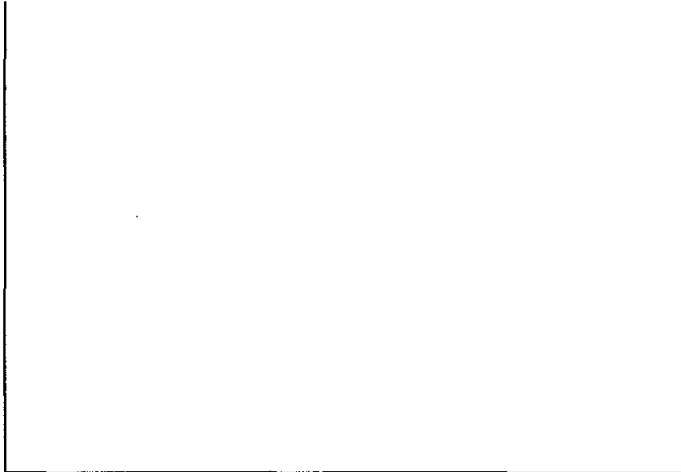


THIS INSTRUMENT PREPARED BY  
AND UPON RECORDATION RETURN TO:

ROBERT A. COOPER, ESQ.  
HAHN LOESER & PARKS LLP  
2400 FIRST STREET, SUITE 300  
FORT MYERS, FLORIDA 33901



**DECLARATION  
FOR  
SIMONTON COURT**

**TABLE OF CONTENTS**

	<b>Page</b>
1. Recitals.....	1
2. Definitions.....	1
3. Plan of Development.....	4
3.1 Generally .....	4
3.2 Association's Obligation to Cooperate .....	4
4. Amendment.....	4
4.1 General Restrictions on Amendments.....	4
4.2 No Vested Rights.....	5
4.3 Amendments Prior to and Including the Turnover Date .....	5
4.4 Amendments After the Turnover Date.....	5
5. Withdrawal.....	5
5.1 Withdrawal .....	5
6. Dissolution.....	5
6.1 Generally .....	5
6.2 Applicability of Declaration after Dissolution.....	5
7. Binding Effect and Membership.....	5
7.1 Term.....	5
7.2 Transfer.....	6
7.3 Membership.....	6
7.4 Ownership by Entity .....	6
7.5 Voting Interests.....	6
7.6 Document Recordation by Owners Prohibited .....	6
7.7 Composition of the Board.....	6
7.8 Conflicts.....	6
8. Paramount Right of Developer.....	6
9. Operation of Common Areas.....	6
9.1 Prior to Conveyance.....	6
9.2 Construction of Common Areas Facilities.....	7
9.3 Use of Common Areas by Developer .....	7
9.4 Conveyance.....	7
9.4.1 Generally .....	7
9.4.2 Form of Deed.....	7
9.5 Operation After Conveyance .....	8
9.6 Paved Areas .....	8
9.7 Delegation and Managers .....	8
9.8 Use.....	8
9.8.1 Nonexclusive Use.....	8
9.8.2 Right to Allow Use.....	8
9.8.3 Waterbodies.....	8
9.8.4 Obstruction of Common Areas.....	9
9.8.5 Assumption of Risk.....	9

- 9.8.6 Owner’s Obligation to Indemnify..... 9
  - 9.9 Rules and Regulations ..... 9
    - 9.9.1 Generally ..... 9
    - 9.9.2 Developer Not Subject to Rules and Regulations..... 9
  - 9.10 Public Facilities ..... 10
  - 9.11 Default by Another Owner ..... 10
  - 9.12 Special Taxing Districts..... 10
  - 9.13 Water Transmission and Distribution Facilities Easement and Repair..... 10
  - 9.14 Association’s Obligation to Indemnify ..... 10
  - 9.15 Site Plans and Plats..... 10
- 10. Party Walls..... 11
  - 10.1 General Rules of Law to Apply ..... 11
  - 10.2 Sharing of Repair, Replacement and Maintenance for Party Walls..... 11
    - 10.2.1 Generally ..... 11
    - 10.2.2 Failure to Contribute..... 11
    - 10.2.3 Alterations ..... 11
    - 10.2.4 Weatherproofing..... 11
    - 10.2.5 Easements ..... 11
- 11. Party Roofs..... 11
  - 11.1 General Rules of Law to Apply ..... 11
  - 11.2 Sharing of Repair, Replacement and Maintenance for Party Roofs..... 11
    - 11.2.1 Generally ..... 11
    - 11.2.2 Failure to Contribute..... 11
    - 11.2.3 Alterations ..... 12
    - 11.2.4 Easements ..... 12
- 12. Maintenance by Association ..... 12
  - 12.1 Common Areas ..... 12
  - 12.2 Lawn Maintenance..... 12
  - 12.3 Irrigation and Sprinkler Systems ..... 12
  - 12.4 Lake Common Areas ..... 12
  - 12.5 Painting..... 12
  - 12.6 Perimeter Walls and Sign Walls ..... 12
  - 12.7 Private Roads..... 12
  - 12.8 Public Roads ..... 12
  - 12.9 Surface Water Management System. .... 13
    - 12.9.1 Duty to Maintain..... 13
    - 12.9.2 Amendments to Association Documents..... 13
  - 12.10 Adjoining Areas..... 13
  - 12.11 Negligence ..... 13
  - 12.12 Right of Entry ..... 13
  - 12.13 Maintenance of Property Owned by Others..... 13
- 13. Maintenance by Owners..... 13
  - 13.1 Lawn Maintenance Standards..... 13
    - 13.1.1 Trees ..... 13
    - 13.1.2 Shrubs ..... 13
    - 13.1.3 Grass ..... 14
    - 13.1.4 Mulch ..... 14
    - 13.1.5 Insect Control and Disease ..... 14
    - 13.1.6 Fertilization ..... 14
    - 13.1.7 Post Lights..... 14
    - 13.1.8 Weeding..... 14
    - 13.1.9 Trash Removal..... 14
    - 13.1.10 Perimeter Walls ..... 14
    - 13.1.11 Right of Association to Enforce ..... 14
    - 13.1.12 Landscaping and Irrigation of Lots; Removal of Sod and Shrubbery; Additional Planting..... 14
- 14. Use Restrictions ..... 15
  - 14.1 Animals..... 15
  - 14.2 Cars and Trucks ..... 15
    - 14.2.1 Parking..... 15
    - 14.2.2 Repairs and Maintenance of Vehicles ..... 15
    - 14.2.3 Prohibited Vehicles ..... 15
  - 14.3 Casualty Destruction to Improvements..... 15
  - 14.4 Commercial Activity..... 16
  - 14.5 Completion and Sale of Homes or Lots ..... 16
  - 14.6 Control of Contractors ..... 16
  - 14.7 Cooking ..... 16
  - 14.8 Decorations ..... 16
  - 14.9 Disputes as to Use..... 16

