

RETURN TO:

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COLLIER COUNTY

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**DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS
FOR CAPE MARCO**

THIS DECLARATION is made this 7 day of APRIL,
1992, by POINT MARCO DEVELOPMENT CORPORATION., a Florida
corporation (hereinafter called "Developer")

BACKGROUND

A. Developer is the owner of a parcel of land located in Collier County, Florida, legally described on Exhibit A hereto (the "Properties" or the "Property") on which Developer is developing a residential living community together with certain facilities for the common use and enjoyment of the owners of units ("Units") located and constructed by Developer within the Properties pursuant to a general plan of development, such development on the Properties to be known as "Cape Marco"; and

B. In order to (i) ensure that a general plan of development is adhered to; (ii) establish certain continuing relationships in the form of mutual rights and obligations between Developer and the persons who acquire ownership of Units developed in Cape Marco by Developer, and their respective successors, with respect to use, enjoyment and maintenance of certain areas and facilities (hereafter described) within Cape Marco and (iii) protect, preserve, and enhance the value of Cape Marco, Developer has determined that this Declaration, establishing certain easements, servitude, restrictions, and conditions in the form of covenants running with the land shall be binding upon, enforceable against and inure to the benefit of all such present and future owners of the property developed within Cape Marco and shall run with title to the land hereby and hereafter subjected to it; and

C. Developer may, but is not obligated to, develop all or a portion of the additional land described on Exhibit B hereto (the "Additional Property") and make all or a portion of the Additional Property a part of the Properties by supplementing this Declaration so as to have it extended to affect and encumber the Additional Property.

NOW, THEREFORE, Developer hereby declares that title to the Property described in Exhibit A, and to all Units (as hereafter defined) now and hereafter existing thereon shall be held, sold, conveyed, encumbered, used and occupied subject to the terms and conditions of this Declaration as covenants running with the land enforceable as aforesaid.

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ARTICLE 1DEFINITIONS

The following terms when used in this Declaration shall have the following meanings:

(a) "Articles" means the Articles of Incorporation of the Association.

(b) "Association" means Cape Marco Property Owners Association, Inc., a non-profit Florida corporation, whose purpose is to administer the Common Properties, as hereafter defined, in accordance with the provisions of this Declaration and the governing documents of the Association.

(c) "Board" means the Board of Directors of the Association.

(d) "By-Laws" means the By-Laws of the Association.

(e) "Common Assessment" shall mean the charge against each Owner and his Unit, representing a portion of the total costs to the Association of maintaining, improving, repairing, replacing, managing and operating the Common Properties.

(f) "Common Expenses" means the actual and estimated costs of: maintenance, management, operation, repair and replacements of the Common Properties (including unpaid Special Assessments) including those costs not paid by the Owner responsible for payment; the costs of any and all commonly metered utilities, cable or master television charges, and other commonly metered charges for the Common Properties; costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, utilities, gardening and other services benefiting the Common Properties, and all recreational facilities thereon; the costs of fire, casualty and liability insurance, workmen's compensation insurance, and other insurance covering the Common Properties; the costs of bonding of the members of the management body; taxes paid by the Association, including real property taxes for the Common Properties; amounts paid by the Association to discharge any lien or encumbrance levied against the Common Properties, or portions thereof; and the costs of any other expenses incurred by the Association for any reason whatsoever in connection with the Common Properties for the benefit of all of the Owners.

(g) "Common Properties" means those portions of the Property legally described as Parcels 1 and 2 on Exhibit A hereto, and such additional portions of the Property as may be so designated by Supplemental Declarations hereto, and which are intended to be devoted to the common use and enjoyment of the Owners of the Property.

(h) "Developer" means Point Marco Development Corporation as aforesaid, and its successors and assigns who acquire any portion of Cape Marco for the purpose of development so long as Point Marco Development Corporation assigns its rights hereunder to such persons by express assignment or by operation of law. Any mortgage holder which finances construction of any part of the Property and subsequently acquires title to it through foreclosure or deed in lieu thereof will be deemed to be successors.

(i) "First Mortgagee" means an Institutional Lender, as hereafter defined, which holds a first mortgage encumbering a Unit, as hereafter defined, and which has notified the Association in writing that it holds the same.

(j) "Improved Unit" means a Unit within Cape Marco on which construction has been completed, as evidenced by a Certificate of Occupancy for such unit or the building in which it is located.

(k) "Institutional Lender" means a governmental agency, commercial or savings bank, savings and loan association, mortgage company, life insurance company, licensed mortgage company, pension fund, or business trust including, but not limited to, a real estate investment trust, or any assignee of a loan made by any such lender including, but not limited to GNMA, FNMA, VA, FHA or FHLMC, or any private or governmental institution which has insured the loan of a lender or any combination of the foregoing entities.

(l) "Member" means a Condominium Association, as hereafter defined, or the Developer. The Association has Class "A" Members and a Class "B" Member as defined in its Articles of Incorporation.

(m) "Condominium Association" means any corporation, so identified in a Declaration of Condominium filed by Developer with respect to any portion of the Properties, which Association exists for purposes of administering and maintaining such portion of the Properties.

(n) "Notice" means:

(i) Written notice delivered personally or mailed to the last known address of the intended recipient, in the manner set forth herein; or

(ii) Notice published at least once each week for two consecutive weeks in a newspaper having general circulation in Collier County, Florida; or

(iii) Notice given in any other manner provided in the ByLaws of the Association.

(o) "Owner" means the record owner, whether one or more persons or entities, of the fee simple title to any Unit developed

by Developer or its assigns upon any portion of the Properties subject hereto but, notwithstanding any applicable theory of the mortgage, shall not mean any holder of a mortgage encumbering a Unit unless and until such holder has acquired title thereto pursuant to foreclosure or any proceeding or conveyance in lieu of foreclosure.

(p) Intentionally Omitted

(q) "Restricted Common Properties" means any portion of the Common Properties such as but not limited to automobile parking spaces, designed for the exclusive use of particular Owners, as may, from time to time, be constructed and existing and designed as Restricted Common Properties.

(r) "Roads" means those private streets, roads, terraces, drives, cul-de-sacs, courts and avenues, including the entire right-of-way, as from time to time are improved and exist within the Common Properties.

(s) "Special Assessments" means a charge against a particular Owner, equal to the cost incurred by the Association, of maintaining, improving, repairing, replacing, managing and operating the Common Properties.

(t) The "Properties" means all real property which has become subject to this Declaration together with such other real property as may from time to time be annexed thereto.

(u) "Unimproved Living Unit" means a Unit within Cape Marco for which a certificate of occupancy has not been issued by the appropriate governmental authority.

(v) "Unit" means any portion of a building situated upon the Property designed and intended for use and occupancy for residential purposes.

ARTICLE 2

OWNER'S PROPERTY RIGHTS

Section 2.1. Owners' Easements of Enjoyment. Every Owner shall have the right and an easement of ingress and egress and of use and enjoyment in, to and over the Common Properties which shall be appurtenant to and shall pass with title to every Unit, subject to the following provisions:

(a) The right of the Association to reasonably limit the number of guests of Owners using the Common Properties.

(b) The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Properties.

(c) The right of the Association in accordance with its Articles of Incorporation and By-Laws and this Declaration, with the vote or written assent of at least two-thirds (2/3) of the membership vote entitled to be cast (excluding therefrom the voting powers of Developer) to borrow money for the purpose of improving the Common Properties and, subject to the provisions of Article 5 of this Declaration, to mortgage, pledge, or hypothecate any or all of the real or personal property, respectively owned by each, as security for money borrowed or debts incurred, provided that the Developer consents to same so long as it remains a Member. Provided further that the rights of any such mortgagee shall be subordinated to the use and enjoyment rights of the Owners herein.

