association reserves the right to restrict the size, color, lettering, height, material and location of signs. The Association shall have the right to remove signs which fail to comply with standards set by the Association and upon prior approval of the Board of Directors, the Association may set more stringent sign requirements for the Lots.

**10.15 Antennas and Electronic Devices.** Except as may be specifically permitted by law in effect as of the date of recording of this Declaration (and in such event, only to the extent permitted by such law), and as long as the same does not imperil the safety of Owners as determined by the Board, no outside antennas, antenna poles, antenna masts, electronic devices, satellite dishes or antenna towers shall be permitted. If such device is permitted by such law(s), adequate screening of same from off-site view shall be required, and the plans, location, and method of screening shall be submitted for approval of the Neighborhood ARC prior to installation. Placement of the aforesaid items within any screened enclosure on the Lot shall be permitted as long as there is appropriate landscaping and/or other screening. The decision of what constitutes adequate landscaping and/or screening shall be made by the Architectural Review Board, whose decision shall be final. No electrical or other equipment may be operated on the Property which interferes with television signal reception.

**10.16 Pets and Animals.** Each Owner may keep not more than two (2) of a

normal domesticated household type (such as a cat or dog). The pet must be leashed or carried at all times while anywhere on the Association property outside of the unit. Each pet owner shall be responsible for the immediate removal and disposal of his or her pet's excrement. The ability to keep a pet is a privilege, not a right, and the Board of Directors is empowered to restrict the keeping of such pet(s) and may order and enforce the removal of any such pet(s) which becomes a source of annoyance to other Owners.

**10.17 Factory-Built or Existing Structures.** No structure of any kind commonly known as "factory-built", "modular", or "mobile home" type construction shall be erected without the prior written permission of the Association.

**10.18 Landscaping; Sprinkler Systems.** All areas not covered by structures, walkways or paved parking facilities shall be maintained by the Association as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. No stone, gravel, or paving of any type shall be used as a substitute for grass in a lawn. All lawns and landscaping shall be completed at the time of completion of the structure as evidenced by the issuance of a Certificate of Occupancy by the appropriate governmental agency, and shall thereafter be kept in good condition by the Association. Sprinkler systems located on Lots and the Common Areas shall be the responsibility of the Association.

**10.19 Outdoor Equipment.** All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool equipment and housing and sprinkler pumps and other such outdoor equipment must be underground or placed in areas so that they shall not be readily visible from adjacent streets, or adequate landscaping used as screening shall be installed around these facilities and maintained by the Owner.

**10.20 Air Conditioning/Heating Equipment.** No air conditioning equipment which is visible on the exterior or any improvement shall be permitted in the Property unless approved by the Neighborhood ARC. Approval shall be based upon adequacy of screening and/or landscaping of such equipment. Window units, wall units and similar equipment or heating units shall not be permitted.

**10.21 Solar Collector; Roof Vents.** Solar collectors, roof vents and other installations on the roofs of structures shall be permitted only at locations approved in writing by the Association.

**10.22 Drainage Structures.** No Owner, without the prior written approval of the Neighborhood ARC, shall obstruct, alter or in any way modify the method and/or structures of drainage utilized or now or hereafter installed by the Association from, on and over any Lot or Dwelling Unit, or Common Area; nor shall any structure be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation.

**10.23 Completion of Construction.** After commencement of construction of any improvements in the Community, the Owner shall diligently pursue completion thereof so that the improvements shall not remain in a partly finished condition any longer than reasonably and normally necessary for completion thereof. The Owner of the Lot upon which improvements are being constructed shall at all times keep public and private streets and driveways contiguous to the Lot free from any dirt, mud, garbage, trash or other debris which might be occasioned by construction of the improvements.

**10.24 Excavation.** No clearing or excavation shall be made except in connection with the construction, maintenance or repair of an improvements; and upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be leveled, graded and seeded, as provided on the approved plans for landscaping.

**10.25 Outside Lighting.** Except as may be initially installed or approved by Neighborhood ARC, no spotlights, floodlights, or similar type high intensity lighting shall be placed or utilized upon any Lot which in any way will allow light to be reflected on any other Lot or the improvements thereon without the written authorization of the Neighborhood ARC. Other types of low intensity lighting which do not unreasonably disturb the Owners or other occupants of the Property may be allowed.

**10.26 Correction of Health and Safety Hazards.** Any conditions which are deemed by the Association to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Association (although under no duty to do so), and the cost thereof shall be charged to the responsible Owner or to the Association.