14.10	Drainage System.....	16
14.11	Extended Vacation and Absences.....	16
14.12	Fences and Walls.....	16
14.13	Fuel Storage.....	17
14.14	Garages.....	17
14.15	Garbage Cans.....	17
14.16	General Use Restrictions.....	17
14.17	Hurricane Shutters.....	17
14.18	Irrigation.....	17
14.19	Laundry.....	17
14.20	Lawful Use.....	17
14.21	Leases.....	17
14.22	Minor's Use of Facilities.....	18
14.23	Nuisances.....	18
14.24	Oil and Mining Operations.....	18
14.25	Personal Property.....	18
14.26	Pools.....	18
14.27	Removal of Soil and Additional Landscaping.....	18
14.28	Roofs, Exterior Surfaces and Pressure Treatment.....	18
14.29	Satellite Dishes and Antennas.....	19
14.30	Signs and Flags.....	19
14.31	Sports Equipment.....	19
14.32	Storage.....	19
14.33	Subdivision and Regulation of Land.....	19
14.34	Substances.....	19
14.35	Swimming, Fishing, Boating, Docks and Wildlife.....	19
14.36	Use of Homes.....	19
14.37	Visibility on Corners.....	19
14.38	Water Intrusion.....	19
14.39	Wells.....	20
14.40	Wetlands Areas.....	20
14.41	Windows or Wall Units.....	20
14.42	Window Treatments.....	20
14.43	Workers.....	20
14.44	Builder Exemption.....	20
15.	Easement for Unintentional and Non-Negligent Encroachments.....	20
16.	Requirement to Maintain Insurance.....	20
16.1	Association.....	20
16.1.1	Flood Insurance.....	20
16.1.2	Liability Insurance.....	20
16.1.3	Directors and Officers Liability Insurance.....	20
16.1.4	Other Insurance.....	20
16.1.5	Developer.....	20
16.2	Homes.....	20
16.2.1	Requirement to Maintain Insurance.....	20
16.2.2	Requirement to Reconstruct or Demolish.....	21
16.2.3	Standard of Work.....	21
16.2.4	Additional Rights of Association.....	21
16.2.5	Rights of County.....	21
16.2.6	Association Has No Liability.....	21
16.3	Fidelity Bonds.....	21
16.4	Association as Agent.....	21
16.5	Casualty to Common Areas.....	22
16.6	Nature of Reconstruction.....	22
16.7	Additional Insured.....	22
16.8	Cost of Insurance.....	22
17.	Property Rights.....	22
17.1	Owners' Easement of Enjoyment.....	22
17.2	Ingress and Egress.....	22
17.3	Development Easement.....	22
17.4	Public Easements.....	23
17.5	Delegation of Use.....	23
17.6	Easement for Encroachments.....	23
17.7	Permits, Licenses and Easements.....	23
17.8	Support Easement and Maintenance Easement.....	23
17.9	Drainage.....	23
17.10	Blanket Easement in Favor of Association.....	23
17.11	Construction Easement.....	23
17.12	Duration.....	23
18.	Assessments.....	24

18.1	Types of Assessments.....	24
18.2	Purpose of Assessments.....	24
18.3	Designation.....	24
18.4	Allocation of Operating Costs.....	25
18.5	General Assessments Allocation.....	25
18.6	Use fees and Individual Assessments.....	25
18.7	Commencement of First Assessment.....	25
18.8	Deficit Funding, Shortfalls and Surpluses.....	25
18.9	Budgets.....	26
18.10	Establishment of Assessments.....	26
18.11	Initial Contribution.....	26
18.12	Resale Contribution.....	26
18.13	Assessment Estoppel Certificates.....	27
18.14	Payment of Home Real Estate Taxes.....	27
18.15	Creation of the Lien and Personal Obligation.....	27
18.16	Subordination of Lien to Mortgages.....	27
18.17	Survival of the Association's Lien.....	28
18.18	Acceleration.....	28
18.19	Non-Payment of Assessments.....	28
18.20	Exemption.....	28
18.21	Collection by Developer.....	28
18.22	Rights to Pay Assessments and Receive Reimbursement.....	29
18.23	Mortgagee Right.....	29
18.24	Collection of Assessments.....	29
19.	Information to Lenders and Owners.....	29
19.1	Availability.....	29
19.2	Copying.....	29
19.3	Notice.....	29
20.	Architectural Control.....	29
20.1	Architectural Control Committee.....	29
20.2	Membership.....	29
20.3	General Plan.....	29
20.4	Master Plan.....	30
20.5	Community Standards.....	30
20.6	Quorum.....	30
20.7	Power and Duties of the ACC.....	30
20.8	Procedure.....	30
20.9	Alterations.....	31
20.10	Variances.....	31
20.11	Permits.....	31
20.12	Construction by Owners.....	31
20.13	Inspection.....	31
20.14	Violation.....	31
20.15	Court Costs.....	32
20.16	Certificate.....	32
20.17	Certificate of Compliance.....	32
20.18	Exemption.....	32
20.19	Exculpation.....	32
20.20	Government Approval.....	32
21.	Owners Liability.....	33
21.1	Loop System Irrigation.....	33
21.2	Right to Cure.....	33
21.3	Non-Monetary Defaults.....	33
21.4	Expenses.....	33
21.5	No Waiver.....	34
21.6	Rights Cumulative.....	34
21.7	Enforcement By or Against Other Persons.....	34
21.8	Fines.....	34
21.9	Right of Association to Evict Tenants, Occupants, Guests and Invitees.....	34
22.	Additional Rights of Developer.....	34
22.1	Sales and Administrative Offices.....	34
22.2	Modification.....	35
22.3	Promotional Events.....	35
22.4	Use by Prospective Purchasers.....	35
22.5	Franchises.....	35
22.6	Management.....	35
22.7	Easements.....	35
22.8	Right to Enforce.....	35
22.9	Additional Development.....	35
22.10	Representations.....	36