(d) The right of the Association to suspend the voting rights and right to use the Common Properties (except to the extent needed as a means of ingress and egress) of an Owner for any period during which any assessment or dues against or due from his Unit remains unpaid and delinquent; and for a period not to exceed ninety (90) days for any single infraction of the published rules and regulations of the Association, provided that any suspension of such voting rights or right to use the Common Properties, shall be made only by the Board of Directors of the Association, after notice and opportunity for a hearing as provided in the by-Laws of the Association.

(e) Subject to the provisions of Article 5 of this Declaration, the right of the Association to dedicate, release, alienate or transfer all or any part of the Common Properties to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication, release, alienation or transfer shall be effective, unless the vote of at least two thirds (2/3) of the membership vote entitled to be cast (excluding the voting power of Developer) is obtained agreeing to such dedication, release, alienation or transfer, and with the consent thereto of the Developer so long as it remains a Member.

(f) The right of the Developer (and its sales agents, customers and representatives) to the non-exclusive use of the Common Properties and facilities without charge, for sales, display, access, ingress, egress and exhibit purposes.

(g) The right of the Association to designate automobile parking spaces located on the Common Properties as Restricted Common Property to be used exclusively by the Owner of designated Units and to make the same appurtenant to each such Unit.

(h) The restrictions, limitations and easements for drainage and other purposes reserved or granted in prior recorded covenants and instruments which encumber the Common Properties.

2.2 Delegation of Use. Any Owner may extend or delegate, as the case may be, in accordance with the By-Laws, his right of enjoyment to the Common Properties and facilities to the members of his family, or to his tenants, guests and contract purchasers, who reside or use his Unit, subject to reasonable regulation by the Board.

2.3 Easements for Parking. Temporary guest or recreational parking shall be permitted within the Common Properties only within spaces and areas clearly marked for this purpose. The Association, through its officers, committee and agents, is hereby empowered to establish parking regulations and to enforce these parking regulations by all means lawful for such enforcement on Roads, including the removal of any violating vehicle by those so empowered.

2.4 Easement for Pedestrian and Vehicular Traffic. In addition to the general easements for use of the Common Properties reserved herein, there shall be, and the Developer hereby reserves and covenants for itself with respect to all portions of the Properties, that Developer and each and every Owner shall have a non-exclusive easement appurtenant to such property as each owns, for pedestrian and vehicular traffic over all Roads within the Common Properties, subject to the parking provisions set forth in Section 2.3 herein. These easements shall specifically benefit Developer in respect to the Additional Properties, or any portion thereof which is developed in the future and all Owners of Units developed on the Additional Property.

2.5 Easements for Public Service Use. In addition to the foregoing easements over the Common Properties, there shall be and Developer hereby reserves and covenants for itself and all future Owners within Cape Marco, easements and the right to grant same for public services, including, but not limited to, utilities and the right of the police to enter upon any part of the Common Properties for the purpose of enforcing the law. This easement will similarly extend, as does the easement in Section 2.4., above, to the Additional Property and future owners of Units developed on it.

2.6 Waiver of Use. No Owner may exempt himself from personal liability for Assessments duly levied by the Association or release the Unit owned by him from the liens and charges hereof, by waiver of the use and enjoyment of the Common Properties and the facilities thereon or by abandonment of his Unit.

2.7 Title to the Common Properties. At such time as required by law, or sooner at the option of the Developer, the Developer shall convey to the Association the fee simple title to the Common Properties and the Association shall accept such conveyance. The Developer, and thereafter the Association, shall hold title to the Common Properties for the benefit of those persons entitled to use same under the provisions hereof. Developer may mortgage the

Common Properties to finance the original development and construction thereof, provided that (i) the lender recognizes the right of the Owners hereunder, (ii) except as hereafter provided the Common Properties shall be free of mortgages at the time of conveyance to the Association, and (iii) except as hereafter provided the Association shall not be personally liable for payment of same.

ARTICLE 3

MEMBERSHIP IN ASSOCIATION

Every Condominium Association within the Properties, and the Developer, shall be a Member of the Association. Memberships in the Association shall not be assignable, except to the successor-in-interest of a Condominium Association, or of the Developer.

ARTICLE 4

VOTING RIGHTS

There shall be such classes of Members in the Association as are from time to time established by the Articles or By-Laws. The voting rights of such Members shall be such, and votes shall be cast, as set forth in said documents.

Notwithstanding anything to the contrary in any of the aforesaid documents, Developer shall have the right to appoint a majority of the Directors, consistent with Florida Statute 718.301, until transfer of Association control pursuant to Article VI of the Articles.

ARTICLE 5

DUTIES AND POWERS OF ASSOCIATION

The Association, acting through its Board of Directors, shall have such powers and duties with respect to the Common Properties as are provided for in the Articles and By-Laws.

ARTICLE 6

COVENANT FOR MAINTENANCE ASSESSMENTS

6.1 Creation of the Lien and Personal Obligation of Assessments. Developer, for each Unit now or hereafter owned by it within Cape Marco and subject to this Declaration, hereby covenants, and each successor Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association (i) annual Common Assessments for Common Expenses and (ii) Special

Assessments, such Assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs and reasonable attorneys' fees for the collection thereof, shall be a charge and secured by a continuing lien upon the Unit against which such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. Subject to provisions of this Declaration protecting First Mortgagees, the personal obligation for delinquent Assessments shall pass to and be assumed by the successors-in-title of such Owner.

6.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the Owners and the Common Properties and in particular for the improvement and maintenance of properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Properties and of the Units situated upon the Properties, including but not limited to the payment of insurance and taxes on the Common Properties, if any are assessed, and repair, replacement, and additions thereto and for the cost of labor, equipment, materials, management and supervision thereof.

6.3 Date of Commencement of "Common Assessments"; Due Dates; Assessment Period. The Common Assessment shall accrue in respect to each Improved Unit, subject to this Declaration, on the date of conveyance of such Unit by the Developer to the first Owner thereof (hereafter called the "Commencement Date") and shall thereafter be due on the first day of every "Assessment Period" as such term is defined in the By-Laws of the Association. With respect to Unimproved Units, the Developer reserves the right to supplement this section to establish commencement dates for such Units, as property on which such Units may be located are added to this Declaration.

6.4 Basis and Maximum Amount of Common Assessments. Except as provided in Section VII. C. of the By-Laws with regard to increases in assessments above 115 percent of a prior year's assessment, from the Commencement Date of Common Assessments until the Developer ceases to be in control of the Board, the initial Common Assessments for all Class "A" Members of the Association, as defined in the Articles and By-Laws, shall be established by the Developer. Except as hereinafter provided, no assessment shall be payable by Developer.

With regard to Units owned by the Developer, where such Units have not been submitted to condominium ownership, until the time Developer ceases to be in control of the Board of the Association, as provided in Article 4, the Developer shall not pay any Common Assessments or Special Assessments. With regard to Units owned by

the Developer where such Units have been submitted to condominium ownership, until the first day of the fourth calendar month following the month in which the closing of the purchase and sale of the first Unit in such condominium occurs, the Developer shall not pay any Common Assessments or Special Assessments. In lieu of such payment the Developer shall, during each year of operation based on the Association's budget, pay the difference in cost between the sum of Common Assessments collected from Class "A" Members and the actual cost of operation of the Association. In the event of an increase in the annual Association budget for the actual cost of operation of the Association, the Developer may increase the Common Assessments prior to the time it ceases to control the Board, so that thereafter the Developer shall not be obligated to pay a Common or Special Assessment on any Unit owned by it except as provided herein. Notwithstanding any provision that may be contained to the contrary in this Declaration, the Developer may at any time commence paying assessments as to Units that it owns and thereby automatically terminate its obligation to fund deficits, but at any time thereafter the Developer may again elect to follow the procedures specified in this Section.