**10.27 Business Use.** No trade or business may be conducted in or from any Lot, except that an Owner or occupant residing in a residence may conduct business activities within the residence as long as: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (2) the business activity conforms to all zoning requirements for the Property and all applicable county ordinances; (3) the business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of other residents of the Property; and (4) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms business and trade, as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (1) such activity is engaged in full or part-time; (2) such activity is intended to or does not generate a profit;

or (3) a license is required therefor. Notwithstanding the above, the leasing of a Lot shall not be considered a trade or business within the meaning of this section

**10.28 Storage Receptacles.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Property except that on-site underground storage of heating fuel, stored in a tank which is designated for the type of pool constructed on a Lot and which meets applicable governmental requirements for swimming pool heaters, shall be permitted. No fuel tanks except for a single 20 pound propane cylinder associated with a barbecue grill shall be permitted. Up to five (5) gallons of fuel may be stored on each Lot for emergency purposes and operating of lawn mowers, barbecue gas grills and similar tools or equipment; provided, however, all such tanks must meet applicable governmental requirements and must be approved as to location and screening from off-site view by the Neighborhood ARC. The foregoing provisions shall not apply to any portion of the Property owned by the Master Association or the Association.

**10.29 Golf Carts.** Golf carts may be operated on streets, subject to regulation and restriction by the Association.

**10.30 Outdoor Recreational Courts and Playground Equipment.** No outdoor recreational courts, including but not limited to tennis, basketball, volleyball and badminton, shall be erected without specific approval of the Neighborhood ARC, which may be conditioned upon adequate screening and buffering of such courts in order to minimize their nuisance to adjacent Lots, as well as a limitation of play to specific time periods during daylight hours. Nighttime illumination of any approved recreational court is prohibited. No jungle gyms, swing sets, or other playground equipment including, but not limited to, basketball hoops and backboards shall be permitted on any Lot, without the express written consent of the Neighborhood ARC.

**10.31 Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held on any portion of Glendevon.

**10.32 Insurance Rates.** Nothing shall be done or kept in the Common Area, which will increase the rate of insurance on any property insured by the Association without the approval of the Board, nor shall anything be done or kept on the Common Area which would result in the cancellation of insurance on any property insured by the Association or which would be in violation of any law.

**10.33 No Implied Waiver.** The failure of the Association to object to an Owner's or other person's, failure to comply with the covenants or restrictions contained herein, or in any rules now or hereafter promulgated shall in no event be deemed a waiver of the provisions of such documents.

**10.34 Rules and Regulations.** The Association, through the Board, shall have

the right to promulgate and impose Rules and Regulations and thereafter to modify, alter, amend, rescind and augment any of the same with respect to the use, operation and enjoyment of all or a portion of the Property, and any improvements located on the Property including, but not limited to, establishing reasonable fees for the use of facilities and establishing hours and manner of operation for the Common Areas. Such rules and regulations may augment or clarify the terms of this Declaration or any provision, covenant or restriction herein contained.

**10.35 Compliance With Laws.** Subject to rights of reasonable contest, each Owner shall promptly comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations.

**10.36 Misconduct by Owner.** Each Owner shall be liable to the Association for any damage to the Common Areas not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of its family and guests, both minor and adult, including attorneys fees and costs incurred to collect such liability. Notwithstanding the foregoing, the Association reserves the right to levy a Special Assessment against any such Owner, equal to the increase, if any, in the insurance premium directly attributable to the damage caused by such Owner. In the case of joint ownership of a Lot, the liability of such Owners shall be joint and several. The cost of correcting such damage shall be a Special Assessment against the Lot and may be collected as provided herein for the collection of Regular Assessments.

## 11. **INSURANCE AND CASUALTY LOSSES**

**11.1 Insurance for Dwelling Units.** It is hereby declared to be reasonably desirable and necessary for the proper preservation and enforcement of the values and amenities in Glendevon to make certain that proper insurance is carried and maintained at all times as hereinafter stated. In other provisions of this Declaration, the Association is charged with the obligation and duty of maintaining, repairing and replacing the Common Area and improvements, and it is therefore proper and acceptable that the Association own and maintain insurance covering the improvements on the Common Area.

**11.2 Authority to Purchase; Named Insured.** All insurance policies upon the Property shall contain extended coverage insurance and vandalism and malicious mischief insurance and shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Florida. The premium for such coverage and all other insurance deemed desirable by the Association shall be assessed against the Owners as a part of the annual assessment. OWNERS ARE HEREBY PUT ON NOTICE THAT THEY ARE RESPONSIBLE FOR INSURING ALL PORTIONS OF THEIR UNITS.

**11.3 Sufficient Insurance Proceeds.** Damage or destruction of all or any

portion of the Common Areas shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary. If in the event of damage or destruction to the Common Areas or any portion thereof, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Areas to be repaired and reconstructed substantially as it previously existed.