22.11 Telecommunications Services ..... 36

22.12 Non-Liability ..... 36

22.13 Resolution of Disputes ..... 37

22.14 Venue ..... 37

22.15 Reliance ..... 37

22.16 Access Control System ..... 38

22.17 Construction of Homes and Townhomes ..... 38

23. Refund of Taxes and Other Charges ..... 38

24. Assignment of Powers ..... 38

25. Selling, Leasing and Mortgaging of Homes ..... 38

25.1 Transfers Subject to Approval ..... 38

25.1.1 Sale ..... 38

25.1.2 Lease ..... 38

25.1.3 Gift ..... 38

25.2 Approval by Association ..... 38

25.2.1 Notice to Association ..... 38

25.2.2 Certificate of Approval ..... 39

25.2.3 Approval of Owner Other Than an Individual ..... 40

25.3 Disapproval by Association ..... 40

25.3.1 Sale ..... 40

25.3.2 Lease ..... 40

25.3.3 Transfer by Gift, Devise or Inheritance ..... 40

25.4 Exceptions ..... 40

25.5 Unauthorized Transactions ..... 41

25.6 Notice of Lien or Suit ..... 41

25.6.1 Notice of Lien ..... 41

25.6.2 Notice of Suit ..... 41

25.6.3 Failure to Comply ..... 41

26. General Provisions ..... 41

26.1 Authority of Board ..... 41

26.2 Severability ..... 41

26.3 Interpretation ..... 41

26.4 Execution of Documents ..... 41

26.5 Affirmative Obligation of Association ..... 41

26.6 Letter(s) of Credit ..... 41

26.7 Notices ..... 42

26.8 Florida Statutes ..... 42

26.9 Construction Activities ..... 42

26.10 Title Documents ..... 43

**DECLARATION  
FOR  
SIMONTON COURT**

THIS DECLARATION FOR SIMONTON COURT (this "**Declaration**") is made by ACF 10-A Simonton L.L.C., a Delaware limited liability company ("**ACF**") and joined in by Simonton Court Homeowners Association, Inc., a Florida not-for-profit corporation ("**Association**").

R E C I T A L S

A. ACF is or will be the owner of the real property in Broward County, Florida ("**County**") more particularly described in **Exhibit 1** attached hereto and made a part hereof ("**Simonton Court**").

B. ACF desires to subject Simonton Court to the covenants, conditions and restrictions contained in this Declaration.

C. This Declaration is a covenant running with all of the land comprising Simonton Court, and each present and future owner of interests therein and their heirs, devisees, personal representatives, successors and assigns are hereby subject to this Declaration;

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Declaration, ACF hereby declares that every portion of Simonton Court is to be held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, reservations, regulations, charges and liens hereinafter set forth.

1. **Recitals.** The foregoing Recitals are true and correct and are incorporated into and form a part of this Declaration.

2. **Definitions.** In addition to the terms defined elsewhere in this Declaration, all initially capitalized terms herein shall have the following meanings:

"**ACC**" shall mean the Architectural Control Committee established pursuant to Section 20.1 hereof.

"**Access Control System**" shall mean any system intended to control vehicular access to and/or from Simonton Court.

"**Articles**" shall mean the Articles of Incorporation of Association filed with the Florida Secretary of State in the form attached hereto as **Exhibit 2** and made a part hereof, as amended from time to time.

"**Assessments**" shall mean any assessments made in accordance with this Declaration and as further defined in Section 18.1 hereof.

"**Association**" shall mean Simonton Court Homeowners Association, Inc., its successors and assigns.

"**Association Documents**" shall mean this Declaration, the Articles, the By-Laws, the Rules and Regulations, and the Community Standards, as amended from time to time.

"**Board**" shall mean the Board of Directors of Association.

"**Builder**" shall mean any Owner who is designated in writing as a Builder by Developer. All Owners that are designated as Builders shall be entitled to the rights of Builders contained in this Declaration. As of the date of this Declaration, Lennar is designated as a Builder. A Builder shall not have the rights or obligations of the Developer unless specifically contained in a written agreement executed by the Developer.

"**By-Laws**" shall mean the By-Laws of Association in the form attached hereto as **Exhibit 3** and made a part hereof, as amended from time to time.

"**Cable Services**" shall mean "basic service tier" as described in Section 623(b)(7)(A) of the Cable Television Consumer Protection Act of 1992, video programming services offered on a per-channel or per-program basis, video programming services offered in addition to basic service tier, any method of delivering video programming to Homes including, without limitation, interactive video programming, and any channel recognized in the industry as premium including, without limitation, HBO, Showtime, Disney, Cinemax and the Movie Channel. By way of example, and not of limitation, the term Cable Services may include cable television, satellite master antenna television, multipoint distribution systems, video dialtone, open video system or any combination thereof.

"**Common Areas**" shall mean any area dedicated to or reserved for the Association on any recorded Plat or replat of Simonton Court and all real property interests and personalty within Simonton Court designated as Common Areas from time to time by recorded amendment to this Declaration and/or provided for, owned, leased by, or dedicated to, the common use and enjoyment of the Owners within Simonton Court. The Common Areas may include, without limitation, open space areas, the surface water management system, a lake, internal buffers, perimeter buffers, perimeter walls and fences, landscaping, improvements, easement areas owned by others, public

rights of way, additions, irrigation pumps, irrigation lines, parks, a pool, a cabana, driveways, sidewalks, streets/roads, street lights, service roads, sign walls, commonly used utility facilities, project signage, parking areas, other lighting, entranceways and/or entrance features, and electronic gates. The Common Areas do not include any portion of a Home. NOTWITHSTANDING ANYTHING HEREIN CONTAINED TO THE CONTRARY, THE DEFINITION OF "COMMON AREAS" AS SET FORTH IN THIS DECLARATION IS FOR DESCRIPTIVE PURPOSES ONLY AND SHALL IN NO WAY BIND, OBLIGATE OR LIMIT DEVELOPER TO CONSTRUCT OR SUPPLY ANY SUCH ITEM AS SET FORTH IN SUCH DESCRIPTION, THE CONSTRUCTION OR SUPPLYING OF ANY SUCH ITEM BEING IN DEVELOPER'S SOLE DISCRETION. FURTHER, NO PARTY SHALL BE ENTITLED TO RELY UPON SUCH DESCRIPTION AS A REPRESENTATION OR WARRANTY AS TO THE EXTENT OF THE COMMON AREAS TO BE OWNED, LEASED BY OR DEDICATED TO ASSOCIATION, EXCEPT AFTER CONSTRUCTION AND DEDICATION OR CONVEYANCE OF ANY SUCH ITEM. Further, and without limiting the foregoing, it is possible that certain areas that would otherwise be Common Areas shall, in the sole discretion of the Developer, be conveyed to a special taxing district.

**"Community Completion Date"** shall mean the date upon which all Homes in Simonton Court, as ultimately planned and as fully developed, have been conveyed by Developer and/or Builders to non-Developer and non-Builder third party Owners.

**"Community Standards"** shall mean such standards of conduct, maintenance or other activity, if any, established by the ACC pursuant to Section 20.5 hereof.