The Board, in accordance with the requirements for a change of Common Assessments, as provided in this Article 6 and the By-Laws, may change the budget and level of Common Assessments at any annual meeting of the Board. For each 12 month period (hereinafter called the "Assessment Year"), the Common assessments may be adjusted by vote of the Board as set forth in Section 5.9.

6.5 Special Assessments. Other than as provided in Section 6.9, in addition to the Common Assessments authorized by Section 6.1, the Board may levy in any Assessment Year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, or for other purposes deemed appropriate by the Association. Any such assessment which in one Assessment Year exceeds Five Thousand Dollars (\$5,000.00) shall be subject to the approval by the Members by a majority vote of the membership votes entitled to be cast, other than Developer. The due date of any Special Assessment under this Article shall be fixed in a resolution authorizing such assessment. Except as provided in Section 6.4, the Developer shall not be obligated to pay Special Assessment levied on any Unit owned by it.

6.6 Damage to Common Properties by Owners. Any of the foregoing maintenance, repairs or replacements within the Common Properties which arises out of or is caused by the willful or negligent act of the Owner, his family, guests or invitees shall be done at said Owner's expense and a Special Assessment therefor may be made against his Unit.

6.7 Notice and Quorum for any Action Authorized Under Section 6.5. Written notice of any meeting of the Members called for the purpose of taking any action provided under Section 6.5 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members in person or by proxy entitled to cast one-third (1/3) of all votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one fourth (1/4) of all votes of the membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.8 Rate of Assessment. Common Assessments and Special Assessments provided for in this Declaration shall be initially allocated and assessed among the Units contained within Cape Marco on an equal basis so that each Unit contributes the same share toward Assessments as do all others. The Assessments shall be apportioned among all Owners of Units within condominiums administered by Class A members based on the total number of such Units which are from time to time subject to these restrictions.

The Association may, subject to the provisions of Section 6.6, levy Special Assessments against selected Owners who have caused the Association to incur special expenses due to willful or negligent acts of said Owners, their guests or agents.

6.9 Date of Commencement of Common Assessments, Due Date. The first annual Common Assessment shall be adjusted according to the number of months remaining in the fiscal year as set forth in the By-Laws. The Board of Directors shall fix the amount of the annual Common Assessment against each Unit subject to assessment in accordance with procedures for adopting a budget contained in the By-Laws. Written notice of any change in the amount of the annual Common Assessment shall be sent to every Owner subject thereto, in accordance with the By-Laws. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association, setting forth whether the assessments on a specified Unit have been paid. A properly executed certificate of the Association as to the status of the assessments against a Unit shall be binding upon the Association as of the date of its issuance.

The Board of Directors shall cause to be prepared an annual balance sheet and operating statement reflecting income and expenditures of the Association for each fiscal year, and shall cause a copy of each such statement to be distributed to each Member, in the manner provided in the By-Laws.

The Association may designate any Condominium Association within Cape Marco to collect from Units in the Condominium it administers the assessments levied hereunder for the Units within said Condominium, and in doing so may bill the entire amount due from all Units in the Condominium to its Condominium Association.

At the end of any fiscal year of the Association, the Members may determine that all excess funds remaining in the Associations operating account, over and above the amounts used for the operation of the Properties, may be returned to the Owners proportionately, or may be retained by the Association and used to reduce the following year's Common Assessments. Upon the dissolution of the Association, any amount remaining in any reserve fund shall be distributed to or for the benefit of the Members in a proportion equal to their individual respective contributions.

6.10 Exempt Property. Common Expenses shall only be assessed against Units which are subject to assessment under the provisions hereof, and all other portions of Cape Marco shall be exempt therefrom.

ARTICLE 7

EFFECT OF NON-PAYMENT OF ASSESSMENTS REMEDIES OF THE ASSOCIATION

7.1 Effect of Non-Payment of Assessments; Remedies of the Association. Any installment of a Common Assessment or Special Assessment not paid within ten (10) days after the due date shall bear interest from the due date of such installment at the rate of eighteen (18) percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Unit. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Properties or abandonment of his Unit. If any installment of any assessment is not paid within thirty (30) days after its due date, the Board may mail an acceleration notice to the Owner and to each First Mortgagee of such Unit which has requested a copy of the notice. The notice shall specify (i) the fact that the installment is delinquent, (ii) the action required to cure the default, (iii) a date, not less than thirty (30) days from the date the notice is mailed to the Owner, by which such default must be cured, and (iv) that failure to cure the default on or before the date specified in the notice may result in acceleration of the balance of the installments of the particular assessment for the then current fiscal year and sale of the Unit pursuant to foreclosure of the lien securing the unpaid assessment. If the delinquent installments of Common Assessments and any charges thereon are not paid in full on or before the date specified in the notice, the Board at its option may declare due all of the unpaid balance of the annual Common Assessment and all

charges thereon in any manner authorized by law and this Declaration.

7.2 Notice of Claim of Lien. No action shall be brought to enforce any assessment lien herein, unless at least thirty (30) days has expired following the date a Notice of Claim of Lien is deposited in the United States mail, certified or registered, postage prepaid, to the Owner of the Unit, and a copy thereof has been recorded by the Association in the office of the Clerk of the Circuit Court of Collier County, Florida. Said Notice of Claim of Lien must recite a good and sufficient legal description of any such Unit, the record Owner or reputed Owner thereof, the amount claimed (including interest on the unpaid assessment at eighteen (18%) percent per annum, plus reasonable attorneys' fees and expenses of collection in connection with the debt secured by said lien), and the name and address of the claimant. Such Notice of Claim of Lien shall be signed and acknowledged by an officer of the Association. The lien shall continue until fully paid or otherwise satisfied.

7.3 Foreclosure Sale. 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 Unit at a foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

7.4 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, but not to exceed Fifty (\$50.00) Dollars, to cover the cost of preparing and recording such release. A certificate executed and acknowledged by any two (2) members of the Board or by the President of the Association stating the indebtedness secured by the liens upon any Unit 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 at a reasonable fee.

7.5 Cumulative Remedies. The assessment liens and the right to foreclose 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.

7.6 Subordination of the Lien to Mortgages. The lien securing the assessments provided for herein shall be subordinate to the lien of any First Mortgage (meaning any recorded mortgage with first priority or seniority over all other mortgages) made in good faith and for value, and recorded prior to the date on which

a Notice of Claim, pursuant to such lien, is recorded. The sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to the foreclosure or deed in lieu thereof of a First Mortgage, shall extinguish the lien of such assessments as to installments which became due prior to such sale or transfer and for which no Notice of Claim was filed. However, no sale or transfer shall relieve such Unit from liability for any installments of assessments thereafter becoming due or from the lien thereof. Liens securing all assessments under this Declaration shall be of equal dignity.