**11.4 Insufficient Proceeds Less than \$10,000.** If the insurance proceeds are within Ten Thousand Dollars (\$10,000.00) or less of being sufficient to effect total restoration to the Common Areas, then the Association shall cause the Common Areas to be repaired and reconstructed, and the difference between the insurance proceeds and the actual cost shall be levied as a Special Assessment equally against each of the Owners, in accordance with the provisions of this Declaration.

**11.5 Insufficient Proceeds Greater than \$10,000.** If the insurance proceeds are insufficient by more than Ten Thousand Dollars (\$10,000.00) to effect total restoration to the Common Areas, then by written consent of two-thirds (2/3) of the Owners, they shall determine whether: (i) to build and restore in substantially the same manner as the improvements existed prior to damage and to raise the necessary funds over the insurance proceeds by levying equal Special Assessments against all Lots; (ii) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of Ten Thousand Dollars (\$10,000.00), and which is assessable equally, replacing these improvements with only such variations in design as will complement the architectural theme or design of the adjacent buildings; (iii) to not rebuild and to distribute the available insurance to remove the destroyed or damaged improvements, and to replace the same with other improvements.

**11.6 Coverage.** All Units and improvements upon each Lot Property shall be insured at the cost of the Owner(s) of such Lot, in an amount equal to one hundred percent (100%) of the current replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, as shall be determined from time to time by the Board of Directors of the Association. Coverage shall afford protection against:

- a. Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement;
- b. Such other risks as from time to time shall be customarily covered with respect to Units similar in construction, location and use as the Units on the Property, including all other perils normally covered by standard "all risk" endorsement where such is available, including but not limited to vandalism and malicious mischief.

**11.7 Notice to Association.** No insurance policy required by this Declaration may be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association. Certificates of insurance shall be issued to the Association upon written request therefor.

**11.8 Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association and shall be assessed against the Owners of Units as a Common Expense and as a part of the annual assessment for each Dwelling Unit.

**11.9 Insurance for Common Areas.** The Board of Directors, or its duly authorized agent, shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the Common Areas, if any, and at the election of the Board of Directors, upon any other property or improvements maintained by the Association. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Board shall also obtain a public liability policy covering the Common Areas, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have the liability limits as established by the Board from time to time.

**11.10 Duty to Maintain Fidelity Insurance.** The Association shall, to the extent available at a reasonable cost, obtain fidelity bonds to protect against dishonest acts on the part of its officers, directors, employees and agents and on the part of all others who handle or are responsible for handling the funds of, or funds administered by, the Association. In addition, if responsibility for handling funds is delegated to a manager, such bonds shall be required for the manager and its officers, employees, and agents. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least one hundred percent (100%) of the estimated annual operating expenses of the Association, including reserves. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

**11.11 Officers' and Directors' Personal Liability Insurance.** The Board may, in its sole and absolute discretion, purchase officers' and directors' personal liability insurance at the expense of the Association to protect the officers, directors and all committee members from personal liability in relation to their duties and responsibilities on behalf of the Association.

**11.12 Workers' Compensation Insurance.** The Association shall obtain workers' compensation insurance or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

**11.13 Other Insurance.** The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to its responsibilities and duties.

**11.14 Damage or Destruction.**

- a. **Filing Claims.** Immediately after damage or destruction by fire or other casualty to all or any part of the Property and improvements thereto covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.
- b. **Repair and Reconstruction of Dwelling Units.** The improvements shall be completely restored and repaired. The Association shall negotiate and obtain a contractor willing to do the work on a fixed price basis, and shall disburse the insurance proceeds and other funds in accordance with progress payments contained in the contract between the Association and the contractor. Any reconstruction or repair shall be effected substantially in accordance with the plans and specifications of the original buildings or in accordance with the plans and specifications approved by the Board of Directors of the Association. Any restoration or repair after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications approved by the Board of Directors of the Association.

**11.15 Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas, or, if no repair or reconstruction is made, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

**11.16 Insufficient Proceeds.** If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a Special Assessment against Members on the same basis as provided for Regular Assessments. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**11.17 Association as Agent and Attorney-in-Fact.** The Association is hereby irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each Owner of any other interest in the Property to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

## 12. RIGHTS OF MORTGAGEES

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

**12.2 Mortgage Liability for Assessments.** Any mortgagee, which obtains title to such Lot pursuant to the remedies provided in such mortgage or by deed in lieu of foreclosure, shall take title to such Lot free and clear of any claims for unpaid assessments or charges due to the Association which accrued prior to the acquisition of title to such Lot by the mortgagee, except to the extent a notice of claim therefore was filed prior to recording of such mortgage. This shall be limited to as permitted by Florida law.