**"Contractors"** shall have the meaning set forth in Section 20.12 hereof.

**"County"** shall have the meaning set forth in the recitals hereof.

**"Data Transmission Services"** shall mean (i) internet access services and (ii) enhanced services as defined in Section 64.702 of Title 47 of the Code of Federal Regulations, as amended from time to time, and without regard to whether the transmission facilities are used in interstate commerce.

**"Declaration"** shall mean this Declaration, together with all amendments and modifications thereof.

**"Developer"** shall mean ACF its successors and assigns. Developer shall have the right to assign all or a portion of any rights granted to the Developer in this Declaration. Developer shall also have the right to assign all or a portion of any obligations of the Developer in this Declaration. Such assignment need not be recorded in the Public Records in order to be effective. Any such assignment may be made on a non-exclusive basis. All assignments of Developer rights and/or obligations (whether full and/or partial) must be in writing. Owners and Builders shall not, solely by purchase of a Lot or Parcel, be deemed a successor or assign of Developer or of the rights and obligations of Developer under this Declaration unless such Owner or Builder is specifically so designated as a successor or assignee of such rights in the respective instrument of conveyance or other instrument executed by the Developer and recorded in the Public Records.

**"Front Yard"** shall mean the yard of every Home between the front of the Home and the road providing access to such Home. In the event there is any questions about what portion of a Home is part of the Front Yard, Association's determination shall be final.

**"Home"** shall mean a residential home and appurtenances thereto constructed on a Lot or Parcel within Simonton Court. A Home shall include, without limitation, a coach home, villa, townhome, estate home, single family home and zero lot line home. The term Home may not reflect the same division of property as reflected on a Plat. A Home shall be deemed created and have perpetual existence upon the issuance of a final or temporary Certificate of Occupancy for such residence; provided, however, the subsequent loss of such Certificate of Occupancy (e.g., by casualty or remodeling) shall not affect the status of a Home, or the obligation of Owner to pay Assessments with respect to the Lot upon which the Home is constructed. The term "Home" includes any interest in land, improvements, or other property appurtenant to the Home. As of the date of this Declaration, all Homes shall be Townhomes; provided that Developer reserves the right to designate other styles of homes as "Homes."

**"Improvement"** shall have the meaning set forth in Section 21.1 hereof.

**"Individual Assessments"** shall have the meaning set forth in Section 18.2.5 hereof.

**"Installment Assessments"** shall have the meaning set forth in Section 18.2.1 hereof.

**"Lawn Maintenance Standards"** shall have the meaning set forth in Section 13.1.

**"Lender"** shall mean (i) the institutional and licensed holder of a first mortgage encumbering a Parcel or Home or (ii) Developer and its affiliates, to the extent Developer or its affiliates finances the purchase of a Home or Lot initially or by assignment of an existing mortgage.

**"Lennar"** shall mean Lennar Homes, LLC, a Florida limited liability company. Lennar is a Builder, and is not the Developer.

**"Lessee"** shall mean the lessee named in any written lease respecting a Home who is legally entitled to possession of any rental Home within Simonton Court.

“**Lot**” shall mean any platted residential lot shown on a Plat. Once a Home has been constructed on a Lot, the term “Lot” shall be deemed to include all improvements thereon including, without limitation, a Home.

“**Master Plan**” shall mean collectively any full or partial concept plan for the development of Simonton Court, as it exists as of the date of recording this Declaration, regardless of whether such plan is currently on file with one or more governmental agencies. The Master Plan is subject to change as set forth herein. The Master Plan is not a representation by Developer as to the development of Simonton Court or its amenities, as Developer reserves the right to amend all or part of the Master Plan from time to time.

“**Member**” shall have the meaning set forth in Section 7.3 hereof.

“**NFIP**” shall have the meaning set forth in Section 16.1.1 hereof.

“**Non-Conforming Pavers**” shall have the meaning set forth in Section 9.13.

“**Operating Costs**” shall mean all costs and expenses of Association and the Common Areas. Operating Costs may include, without limitation, all costs of ownership; operation; administration; all amounts payable by Association; all amounts required to maintain the Surface Water Management System; all community lighting including, without limitation, lighting provided pursuant to agreements between Association and private utility providers, up-lighting and entrance lighting (if not the obligation of the a special taxing district), all amounts payable in connection with any private street lighting agreements, if any; amounts payable to a Telecommunications Provider for Telecommunications Services furnished to all Owners, if any; utilities; taxes; insurance; bonds; salaries; management fees; professional fees; service costs; supplies; maintenance; repairs; replacements; refurbishments; common area landscape maintenance; and any and all costs relating to the discharge of the obligations hereunder, or as determined to be part of the Operating Costs by Association. By way of example, and not of limitation, Operating Costs shall include all of Association’s legal expenses and costs relating to or arising from the enforcement and/or interpretation of this Declaration.

“**Owner**” shall mean the record owner (whether one or more persons or entities) of fee simple title to any Lot. The term “Owner” shall not include Developer until the Turnover Date.

“**Parcel**” shall mean a platted or unplatted lot, tract, unit or other subdivision of real property upon which a Home has been, or will be, constructed. Once improved, the term Parcel shall include all improvements thereon and appurtenances thereto. The term Parcel, as used herein, may include more than one Home.

“**Party Roof**” shall mean any roof built as part of the construction of two or more Homes, which Homes are connected by one or more Party Walls.

“**Party Wall**” shall mean any fence or wall built as part of the original construction of two or more Homes which is placed on the dividing line or platted lot line between such Homes.

“**Permit**” shall mean the permit issued by the SFWMD relating to Simonton Court, a copy of which is attached hereto as **Exhibit 4**.

“**Plat**” shall mean any plat of any portion of Simonton Court filed in the Public Records, as the same may be amended by Developer from time to time.

“**Public Records**” shall mean the Public Records of County.

“**Reserves**” shall have the meaning set forth in Section 18.2.4 hereof.

“**Rules and Regulations**” shall mean the Rules and Regulations governing Simonton Court as adopted by the Board from time to time.

“**SFWMD**” shall mean the South Florida Water Management District.

“**Simonton Court**” shall have the meaning set forth in the Recitals hereof subject to additions and deletions thereto as permitted pursuant to the terms of this Declaration. Developer may, when amending or modifying the description of real property which is subject to the operation of this Declaration, also amend or modify the definition of Simonton Court.

“**Special Assessments**” shall mean those Assessments more particularly described as Special Assessments in Section 18.2.2 hereof.