ARTICLE 8

MAINTENANCE AND REPAIR OBLIGATIONS

8.1 Maintenance Obligations of Owners. Subject to the duty of the Association to provide for maintenance as provided in this Article, it shall be the duty of the Owners of Units, with regard to the Units, and the Condominium Association(s) with regard to Common Areas or Common Elements of the Condominium(s), at their sole cost and expense, subject to the provisions of this Declaration, to maintain, repair, replace and restore areas subject to their control, in a neat, sanitary and attractive condition. In the event that any such Owners or Associations shall permit any improvement, which it is their responsibility to maintain, to fall into disrepair or not to be so maintained so as to create a dangerous, unsafe, unsightly or unattractive condition, or to otherwise violate this Declaration, the Association shall have the right, but not the duty, upon fifteen (15) days prior written notice to the appropriate Owner or Association, to correct such condition and to enter upon such property to make such repairs or to perform such maintenance, and the cost thereof shall be charged to the Owner or such Association. Said cost shall be a Special Assessment and shall create a lien upon all the Units in said Condominium, or particular affected Units, enforceable in the same manner as other assessments as set forth in this Declaration. Such Association, or such Owners, shall pay promptly all amounts due for such work, and the costs and expenses of collection may be added, at the option of the Board of Directors, to the amounts payable by each Unit Owner in the affected Neighborhood or Condominium or payable by the Unit Owner as Common Assessments.

8.2 Maintenance Obligations of Association. Subject to the provisions of Section 8.1, the Association shall maintain, or provide for the maintenance of all of the Common Properties and all improvements thereon, in good order and repair, including recreational facilities, the interior and exterior of any recreational buildings, and any and all utility facilities, lakes, improvements, and buildings on the Common Properties. In addition to improvement maintenance, the Association shall provide all necessary landscaping and gardening to properly maintain and

periodically replace when necessary the trees, plants, grass and other vegetation which is on the Common Properties. The Association shall further maintain, reconstruct, replace and refinish any roads and any paved surface in the Common Properties. All of the foregoing obligations of the Association shall be discharged when and in such manner as the Board of Directors of the Association shall determine in their judgment to be appropriate.

8.3 Exterior Appearance and Design. The Owners of Units in any residential building which has suffered damage may apply for approval for reconstruction, rebuilding or repair of the improvements therein to the Board of the Association. Application for such approval shall be made in writing together with drawings and elevations showing the proposed reconstruction and the end result thereof. The Board shall grant such approval only if upon completion of the work the exterior appearance and design will be substantially the same as that which existed prior to the date of the casualty. Failure of the Board to act within thirty (30) days after receipt of such request in writing coupled with the drawings and plot plan showing the full and complete nature of the proposed change shall constitute approval thereof.

8.4 Time Limitation. The Owner or Owners of Units located in any damaged residential building, and the Board of the Association shall be obligated to proceed with all due diligence hereunder, and, assuming the availability of funds, the responsible party shall commence reconstruction within six (6) months after the damage occurs and complete reconstruction within one (1) year after damage occurs, unless prevented by causes beyond their reasonable control.

ARTICLE 9

USE RESTRICTIONS

All real property comprising Cape Marco and additional lands which may become subject to this Declaration by Supplemental Declaration, shall be held, used and enjoyed subject to the following limitations and restrictions, and further subject to the exemption of Developer in Section 9.15 hereof.

9.1 Signs. No sign, poster, display, billboard or other advertising device of any kind shall be displayed to the public view on any portion of the Properties without the prior written consent of the Board, except signs, regardless of size, used by Developer, its successors or assigns, for advertising during the construction and the sale period.

9.2 Driveways. All roads and driveways shall be maintained in the style originally established by the Developer.

9.3 Common Properties and Restricted Common Property. The Common Properties and any Restricted Common Property shall be used only for the purposes for which they are intended to be used in the furnishing of services and facilities for the enjoyment of the Unit owners.

9.4 Trash Containers. All trash and trash containers and contents thereof shall be stored underground or in a screened-in area and as approved by the Association.

9.5 Exterior Antennae. No exterior radio, television or other electronic device antennae shall be permitted on the exterior of any Unit without the prior written approval of the Association.

9.6 Parking. Automobile parking spaces may be used only for parking automobiles that are in operating condition and for no other purposes. Trucks, commercial vehicles, campers, recreational vehicles, boats, trailers, or any vehicle not susceptible to registration by the State of Florida as an "automobile" may not be parked in parking spaces and may not be kept on the Common Property. Trucks, as used herein, is defined as a commercial vehicle, and does not include small pickups, customized vans, and other such vehicles customarily used for personal transportation and not business use. Automobile parking spaces that are designated in the Declaration as Restricted Common Property may be assigned to a separate Owner by the Association. No vehicular or boat repair or maintenance shall be performed on Association Property, except for emergency repairs sufficient to either start or tow a vehicle therefrom. Each Neighborhood and Condominium Association shall be entitled to designate areas within the parking lots used exclusively by such association for storage of bicycles.

9.7 Additional Temporary or Permanent Structures. No structure of a temporary or permanent character, including but not limited to, basements, tents, shacks, garages, barns, or other out buildings shall be used or erected on any of the Common Properties without the prior written approval of the Association as to its location, design, architecture and appearance.

9.8 Pets. Unit owners shall be permitted to keep small pets, including birds, such as canaries or parakeets; fish, such as gold fish and tropical varieties; cats; and small dogs not exceeding 17 inches in height measured at the shoulder, or 25 pounds of weight at maturity. No such pets shall be raised for commercial purposes, and no more than one dog or one cat may be kept at any one time by a Unit owner and only one dog under the age of one year may be kept on the premises. No cat or dog shall be permitted outside the Owner's Unit except when leashed and accompanied by the Owner. Each Owner shall be responsible for the actions of each pet and for cleaning up after it. In the event that any pet kept on the premises, including a dog, should constitute a nuisance in the opinion of a majority of the Board of Directors, then the Owner,

when so notified in writing, shall be required to immediately remove said pet or dog from the premises.

9.9 Alteration and Improvement of Units. The prior, express written consent of the Board of Directors of the Association is required in order to enclose, paint or otherwise decorate or substantially change the appearance of any portions of the exterior of any of the buildings that may be constructed on the Properties.

9.10 Developer. Until the Developer has sold and conveyed title to all of the Units within the Properties which it plans to develop, the Developer may use any Units it owns or leases and the Common Properties to facilitate such sales, including, but not limited to, the maintenance of a sales office and models and the display of signs.

9.11 Additional Rules and Regulations. The Developer, until it conveys the Common Properties, and thereafter the Board of Directors of the Association, may establish such additional rules and regulations as may be deemed for the best interests of the Association and its Members for purposes of enforcing the provisions of this Article 9.

9.12 Exterior Improvements; Landscaping. No Owner of a Unit shall cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors or windows of any buildings (including awnings, antennae, signs, storm shutters, screens, furniture, fixtures and equipment), or to structures of any parking areas without the prior written consent of the Board of Directors of the Association.

9.13 Nuisances. No nuisances shall be allowed upon the Properties, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Common Properties by residents. All parts of the Properties shall be kept in clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor shall any fire hazard be allowed to exist. No use shall be made of any Unit or of the Properties which would increase the rate of insurance upon the Property.

9.14 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof; and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Property shall be the same as is elsewhere herein specified with respect to other maintenance, repair and replacement.