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

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

**12.5 Financial Statement.** Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statement of the Association for the immediately preceding fiscal year.

## 13. AMENDMENT OF DECLARATION

**13.1 Procedure.** All amendments to this Declaration may be made in accordance with this provision. The holders of at least a majority of the total Voting Interests may change or amend any provision hereof in the following manner: (1) by executing a written instrument in recordable form setting forth such amendment; or (2) by causing a certified copy of a duly adopted resolution of the Owners to be prepared, and having the same duly recorded in the Public Records of Collier County, Florida. A proposed amendment may be initiated by the Association or by petition signed by fifteen percent (15%) of the total Voting Interests. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, the affirmative vote required for adoption shall be a majority of the total Voting Interests. Owners not present in person or by proxy at the meeting considering the amendment may express their approval or disapproval in writing, providing such approval or disapproval is delivered to a member of the Board of Directors at or prior to the meeting. The recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment or the certified copy of the duly adopted resolution among the Public Records of Collier County. Notwithstanding anything contained herein to the contrary, no amendment shall be inconsistent with the requirements of any governmental body having jurisdiction over Glendevon.

**13.2 Scriveners' Errors.** Amendments for correction of scrivener's errors or other non-material changes may be made solely by the Board of Directors of the Association without the need of consent of the Owners.

**13.3 Amendments Affecting Water Management Areas or Systems.** Any amendment(s) materially affecting the water management areas or systems for Glendevon must be approved by South Florida Water Management District.

#### 14. DURATION AND TERMINATION

The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association and any Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of thirty (30) years from the date the Original Declaration was recorded. These restrictions shall automatically be extended for successive periods of five (5) years. This Declaration may be terminated at any time by recordation of an instrument signed by the then holders of two-thirds (2/3) of the Voting Interests in the Association and all mortgagees agreeing to terminate said covenants and restrictions. Such approval may be evidenced by an instrument signed by the holders of the required number of votes. No such termination shall impair the rights of any Owner to the use and benefit of any easements granted to such Owner herein.

## 15. MISCELLANEOUS PROVISIONS

**15.1 Enforcement.** Breach of any of the covenants contained in this Declaration, the Articles, or the Bylaws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by the Association. Any judgment rendered in any action or proceedings pursuant hereto shall include a sum for attorneys' fees in an amount as the court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, interest thereon, costs of collection and court costs. The remedies herein provided for breach of the covenants contained in this Declaration or in the Bylaws shall be deemed cumulative, and none of such remedies shall be deemed exclusive. The failure of the Association to enforce any of the covenants contained in this Declaration or in the Bylaws shall not constitute a waiver of the right to enforce the same thereafter. A breach of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws, shall not affect or impair the lien or charge of any mortgage made in good faith and for value on any Lot, provided, however, that any subsequent Owner of such Lot shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

**15.2 Severability.** Invalidation of any one or more of these covenants, conditions, or restrictions in whole or in part by judgment or court order shall in no way affect the validity of any other provisions which shall remain in full force and effect.

**15.3 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the ongoing operation of Glendevon as a residential community. The article and section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the masculine, feminine and neuter.

**15.4 No Public Right or Dedication.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Common Properties to the public, or for any public use.

**15.5 Constructive Notice and Acceptance.** Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of Glendevon does and shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained herein whether or not any reference to these restrictions is contained in the instrument by which such person acquired an interest in such property.

**15.6 Notices.** Any notice permitted or required to be delivered as provided herein shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to any person at the address given by such person to the Association for the purpose of service of such notice, or to the residence of such person if no address has been given to the Association. Such address may be changed from time to time by notice in writing to the Association.

IN WITNESS WHEREOF, the President of the Association has executed this Declaration on the date first above written.

Signed, sealed and delivered in our presence as witnesses:

**GLENDDEVON ASSOCIATION, INC.**

Witness

Mary Jo Fairwright

Print Name: MARY JO FAIRWRIGHT

By: Jordan Tusch

Its: President

Witness

MARCEEN M. LEE

Print Name: MARCEEN M. LEE

(CORPORATE SEAL)

STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August, 2002, by Gordon Gussler, as President of Glendevon Association, Inc., on behalf of said corporation, who is personally known to me or produced \_\_\_\_\_ as identification.

NOTARY SEAL

Dorothy L. Pohrer

NOTARY PUBLIC

My Commission Expires:

DOROTHY L. POHRER  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # CC939210  
EXPIRES 6/11/2004  
BONDED THRU ASA 1-888-NOTARY1

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