“**Surface Water Management System**” shall mean the collection of devices, improvements, or natural systems whereby surface waters are controlled, impounded or obstructed. This term includes exfiltration trenches, Wetland Conservation Areas, mitigation areas, lakes, retention areas, lift station, water management areas, ditches, culverts, structures, dams, impoundments, reservoirs, drainage maintenance easements, those works defined in Section 373.403(1)-(5) of the Florida Statutes, and those works authorized by SFWMD pursuant to the Permit.

“**Telecommunications Provider**” shall mean any party contracting with Association to provide Owners with one or more Telecommunications Services. Developer may be a Telecommunications Provider. With respect to any particular Telecommunications Services, there may be one or more Telecommunications Providers. By way of example, with respect to Data Transmission Services, one Telecommunications Provider may provide Association

such service while another may own, maintain and service the Telecommunications Systems which allow delivery of such Data Transmission Services.

**“Telecommunications Services”** shall mean delivered entertainment services; all services that are typically and in the future identified as telecommunication services; Telephony Services; Cable Services; and Data Transmission Services. Without limiting the foregoing, such Telecommunications Services include the development, promotion, marketing (which may be provided by Telecommunications Providers pursuant to agreements with the Association), advertisement, provision, distribution, maintenance, transmission, and servicing of any of the foregoing services. The term Telecommunications Services is to be construed as broadly as possible.

**“Telecommunications Systems”** shall mean all facilities, items and methods required and/or used in order to provide Telecommunications Services to Simonton Court. Without limiting the foregoing, Telecommunications Systems may include wires (fiber optic or other material), conduits, passive and active electronic equipment, pipes, pedestals, wireless cell sites, computers, modems, satellite antennae sites, transmission facilities, amplifiers, junction boxes, trunk distribution, feeder cables, lock boxes, taps, drop cables, related apparatus, converters, connections, head-end antennae, earth stations, appurtenant devices, network facilities necessary and appropriate to support provision of local exchange services and/or any other item appropriate or necessary to support provision of Telecommunications Services. Ownership and/or control of all or a portion of any part of the Telecommunications Services may be bifurcated among network distribution architecture, system head-end equipment, and appurtenant devices (e.g., individual adjustable digital units).

**“Telephony Services”** shall mean local exchange services provided by a certified local exchange carrier or alternative local exchange company, intraLATA and interLATA voice telephony and data transmission.

**“Title Documents”** shall have the meaning set forth in Section 26.10 hereof.

**“Toll Calls”** shall have the meaning given to such term by the Florida Public Service Commission and/or the Federal Communications Commission.

**“Townhome”** shall mean a single family attached villa or home that is not a condominium within Simonton Court that is part of a Townhome Building.

**“Townhome Building”** shall mean a single structure containing multiple Townhomes in which the Townhomes are separated by Party Walls.

**“Turnover Date”** shall mean the date on which transition of control of Association from Developer to Owners actually occurs. Without limiting the foregoing, Developer shall never be obligated to turn over Association prior to date currently required by Chapter 720, Florida Statutes, in effect on the date of recording this Declaration.

**“Use Fees”** shall have the meaning set forth in Section 18.2.3 hereof.

### 3. Plan of Development.

3.1 **Generally.** The planning process for Simonton Court is an ever-evolving one and must remain flexible in order to be responsible to and accommodate the needs of Developer’s buyers. Subject to the Title Documents, Developer may wish and has the right to develop Simonton Court into residences, comprised of homes, villas, Townhomes, zero lot line homes, patio homes, multi-family homes, condominiums, rental apartments, and other forms of residential dwellings. The existence at any point in time of walls, landscape screens, or berms is not a guarantee or promise that such items will remain or form part of Simonton Court as finally developed.

3.2 **Association’s Obligation to Cooperate.** Association shall at all times cooperate with every entity comprising Developer. Without limiting the foregoing, Association shall provide Developer with such consents and approvals which Developer may reasonably require in connection with (i) the sale of Parcels and/or Lots to Builders, (ii) the development and conveyance of the Common Areas, and (iii) master land development requirements. Additionally, Association shall cooperate with Developer in connection with the turnover of Association control including, but not limited to, signing a turnover receipt in the form to be provided by Developer to Association on the Turnover Date.

### 4. Amendment.

4.1 **General Restrictions on Amendments.** Notwithstanding any other provision herein to the contrary, no amendment to this Declaration including, without limitation, an amendment withdrawing any portion of Simonton Court from the purview of this Declaration, shall affect the rights of Developer or Lennar unless such amendment receives the prior written consent of Developer and/or Lennar, as applicable, which consent may be withheld for any reason whatsoever. All proposed amendments to this Declaration shall be provided to Lennar and Developer, and Lennar and Developer, each in its sole and absolute discretion, shall determine whether such amendment affects Lennar’s or Developer’s respective rights, as the case may be. Within five (5) days receipt of any proposed amendment, Lennar and Developer shall each notify, in writing, the party seeking to amend the Declaration (*i.e.*, the Developer or the Association) as to whether Lennar or the Developer believes the proposed amendment affects Lennar’s or the Developer’s respective rights, as the case may be, and whether Lennar or Developer, as the case may be, will consent to such amendment. To the extent either or both of Lennar or the Developer, as the case may be, believes that a proposed amendment affects Lennar’s or the Developer’s rights, as the case may be, and chooses not to consent to such proposed amendment, such amendment shall not be recorded and shall not be effective. If the prior written approval of any governmental entity or agency having jurisdiction is

required by applicable law or governmental regulation for any amendment to this Declaration, then the prior written consent of such entity or agency must also be obtained. All amendments must comply with Section 12.9.2 which benefits SFWMD. No amendment shall be effective until it is recorded in the Public Records. The rights of Lennar set forth in this Section shall automatically terminate without any further action on the part of Developer, Lennar or Association if Lennar does not own any Lot or Parcel within Simonton Court and has no right to acquire additional Lots or Parcels pursuant to an effective agreement with Developer.

4.2 No Vested Rights. Each Owner by acceptance of a deed to a Lot irrevocably waives any claim that such Owner has any vested rights pursuant to case law or statute with respect to this Declaration or any of the other Association Documents. It is expressly intended that Developer and Association have the unfettered right to amend this Declaration and the other Association Documents except as expressly set forth herein.