9.15 Developer Exemption. Developer or its successors or assigns will undertake the work of constructing Units and

improvements. The completion of that work and the sale, rental and other disposal of Units is essential to the establishment and welfare of Cape Marco as a community. As used in this Section and its sub paragraphs, the words "its successors or assigns" specifically do not include purchasers of completed Units. In order that said work may be completed and Cape Marco established as a fully occupied community as rapidly as possible, no Owner nor the Association shall do anything to interfere with, and nothing in this Declaration shall be understood or construed to:

(a) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from doing on any property owned by them whatever they determine to be necessary or advisable in connection with the completion of said work including without limitation the alteration of such construction plans and designs as Developer deems advisable in the course of development (all models or sketches showing plans for future development of Cape Marco may be modified by the Developer at any time and from time to time, without notice).

(b) Prevent Developer, its successors or assigns, or its or their representatives, from erecting, constructing and maintaining on any property, owned or controlled by Developer, or its successors or assigns or its or their contractors or subcontractors, such structures as may be reasonably necessary for the conduct of its or their business or of completing said work and establishing Cape Marco as a community and disposing of the same by sale, lease or otherwise.

(c) Prevent Developer, its successors or assigns, or its or their contractors or subcontractors, from conducting on any property, owned or controlled by Developer, or its successors or assigns, its or their business of developing, grading and constructing improvements in Cape Marco as a community and of disposing Units therein by sale, lease or otherwise.

(d) Prevent Developer, its successors or assigns, from determining in its sole discretion the nature of any type of improvements to be constructed as part of the Common Properties.

9.16 Drilling. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind, shall be permitted in Cape Marco, nor shall oil wells, tanks, tunnels or mineral excavations or shafts be permitted. No derrick or other structure designed for use in boring for water, oil or natural gas shall be erected, maintained or permitted on or around the residential buildings or Common Properties.

ARTICLE 10

DAMAGE OR DESTRUCTION TO COMMON PROPERTIES

Damage or destruction of all or any portion of the Common Properties shall be handled in the following manner, notwithstanding any provision in this Declaration to the contrary:

(a) If in the event of damage or destruction to the Common Properties or any portion thereof, the insurance proceeds are sufficient to effect total restoration, then the Association shall cause such Common Properties to be repaired and reconstructed substantially as it previously existed.

(b) If the insurance proceeds are within 25% of the cost, or less, of being sufficient to effect total restoration to the Common Properties, then the Association shall cause the Common Properties 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 Section 6.5 of this Declaration.

(c) If the insurance proceeds are insufficient by more than 25% of the cost to effect total restoration to the Common Properties, then by written consent or vote of a majority of the Membership votes entitled to be cast by Members, 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 Special Assessments against all Units; (ii) to rebuild and restore in a way which utilizes all available insurance proceeds and an additional amount not in excess of 25% of the cost, and which is assessable against all Units, replacing those improvements in substantially the same manner as they existed prior to being damaged; (iii) to not rebuild and to distribute the available insurance proceeds to the Owners and Mortgagees of the Units as their interests may appear; or (iv) to use the available insurance proceeds to remove the destroyed or damaged improvements, and to replace the same with other improvements.

(d) Each Owner shall be liable to the Association for any damage to the Common Properties not fully covered by insurance which may be sustained by reason of the negligence or willful misconduct of said Owner or of his family and guests, both minor and adult. 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 Unit, the liability of such Owners shall be joint and several, except to the extent that the Association has previously contracted in writing with such joint Owners to the contrary. The cost of correcting such damage shall be a Special Assessment against the Unit and may be collected as provided herein for the collection of Common Assessments.

ARTICLE 11INSURANCE

11.1 Common Properties. The Association shall keep all buildings, improvements and fixtures of the Common Properties insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Properties shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in the Common Assessments made by the Association.

11.2 Waiver of Subrogation. As to each policy of insurance maintained by the Association, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Board, the Owners, any management company, Developer and the agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss.

11.3 Liability and Other Insurance. The Association shall have the power to and may obtain comprehensive public liability insurance, including medical payments, liquor liability insurance and malicious mischief, in such limits as it shall deem desirable, insuring against liability for bodily injury, death and property damage arising from the activities of the Association or with respect to property under its jurisdiction, including, if obtainable, a cross liability endorsement insuring each Unit Owner, the Association Board of Directors, and any management company from liability in connection with the Common Properties, the premiums for which are Common Expenses included in the Common Assessments made against the Unit Owners. All insurance policies shall be reviewed at least annually by the Board of Directors and the limits increased in its discretion. The Board may also obtain such errors and omissions insurance, indemnity bonds, fidelity bonds and other insurance as it deems advisable, insuring the Board and any management company thereof against any liability for any act or omission in carrying out their obligations hereunder, or resulting from their membership on the Board or on any committee thereof.

11.4 Waiver by Insurer. Whenever obtainable, insurance policies maintained by the Association shall provide for the following: (a) that the policy may not be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and to each First Mortgagee as that term is herein defined; (b) waive the insurer's right of subrogation against the Association and against Members individually and as a group; (c) the insurance is not prejudiced and the insurer may not avoid liability for a loss that is caused by an act of the Board of Directors of the Association or by a Member of the Board of Directors of the Association or by more Members, or by any act or neglect of individual Members which is not in the control of such Members Collectively; and (d) the policy is primary in the event that Members have other insurance covering the same loss.

ARTICLE 12

MORTGAGEE PROTECTION CLAUSE

The following provisions are for the benefit of First Mortgagees and to the extent these provisions conflict with any other provisions of the Declaration, these provisions shall control:

(a) Each holder of a First Mortgage encumbering any Unit, at its written request, is entitled to written notification from the Association of any default by the Mortgagor of such Unit in the performance of such Mortgagor's obligations under this Declaration, the Articles of Incorporation of the Association or the Bylaws of the Association, which default is not cured within thirty (30) days after the Association learns of such default.

(b) Any holder of a First Mortgage encumbering any Unit which obtains title to such Unit pursuant to the remedies provided in such Mortgage or by deed in lieu of foreclosure, shall take title to such Unit free and clear of any claims of unpaid assessments or charges due to the Association against such Unit which accrued prior to the acquisition of title to such Unit by the Mortgagee except to the extent a Notice of Claim therefor was filed prior to recording of said mortgage.

(c) Unless at least seventy-five percent (75%) of First Mortgagees (based upon one vote for each Mortgage owned), and a vote of 60% of the Membership votes entitled to be cast (other than Developer) have given their prior written approval, provided that such approval from the Mortgagees may not be unreasonably withheld, neither the Association, nor the Owners shall:

(1) By act or omission seek to sell or transfer the Common Properties and the improvements thereon which are owned by the Association, as the case may be.

(The granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association or the Developer or the transfer of the Common properties to an unincorporated association of the Owners in accordance with the Articles of Incorporation of the Association shall not be deemed a transfer within the meaning of this clause.)

(2) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Unit.

(3) Fail to maintain fire and extended coverage on insurable Common Properties on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurance value (based on current replacement cost) less such reasonable deductions as the Board may deem appropriate.

(4) Use hazard insurance proceeds for losses to the Common Properties, as the case may be, for other than the repair, replacement or reconstruction of such improvements.

(5) Except as otherwise provided herein by reservation to Developer herein, amend this Declaration or the Articles of Incorporation or By-Laws of the Association in such a manner that the rights of any First Mortgagee will be adversely affected or the value of Units reduced.

(d) All First Mortgagees who have registered their names with the Association shall be given (i) thirty (30) days written notice prior to the effective date of any proposed, material amendment to this Declaration or the Articles of Incorporation or By-Laws of the Association and prior to the effective date of any termination of any agreement for professional management of the Common Properties following a decision of the Owners to assume self-management of the Common Properties; and (ii) immediate notice following any damage to the Common Properties whenever the cost of reconstruction exceeds Twenty-Five Thousand Dollars (\$25,000.00), and as soon as the Board learns of any threatened condemnation proceeding or proposed acquisition of any portion of the Common properties.