4.3 Amendments Prior to and Including the Turnover Date. Prior to and including the Turnover Date, Developer shall have the right to amend this Declaration as it deems appropriate, without the joinder or consent of any person or entity; provided, however, that all amendments shall be subject to the restrictions on the right to amend this Declaration set forth in Sections 4.1 and 4.3 hereof. Such amendments may include, without limitation, the creation of easements for Telecommunications Systems, utility, drainage, ingress and egress and roof overhangs over any portion of Simonton Court; additions or deletions from the properties comprising the Common Areas; and modifications of restrictions on the Lots, and maintenance standards for landscaping. Developer's right to amend under this provision is to be construed as broadly as possible. By way of example, and not as a limitation, Developer may create easements over Lots conveyed to Owners provided that such easements do not prohibit the use of such Lots as residential homes. In the event that Association shall desire to amend this Declaration prior to and including the Turnover Date, Association must first obtain Developer's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Developer may be adopted by Association pursuant to the requirements for amendments from and after the Turnover Date. Thereafter, Developer shall join in such identical amendment so that its consent to the same will be reflected in the Public Records. Notwithstanding the foregoing, at all times after the Turnover Date, Developer shall have the right to amend Association Documents unilaterally to correct scrivener's errors.

4.4 Amendments After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, this Declaration may be amended with the approval of (i) sixty six and two-thirds percent (66 $\frac{2}{3}$ %) of the Board; and (ii) seventy-five percent (75%) of all of the votes present (in person or by proxy) at a duly noticed meeting of the members of Association in which there is a quorum.

## 5. Withdrawal.

5.1 Withdrawal. Prior to and including the Turnover Date, any portions of Simonton Court (or any additions thereto) may be withdrawn by Developer from the provisions and applicability of this Declaration by the recording of an amendment to this Declaration in the Public Records, subject to the restrictions on the right to amend this Declaration set forth in Sections 4.1 and 4.3 hereof. The right of Developer to withdraw portions of Simonton Court shall not apply to any Lot which has been conveyed to an Owner or Builder unless that right is specifically reserved in the instrument of conveyance or the prior written consent of the Owner or Builder is obtained. The withdrawal of any portion of Simonton Court shall not require the consent or joinder of any other party (including, but not limited to, Association, Owners, or any Lenders of any portion of Simonton Court). Association shall have no right to withdraw land from Simonton Court.

## 6. Dissolution.

6.1 Generally. In the event of the dissolution of Association without reinstatement within thirty (30) days, other than incident to a merger or consolidation, any Owner may petition the circuit court of the appropriate judicial circuit of the State of Florida for the appointment of a receiver to manage the affairs of the dissolved Association and to manage the Common Areas in the place and stead of Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association. In the event Association is dissolved, and any portion of the Surface Water Management System is part of the Common Areas, the Surface Water Management System shall be conveyed to an appropriate agency of local government and, if not accepted, then the Surface Water Management System shall be dedicated to a similar not-for-profit corporation.

6.2 Applicability of Declaration after Dissolution. In the event of dissolution of Association, Simonton Court and each Lot therein shall continue to be subject to the provisions of this Declaration, including, without limitation, the provisions respecting Assessments specified in this Declaration. Each Owner shall continue to be personally obligated to the successors or assigns of Association for Assessments to the extent that Assessments are required to enable the successors or assigns of Association to properly maintain, operate and preserve the Common Areas. The provisions of this Section shall only apply with regard to the maintenance, operation, and preservation of those portions of Simonton Court which had been Common Areas and continue to be so used for the common use and enjoyment of the Owners.

## 7. Binding Effect and Membership.

7.1 Term. This Declaration and all covenants, conditions and restrictions contained in this Declaration are equitable servitudes, perpetual and run with the land. Each Owner, by acceptance of a deed to a Home or Parcel, and any person claiming by, through or under such Owner (i) agrees to be subject to the provisions of this Declaration and (ii) irrevocably waives any right to deny, and any claim, that this Declaration and all covenants, conditions and restrictions contained in this Declaration are not enforceable under the Marketable Record Titles to Real Property Act, Chapter 712 of the Florida Statutes. It is expressly intended that the Marketable Record

Titles to Real Property Act will not operate to extinguish any encumbrance placed on Simonton Court by this Declaration. It is further expressly intended that no re-filing or notice of preservation is necessary to continue the applicability of this Declaration and the applicability of all covenants, conditions, and restrictions contained in this Declaration. This provision is not subject to amendment except by Developer.

7.2 Transfer. The transfer of the fee simple title to a Lot, whether voluntary or by operation of law, terminating the Owner's title to that Lot shall terminate the Owner's rights to the use of and enjoyment of the Common Areas as it pertains to that Lot and shall terminate such Owner's membership in Association. An Owner's rights and privileges under this Declaration are not assignable separately from a Lot. The Owner of each Lot is entitled to the benefits of, and is burdened with the duties and responsibilities set forth in, the provisions of this Declaration. All parties acquiring any right, title and interest in and to any Lot shall be fully bound by the provisions of this Declaration. In no event shall any Owner acquire any rights that are greater than the rights granted to, and limitations placed upon its predecessor in title pursuant to the provisions of this Declaration. In the event that any Owner desires to sell or otherwise transfer title of his or her Lot, such Owner shall give the Board at least fourteen (14) days prior written notice of the name and address of the purchaser or transferee, the date on which such transfer of title is to take place, and such other information as the Board may reasonably require. The transferor shall remain jointly and severally liable with the transferee for all obligations of the Owner and the Lot pursuant to this Declaration including, without limitation, payment of all Assessments accruing prior to the date of transfer. Until written notice is received as provided in this Section, the transferor and transferee shall be jointly and severally liable for Assessments accruing subsequent to the date of transfer. In the event that upon the conveyance of a Lot an Owner fails in the deed of conveyance to reference the imposition of this Declaration on the Lot, the transferring Owner shall remain liable for Assessments accruing on the Lot from and after the date of conveyance.

7.3 Membership. Upon acceptance of title to a Lot, and as more fully provided in the Articles and By-Laws, each Owner (or his or her Lessee, if applicable) shall be a Member of Association. All Members shall be voting members in the Association and shall exercise their voting interests in accordance with the terms and provisions of the Articles and By-Laws. Membership rights are governed by the provisions of this Declaration, the deed to a Lot, the Articles and By-Laws. Membership shall be an appurtenance to and may not be separated from, the ownership of a Lot. Developer rights with respect to Association are set forth in this Declaration, the Articles and the By-Laws.

7.4 Ownership by Entity. In the event that an Owner is other than a natural person, that Owner shall, immediately upon taking title, designate one or more persons who are to be the occupants of the Home and register such persons with Association. All provisions of this Declaration and the other Association Documents shall apply to both such Owner and the designated occupants.

7.5 Voting Interests. Voting interests in Association are governed by the provisions of the Articles and By-Laws.

7.6 Document Recordation by Owners Prohibited. Neither Association nor any Owner, nor group of Owners, may record any documents which, in any way, affect or restrict the rights of Developer or conflict with the provisions of this Declaration or the other Association Documents.

7.7 Composition of the Board. Developer reserves the right to change, from time to time prior to and including Turnover Date, the composition of Board. Without limiting the foregoing, Developer may change the number of Board members, the effect of a vote by a Board member, or how a Board member is elected or appointed prior to and including Turnover Date.

7.8 Conflicts. In the event of any conflict among this Declaration, the Articles, the By-Laws or any of the Association Documents, this Declaration shall control.

8. Paramount Right of Developer. Notwithstanding anything to the contrary herein, prior to the Community Completion Date, Developer shall have the paramount right to dedicate, transfer, and/or convey (by absolute conveyance, easement, or otherwise) portions of Simonton Court for various public purposes or for the provision of Telecommunications Systems, or to make any portions of Simonton Court part of the Common Areas, or to create and implement a special taxing district which may include all or any portion of Simonton Court. In addition, the Common Areas of Simonton Court may include decorative improvements, berms, and waterbodies. Notwithstanding anything to the contrary herein, the waterbodies may be dry during certain weather conditions or during certain times of the year. Developer may remove, modify, eliminate or replace these items from time to time in its sole discretion. SALES BROCHURES, SITE PLANS, AND MARKETING MATERIALS ARE CURRENT CONCEPTUAL REPRESENTATIONS AS TO WHAT FACILITIES, IF ANY, WILL BE INCLUDED WITHIN THE COMMON AREAS. DEVELOPER SPECIFICALLY RESERVES THE RIGHT TO CHANGE THE LAYOUT, COMPOSITION, AND DESIGN OF ANY AND ALL COMMON AREAS AT ANY TIME WITHOUT NOTICE AT ITS DISCRETION.

9. Operation of Common Areas.

9.1 Prior to Conveyance. Prior to the conveyance, identification and/or dedication of the Common Areas to Association as set forth in Section 9.4 herein, any portion of the Common Areas owned by Developer shall be operated, maintained, and administered at the sole cost of Association for all purposes and uses reasonably intended, as Developer in its sole discretion deems appropriate. During such period, Developer shall own, operate, and administer the Common Areas without interference from any Owner or Lender of a Parcel or any other person or entity whatsoever. Owners shall have no right in or to any Common Areas referred to in this Declaration unless and until same are actually constructed, completed, and conveyed to, leased by, dedicated to, and/or maintained by

Association. The current conceptual plans and/or representations, if any, regarding the composition of the Common Areas are not a guarantee of the final composition of the Common Areas. No party should rely upon any statement contained herein as a representation or warranty as to the extent of the Common Areas to be owned, leased by, or dedicated to Association. Developer, so long as it controls Association, further specifically retains the right to add to, delete from, or modify any of the Common Areas referred to herein in its sole discretion and without notice.

9.2 Construction of Common Areas Facilities. Developer has constructed or will construct, at its sole cost and expense, certain facilities and improvements as part of the Common Areas, together with equipment and personalty contained therein, and such other improvements and personalty as Developer determines in its sole discretion. Developer shall be the sole judge of the composition of such facilities and improvements. Prior to the Community Completion Date Developer reserves the absolute right to construct additional Common Areas facilities and improvements within Simonton Court, from time to time, in its sole discretion, and to remove, add to modify and change the boundaries, facilities and improvements now or then part of the Common Areas. Developer is not obligated to, nor has it represented that it will, modify or add to the facilities, improvements, or Common Areas as they are contemplated as of the date hereof. Developer is the sole judge of the foregoing, including the plans, specifications, design, location, completion schedule, materials, size, and contents of the facilities, improvements, appurtenances, personalty (e.g., furniture), color, textures, finishes, or Common Areas, or changes or modifications to any of them.

9.3 Use of Common Areas by Developer. Until the Community Completion Date Developer shall have the right to use any portion of the Common Areas, without charge, for any purpose deemed appropriate by Developer.

9.4 Conveyance.

9.4.1 Generally. On the Turnover Date, all of the Common Areas shall be conveyed by Quitclaim Deed recorded in the Public Records from Developer to Association. Association shall pay all of the costs of the conveyance. The conveyance shall be subject to easements, restrictions, reservations, conditions, limitations, and declarations of record, real estate taxes for the year of conveyance, zoning, land use regulations and survey matters. Association shall be deemed to have assumed and agreed to pay all obligations and service and similar contracts relating to the ownership operation, maintenance, and administration of the Common Areas and other obligations relating to the Common Areas imposed herein regardless of the timing of conveyance of the Common Areas from Developer to Association. Association shall, and does hereby, indemnify and hold Developer harmless on account thereof. Association, by its joinder in this Declaration, hereby accepts such dedication(s) or conveyance(s) without setoff, condition, or qualification of any nature. THE ASSOCIATION SHALL ACCEPT THE COMMON AREAS, PERSONAL PROPERTY AND EQUIPMENT THEREON AND APPURTENANT THERETO DEDICATED OR CONVEYED BY DEVELOPER IN "AS IS", "WHERE IS" CONDITION WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN FACT OR BY LAW, WITH RESPECT THERETO, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR THE ORDINARY OR ANY PARTICULAR PURPOSE, AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES REGARDING FUTURE REPAIRS OR REGARDING THE CONDITION, CONSTRUCTION, ACCURACY, COMPLETENESS, DESIGN, ADEQUACY OF THE SIZE OR CAPACITY IN RELATION TO THE UTILIZATION, DATE OF COMPLETION OR THE FUTURE ECONOMIC PERFORMANCE OR OPERATIONS OF, OR THE MATERIALS, EQUIPMENT OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH COMMON AREAS, EXCEPT AS SET FORTH IN THIS DECLARATION. BY ACCEPTANCE OF AN INTEREST IN ANY COMMON AREAS OR THE DEED TO ANY PARCEL OR LOT, THE ASSOCIATION AND ALL OWNERS AND BUILDERS RELEASE DEVELOPER FROM ANY AND ALL CLAIMS AND WARRANTIES. NO CLAIM SHALL BE MADE BY THE ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION OR COMPLETENESS OF THE COMMON AREAS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM. ALL COSTS AND EXPENSES OF ANY CONVEYANCE OF ANY COMMON AREAS, PERSONAL PROPERTY OR EQUIPMENT SHALL BE PAID BY THE ASSOCIATION.