(e) First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any Common properties facilities and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and First Mortgagees making such payments shall be owed immediate reimbursement therefor from the Association.

ARTICLE 13

ENCROACHMENTS - EASEMENTS

13.1 Encroachments. If (a) any portion of the Common Properties encroaches upon any other portion of Cape Marco; (b) any other portion of Cape Marco encroaches upon the Common Properties; or (c) any encroachment shall hereafter occur as the result of (i) construction of any building or other improvements; (ii) any alteration or repair to the Common Properties or any other portion of Cape Marco; or (iii) any repair or restoration of any building or other improvements or any of the Common Properties after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings or all or any portion of any building improvements or Common Properties, 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.

13.2 Pipes, Wires, Ducts, Cables, Conduits, Public Utility Lines, etc. Each portion of Cape Marco shall have an easement in common with all other portions thereof to use, maintain, repair, alter and replace all pipes, wires, ducts vents, cables, conduits, public utility lines, and similar related facilities located in Cape Marco and serving such portion thereof. Each portion of Cape Marco shall be subject to an easement in favor of all other portions thereof to use, maintain, repair, alter and replace the pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities located in such portion of Cape Marco and serving other portion thereof.

13.3 Easements of Support. Whenever any structure included in the Common Properties adjoins any structure included in another portion of Cape Marco, each said structure shall have and be subject to an easement of support and necessity in favor of the other structure.

13.4 Construction and Sales. The Developer (and its agents, employees, contractors, subcontractors and suppliers) shall have an easement of ingress and egress over and across the Common Properties for construction purposes. The Developer (and its agents, employees and designees) shall have an easement to erect, maintain, repair and replace, from time to time, one or more signs

on the Common Properties for the purpose of advertising the sale or lease of Units.

13.5 Reservation. Developer reserves to itself the right and easement to use such portions of The Properties as are necessary for roads, access, utilities, cable television, drainage and other purposes necessary to serve and support and provide access to any part of The Properties which is not subject to the terms hereof.

ARTICLE 14

GENERAL PROVISIONS

14.1 Enforcement. This Declaration, the Articles of Incorporation, and the By-Laws may be enforced by the Association, as follows:

(a) Breach of any of the covenants contained in the Declaration, Articles or By-Laws and the continuation of any such breach may be enjoined, abated or remedied by appropriate legal proceedings by any Member, Owner, the Developer, or the Association. Any judgment rendered in any action or proceeding 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, interests thereon, costs of collection and court costs.

(b) The remedies herein provided for breach of the covenants contained in this Declaration, the Articles or By-Laws shall be deemed cumulative, and none of such remedies shall be deemed exclusive.

(c) The failure of the Association to enforce any of the covenants contained in this Declaration the Articles or By-laws shall not constitute a waiver of the right to enforce the same thereafter.

(d) A breach of the covenants, conditions or restrictions contained in this Declaration, the Articles or Bylaws, shall not affect or impair the lien or charge of any Mortgage made in good faith and for value on any Unit, provided, however, that any subsequent Owner of such Unit shall be bound by said covenants, whether such Owner's title was acquired by foreclosure sale or otherwise.

14.2 Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

14.3 Taxes. The covenants and restrictions of this Declaration shall run with title and bind the property hereby encumbered, and

shall inure to the benefit of and be enforceable by the Association, the Developer, the Members and the Owners of Units subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-one (21) years from the date this Declaration is recorded after which time said covenants, conditions, reservation of easements, equitable servitude and restrictions shall automatically extended for successive periods of ten (10) years unless an instrument, approved by the Members by a vote of 75% of the Membership votes entitled to be cast, has been recorded, agreeing to change said covenants and restrictions in whole or in part.

14.4 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development of Cape Marco as a 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 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.

14.5 Amendments. This Declaration may be amended by (i) the affirmative vote or written consent of the Members holding not less than seventy-five percent (75%) of the voting power of the Class "A" and "C" Membership of the Association together with the affirmative vote of the Class "B" Member (so long as the Class "B" Membership exists) or (ii) solely by the unilateral affirmative action of the Class "B" Member; provided, however that no amendment adopted solely by the Class "B" Member shall be permitted which has a material adverse effect upon substantial rights of an Owner or First Mortgagee or the value of any part the properties subject hereto. Nothing contained herein shall affect the right of the Developer to make such amendments or Supplemental Declarations as may otherwise be permitted herein.

14.6 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.

14.7 Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Unit or other portion of Cape Marco 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.

14.8 Notices. Any notices 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.

14.9 No Representations or Warranties. No representations or warranties of any kind, express or implied, have been given or made by Developer or its agents or employees in connection with any portion of the Common Properties, their physical condition, zoning, compliance with applicable laws, sale, operation, maintenance, cost of maintenance, taxes or regulation thereof, except as specifically and expressly set forth in this Declaration and except as may be contained in documents filed by Developer from time to time with the Florida Division of Land Sales and Condominiums.

14.10 Supplemental Declarations. From time to time Developer may execute and file Supplemental Declarations hereto for the purpose of subjecting portions of the Additional Property to the effect of this Declaration and/or for the purpose of designating and identifying portions of the Additional Property as Common Properties. Provided, however, notwithstanding the subsequent development of the Properties, nothing herein shall obligate Developer to file Supplemental Declarations with respect to any Additional Property. Until portions of the Additional Property are so subjected to the terms of this Declaration, only the Property shall be subject to or be encumbered by it.

14.11 Withdrawal and Modification. Anything herein to the contrary notwithstanding, the Developer reserves the absolute right to amend this Declaration at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Properties from the provisions of this Declaration. Provided however the right shall not permit the removal of any land containing improvements, facilities and amenities which are needed by or were available for use by any Unit Owners at the time of acquiring their Units. Provided further that Developer may unilaterally modify and amend this Declaration for the purpose of altering the boundaries of the Common Properties so as to enlarge or reduce the size of and/or change the location of either.

Developer has executed this Declaration on the date first above written.

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Signed, sealed and delivered
in the presence of:

POINT MARCO DEVELOPMENT
CORPORATION, a Florida
Corporation

Deborah K. Joudrey
Witness Signature

Deborah K. Joudrey
Printed Name of Witness

Victoria L. Fahy
Witness Signature

VICTORIA L. FAHEY
Printed Name of Witness

By: Jack J. Antaramian
JACK J. ANTARAMIAN, President
1079 Bald Eagle Drive
Suite 5
Marco Island, FL 33937
(CORPORATE SEAL)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 7
day of APRIL, 1992, by JACK J. ANTARAMIAN, as
President of POINT MARCO DEVELOPMENT CORPORATION, a Florida
corporation, on behalf of the corporation. He is personally known
to me and did not take an oath.

(Affix Seal)

Deborah K. Joudrey
Signature of Person Taking Acknowledgment
Deborah K. Joudrey
Name of Acknowledger Typed, Printed or Stamped
Title or Rank, if other than Notary

Commission Number
My commission expires:



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JOINDER AND CONSENT TO
DECLARATION OF RESTRICTIVE COVENANTS AND EASEMENTS
FOR CAPE MARCO

The undersigned, being the owner and holder of a mortgage recorded in Official Records Book 1601, Page 666, of the Public Records of Collier County, Florida, which mortgage encumbers the land described in the foregoing Declaration of Restrictive Covenants and Easements for Cape Marco, hereby joins in and consents to the said Declaration. The joinder by the undersigned to the Declaration of Condominium is required by Section 718.104(2), Florida Statutes (1990), and shall not be construed in a manner which affects the priority of the lien of the undersigned's mortgage or the terms thereof.

Executed this 10th day of April, 1992.

Signed, sealed and delivered
in the presence of:

SHAWMUT BANK, N.A.

Christopher P. Cummings
Signature

By: Albert F. Moscato Jr.
ALBERT F. MOSCATO Jr.

CHRISTOPHER P. CUMMINGS
Name Printed

Its: Vice President

(CORPORATE SEAL)

Signature

Name Printed

STATE OF Massachusetts
COUNTY OF Suffolk

The foregoing instrument was acknowledged before me this 10th day of April, 1992, by ALBERT F. MOSCATO, as Vice President of SHAWMUT BANK, N.A., on behalf of the association. He is personally known to me or has produced Bank Id as identification and did not take an oath.

(Affix Seal)



Jennifer M. Wood
Signature of Person Taking Acknowledgment
Jennifer M. Wood
Name of Acknowledger Typed, Printed or Stamped
Mortgage Officer
Title or Rank, if other than Notary Public

Commission Number
My commission expires: 10/1/93

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PARCEL I - INGRESS AND EGRESS EASEMENT

A PARCEL OF LAND LYING IN AND BEING A PART OF SECTION 19, TOWNSHIP 32 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF SOUTH COLLIER BOULEVARD AND SWALLOW AVENUE AS SHOWN ON THE RECORDED PLAT OF MARCO BEACH UNIT 40, AS RECORDED IN PLAT BOOK 6, PAGES 74 THROUGH 79, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE S 04°18'53" W ALONG THE CENTERLINE OF SAID SOUTH COLLIER BOULEVARD A DISTANCE OF 77.12 FEET; THENCE N 85°41'07" W 50.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH COLLIER BOULEVARD; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, S 04°18'53" W 63.83 FEET; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE 482.96 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 61°29'32" AND SUBTENDED BY A CHORD WHICH BEARS S 26°25'53" E 460.11 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE LEAVING SAID RIGHT-OF-WAY LINE, S 27°35'50" W 53.64 FEET; THENCE 55.29 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 139.00 FEET, A CENTRAL ANGLE OF 22°47'20" AND SUBTENDED BY A CHORD WHICH BEARS S 31°59'30" W 54.92 FEET; THENCE S 50°23'10" W 24.15 FEET; THENCE N 04°51'02" W 51.97 FEET; THENCE S 50°23'10" W 72.00 FEET; THENCE S 07°02'44" W 60.50 FEET; THENCE S 39°36'50" E 72.00 FEET; THENCE S 88°03'41" E 56.12 FEET; THENCE S 39°36'50" E 7.31 FEET; THENCE 144.92 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 187.00 FEET, A CENTRAL ANGLE OF 44°24'11" AND SUBTENDED BY A CHORD WHICH BEARS S 17°24'45" E 141.32 FEET; THENCE S 04°47'21" W 93.63 FEET; THENCE S 19°06'56" E 56.76 FEET; THENCE S 04°47'21" W 61.26 FEET; THENCE S 85°12'39" E 31.33 FEET; THENCE N 04°47'21" E 49.12 FEET; THENCE S 85°12'39" E 24.67 FEET; THENCE N 04°47'21" E 157.60 FEET; THENCE 206.15 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 266.00 FEET, A CENTRAL ANGLE OF 44°24'11" AND SUBTENDED BY A CHORD WHICH BEARS N 17°24'45" W 201.03 FEET; THENCE N 39°36'50" W 10.54 FEET; THENCE 45.55 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS 29.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND SUBTENDED BY A CHORD WHICH BEARS N 05°23'10" E 41.01 FEET; THENCE N 50°23'10" E 27.12 FEET; THENCE 87.90 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 221.00 FEET, A CENTRAL ANGLE OF 22°47'20" AND SUBTENDED BY A CHORD WHICH BEARS N 38°50'30" E 87.32 FEET; THENCE N 27°35'50" E 53.64 FEET TO THE RIGHT-OF-WAY LINE OF SOUTH COLLIER BOULEVARD; THENCE ALONG THE RIGHT-OF-WAY LINE OF SAID SOUTH COLLIER BOULEVARD, 82.11 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 10°27'18" AND SUBTENDED BY A CHORD WHICH BEARS N 62°24'18" W 82.00 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LANDS.

SAID PARCEL CONTAINING 1.37 ACRES OF LAND, MORE OR LESS.

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PARCEL 2

A PARCEL OF LAND LYING AND BEING A PART OF SECTIONS 19 AND 20, TOWNSHIP 52 SOUTH, RANGE 26 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF SOUTH COLLIER BOULEVARD AND SWALLOW AVENUE AS SHOWN ON THE PLAT OF MARCO BEACH UNIT 10, AS RECORDED IN PLAT BOOK 6, PAGES 74 THROUGH 79, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE S 04°18'53" W ALONG THE CENTERLINE OF SAID SOUTH COLLIER BOULEVARD A DISTANCE OF 77.12 FEET; THENCE N 85°41'07" W 50.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH COLLIER BOULEVARD; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, S 04°18'53" W 63.83 FEET; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE 565.07 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 71°56'50" AND SUBTENDED BY A CHORD WHICH BEARS S 31°39'32" E 528.67 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LANDS; THENCE LEAVING SAID RIGHT-OF-WAY LINE, S 27°35'50" W 53.64 FEET; THENCE 87.90 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 221.00 FEET, A CENTRAL ANGLE OF 27°47'20" AND SUBTENDED BY A CHORD WHICH BEARS S 38°59'30" W 87.82 FEET; THENCE S 50°23'10" W 27.12 FEET; THENCE 45.55 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 29.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND SUBTENDED BY A CHORD WHICH BEARS S 05°23'10" W 41.01 FEET; THENCE S 39°36'50" E 10.54 FEET; THENCE 154.08 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 266.00 FEET, A CENTRAL ANGLE OF 33°11'16" AND SUBTENDED BY A CHORD WHICH BEARS S 23°01'02" E 151.93 FEET; THENCE S 85°12'39" E 251.37 FEET; THENCE S 04°47'21" W 134.33 FEET; THENCE S 13°59'37" W 52.85 FEET; THENCE S 04°47'21" W 116.74 FEET; THENCE S 43°10'44" W 44.62 FEET; THENCE S 69°16'21" W 76.13 FEET; THENCE N 88°12'39" W 88.00 FEET; THENCE N 04°47'21" E 45.00 FEET; THENCE N 67°27'52" W 81.99 FEET; THENCE N 04°47'12" E 42.50 FEET; THENCE N 85°12'39" W 31.33 FEET; THENCE S 04°47'21" W 136.70 FEET TO A POINT ON THE CENTERLINE OF A SEAWALL CAP; THENCE ALONG THE CENTERLINE OF SAID SEAWALL CAP, S 85°12'39" E 171.53 FEET; THENCE LEAVING SAID SEAWALL CAP, N 85°07'22" E 156.90 FEET ALONG THE MEAN HIGH WATER LINE OF CAXAMBAS PASS AS IT EXISTED ON JUNE 2, 1980 TO THE WESTERLY LINE OF LOT 1, BLOCK 587, MARCO BEACH UNIT 21, AS RECORDED IN PLAT BOOK 6A, PAGES 21A AND 22A, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE ALONG THE WESTERLY LINE OF SAID LOT 1, N 10°46'66" E 651.95 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF SOUTH COLLIER BOULEVARD; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, N 79°13'04" W 244.33 FEET; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE 90.99 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 11°35'07" AND SUBTENDED BY A CHORD WHICH BEARS N 73°25'31" W 90.84 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LANDS.

SAID PARCEL CONTAINING 3.30 ACRES OF LAND, MORE OR LESS.

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PARCEL 3

A PARCEL OF LAND LYING IN AND BEING A PART OF SECTION 19, TOWNSHIP 52 SOUTH, RANGE 16 EAST, COLLIER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINES OF SOUTH COLLIER BOULEVARD AND SWALLOW AVENUE AS SHOWN ON THE PLAT OF MARCO BEACH UNIT 10, AS RECORDED IN PLAT BOOK 6, PAGES 74 THROUGH 79, INCLUSIVE, OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA; THENCE S 04°18'53" W ALONG THE CENTERLINE OF SAID SOUTH COLLIER BOULEVARD A DISTANCE OF 77.12 FEET; THENCE N 85°41'07" W 50.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF SAID SOUTH COLLIER BOULEVARD; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, S 04°18'53" W 63.83 FEET; THENCE CONTINUE ALONG SAID RIGHT-OF-WAY LINE 565.07 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 450.00 FEET, A CENTRAL ANGLE OF 71°56'50" AND SUBTENDED BY A CHORD WHICH BEARS S 31°39'32" E 528.67 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, S 27°35'50" W 53.64 FEET; THENCE 87.90 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 221.00 FEET, A CENTRAL ANGLE OF 22°47'20" AND SUBTENDED BY A CHORD WHICH BEARS S 38°59'30" W 87.32 FEET; THENCE S 50°23'10" W 27.12 FEET; THENCE 45.55 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE LEFT, HAVING A RADIUS OF 29.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND SUBTENDED BY A CHORD WHICH BEARS S 05°23'10" W 41.01 FEET; THENCE S 39°36'50" E 10.54 FEET; THENCE 154.08 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 266.00 FEET, A CENTRAL ANGLE OF 33°11'16" AND SUBTENDED BY A CHORD WHICH BEARS S 23°01'02" E 151.93 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LANDS; THENCE CONTINUE 52.07 FEET ALONG THE ARC OF A CIRCULAR CURVE TO THE RIGHT, HAVING A RADIUS OF 266.00 FEET, A CENTRAL ANGLE OF 11°12'55" AND SUBTENDED BY A CHORD WHICH BEARS S 00°49'06" E 51.98 FEET; THENCE S 04°47'21" W 157.66 FEET; THENCE N 85°12'39" W 24.87 FEET; THENCE S 04°47'21" W 91.62 FEET; THENCE S 67°27'52" E 81.99 FEET; THENCE S 04°47'21" W 45.00 FEET; THENCE S 85°12'39" E 88.00 FEET; THENCE N 69°16'21" E 76.13 FEET; THENCE N 43°10'44" E 44.62 FEET; THENCE N 04°47'21" E 116.74 FEET; THENCE N 13°59'37" E 52.85 FEET; THENCE N 04°47'21" E 134.33 FEET; THENCE N 85°12'39" W 251.37 FEET TO THE POINT OF BEGINNING OF THE HEREIN DESCRIBED LANDS.

SAID PARCEL CONTAINING 1.99 ACRES OF LAND, MORE OR LESS.

unsatisfactory in this document when received.

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W. LAMAR EVERS, INC.

Engineering and Surveying Consultants

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"Additional Property"

Parcel 4

A parcel of land lying in and being a part of Section 19, Township 52 South, Range 26 East, Collier County, Florida, being more particularly described as follows:

Commencing at the intersection of the centerlines of South Collier Boulevard and Swallow Avenue as shown on the plat of Marco Beach Unit 10, as recorded in Plat Book 6, pages 74 through 79, inclusive, of the Public Records of Collier County, Florida; thence S 04° 18' 53" W along the centerline of said South Collier Boulevard a distance of 77.12 feet; thence N 85° 41' 07" W 50.00 feet to an iron pin, said iron pin being on the Westerly Right-of-Way line of said South Collier Boulevard and the POINT OF BEGINNING of the herein described parcel; thence N 85° 41' 07" W a distance of 469.55 feet to an iron pin; thence continue N 85° 41' 07" W a distance of 68 feet, more or less, to the Mean High Water Line (elevation +1.5 contour) of the Gulf of Mexico as it existed on January 5, 1979; thence along said mean high water line the following seven (7) described courses:

- (1) S 01° 29' 37" E 202.33 feet;
- (2) S 02° 38' 51" E 100.12 feet;
- (3) S 03° 47' 21" E 100.24 feet;
- (4) S 02° 38' 51" E 100.12 feet;
- (5) S 01° 56' 00" W 100.04 feet;
- (6) S 24° 43' 04" W 24.11 feet;

(7) thence S 70° 06' 35" W 97.00 feet to a point on the centerline of a seawall cap; thence along said centerline the following twelve (12) described courses:

- (1) thence N 74° 01' 32" W 24.71 feet;
- (2) thence S 45° 11' 55" W 122.47 feet;
- (3) thence S 05° 37' 57" W 407.84 feet;
- (4) thence S 18° 33' 25" E 295.27 feet;
- (5) thence S 43° 11' 57" E 194.86 feet;
- (6) thence S 81° 22' 40" E 53.05 feet;
- (7) thence N 85° 00' 07" E 36.69 feet;
- (8) thence N 81° 02' 21" E 15.53 feet;
- (9) thence N 53° 57' 20" E 11.66 feet;
- (10) thence N 46° 24' 57" E 86.09 feet;
- (11) thence N 46° 51' 07" E 374.27 feet;
- (12) thence S 85° 12' 39" E 245.05 feet;

thence leaving said centerline, N 04° 47' 21" E 198.02 feet; thence N 19° 06' 56" W 56.76 feet; thence N 04° 47' 21" E 93.63 feet; thence 144.92 feet along the arc of a circular curve to the left, having a radius of 187.00 feet, a central angle of 44° 24' 11" and subtended by a chord which bears N 17° 24' 45" W 141.32 feet; thence N 39° 36' 50" W 7.31 feet; thence N 88° 03' 41" W 56.12 feet; thence N 39° 36' 50" W 72.00 feet; thence N 07° 02' 44" E 60.50 feet; thence N 50° 23' 10" E 72.00 feet; thence S 84° 58' 02" E 51.97 feet; thence N 50° 23' 10" E 24.15 feet; thence S 55.29

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feet along the arc of a circular curve to the left, having a radius of 139.00 feet, a central angle of $22^{\circ} 47' 20''$ and subtended by a chord which bears $N 38^{\circ} 59' 30'' E 54.92$ feet; thence $N 27^{\circ} 35' 50'' E 53.64$ feet to the right-of-way line of South Collier Boulevard; thence along said right-of-way line 483.07 feet along the arc of a non-tangential circular curve to the right, having a radius of 450.00 feet, a central angle of $61^{\circ} 30' 21''$ and subtended by a chord which bears $N 26^{\circ} 26' 17'' W 460.20$ feet; thence continue along said right-of-way line, $N 04^{\circ} 18' 53'' E 63.83$ feet to the Point of Beginning of the herein described lands.

Less and Excepting that land as described in Official Records Book 1163, page 1358, Public Records of Collier County, Florida.

Said parcel containing acres of land, more or less.

SUBJECT TO easements, restrictions and reservations of record.