9.4.2 Form of Deed. Each deed of the Common Areas shall be subject to the following provisions, even if such deed does not specifically reference said provisions:

9.4.2.1 a perpetual nonexclusive easement in favor of governmental agencies for the maintenance and repair of existing road, speed and directional signs, if any;

9.4.2.2 matters reflected in the plat(s) of Simonton Court;

9.4.2.3 perpetual non-exclusive easements in favor of Developer and each Builder, and their successors, and assigns in, to, upon and over all of the Common Areas for the purpose of vehicular and pedestrian ingress and egress, installation of utilities, landscaping and/or drainage, and construction of Homes and construction and maintenance of the Common Area improvements, without charge, including, without limitation, the right to use such roadways for construction vehicles and equipment. The easements reserved in the deed shall run in favor of Developer and Builders, and its employees, representatives, agents, licensees, guests, invitees, successors and/or assigns;

9.4.2.4 all restrictions, easements, covenants and other matters of record;

9.4.2.5 in the event that Association believes that Developer shall have failed in any respect to meet Developer's obligations under this Declaration or has failed to comply with any of Developer's obligations under law or the Common Areas conveyed herein are defective in any respect, Association shall give



written notice to Developer detailing the alleged failure or defect. Once Association has given written notice to Developer pursuant to this Section, Association shall be obligated to permit Developer and their agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by Developer to respond to such notice at all reasonable times. Association agrees that any inspection, test and/or repair/replacement scheduled on a business day between 9 a.m. and 5 p.m. shall be deemed scheduled at a reasonable time. The rights reserved in this Section include the right of Developer to repair or address, in Developer's sole option and expense, any aspect of the Common Areas deemed defective by Developer during its inspections of the Common Areas. Association's failure to give the notice and/or otherwise comply with the provisions of this Section will damage Developer. At this time, it is impossible to determine the actual damages Developer might suffer. Accordingly, if Association fails to comply with its obligations under this Section in any respect, Association shall pay to Developer liquidated damages in the amount of \$250,000.00 which Association and Developer agree is a fair and reasonable remedy; and

9.4.2.6 a reservation of right in favor of Developer (so long as Developer owns any portion of Simonton Court) to require that Association reconvey all or a portion of the Common Areas conveyed by quitclaim deed in favor of Developer in the event that such property is required to be owned by Developer for any purpose, including, without limitation, the reconfiguration of any adjacent property by replatting or otherwise.

9.5 Operation After Conveyance. After the conveyance or dedication of any portion of the Common Areas to Association, the portion of the Common Areas so dedicated shall be owned, operated and administered by Association for the use and benefit of the owners of all property interests in Simonton Court including, but not limited to, Association, Developer, Owners and any Lenders. Subject to Association's right to grant easements, and other interests as provided herein, Association may not convey, abandon, alienate, encumber, or transfer all or a portion of the Common Areas to a third party without (i) if prior to and including the Turnover Date, the approval of (a) a majority of the Board; and (b) the consent of Developer, or (ii) from and after the Turnover Date, approval of (a) sixty-six and two-thirds percent (66 2/3%) of the Board; and (b) seventy-five percent (75%) of all of the votes in Association.

9.6 Paved Areas. The Common Areas may contain certain paved areas. Without limiting any other provision of this Declaration, Association is responsible for the maintenance and/or resurfacing of all paved surfaces, including but not limited to, roads, pathways, bicycle paths, and sidewalks forming a part of the Common Areas, if any. Although pavement appears to be a durable material, it requires maintenance. Any patching, grading, or other maintenance work should be performed by a company licensed to perform the work. From and after the Community Completion Date, Association should monitor the roads and sidewalks forming the Common Areas monthly to ensure that vegetation does not grow into the asphalt and that there are no eroded or damaged areas that need immediate maintenance.

9.7 Delegation and Managers. Once conveyed or dedicated to Association, the Common Areas and facilities and improvements located thereon shall, subject to the provisions of this Declaration and the document of conveyance or dedication, at all times be under the complete supervision, operation, control, and management of Association. Notwithstanding the foregoing Association may delegate all or a portion of its obligations hereunder to a licensed manager or professional management company. Association specifically shall have the right to pay for management services on any basis approved by the Board (including bonuses or special fee arrangements for meeting financial or other goals). Developer, its affiliates and/or subsidiaries shall have the right to manage Association. Owners and Association acknowledge that it is fair and reasonable to have Developer, its affiliates and/or subsidiaries manage Association. Further, in the event that a Common Area is created by easement, Association's obligations and rights with respect to such Common Area may be limited by the terms of the document creating such easement.

9.8 Use.

9.8.1 Nonexclusive Use. The Common Areas shall be used and enjoyed by the Owners on a non-exclusive basis in common with other persons, entities and corporations (who may, but are not required to be, members of Association) entitled to use those portions of the Common Areas. Prior to the Community Completion Date, Developer, and thereafter, Association has the right, at any and all times, and from time to time, to further provide and make the Common Areas available to other individuals, persons, firms, or corporations, as it deems appropriate. The granting of such rights shall not invalidate this Declaration, reduce or abate any Owner's obligations pursuant to this Declaration, or give any Owner the right to avoid any of the covenants, agreements or obligations to be performed hereunder.

9.8.2 Right to Allow Use. Developer and/or Association may enter into easement agreements or other use or possession agreements whereby the Owners, Telecommunications Providers and/or Association and/or others may obtain the use, possession of, or other rights regarding certain property, on an exclusive or non-exclusive basis, for certain specified purposes. Association may agree to maintain and pay the taxes, insurance, administration, upkeep, repair and replacement of such property, the expenses of which shall be Operating Costs. Any such agreement by Association prior the Turnover Date shall require the consent of the Developer. Thereafter, any such agreement shall require the approval of the majority of the Board, which consent shall not be unreasonably withheld or delayed. Builders may enter into easement agreements respecting Lots, Parcels and Homes owned by such Builder(s), but may not enter into easement agreements respecting the Common Areas or other portions of Simonton Court.

9.8.3 Waterbodies. BY ACCEPTANCE OF A DEED TO A HOME OR LOT, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DEVELOPER, BUILDERS OR ASSOCIATION THAT WATER LEVELS WILL BE

CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME; AT TIMES, WATER LEVELS MAY BE NONEXISTENT. Developer and Association shall not be obligated to erect fences, gates, or walls around or adjacent to any waterbody within Simonton Court. Notwithstanding the foregoing, an Owner may erect a fence adjacent to the boundary of a waterbody but within the boundary of a Lot with the prior approval of the ACC. No fence or other structure may be placed within any lake maintenance easement. Swimming and boating will not be permitted in any waterbody within Simonton Court. No private docks may be erected within any waterbody forming part of the Common Areas.

9.8.4 Obstruction of Common Areas. No portion of the Common Areas may be obstructed, encumbered, or used by Owners for any purpose other than as permitted by Association.

9.8.5 Assumption of Risk. Without limiting any other provision herein, each person within any portion of Simonton Court accepts and assumes all risk and responsibility for noise, liability, injury, or damage connected with use or occupancy of any portion of Simonton Court (including the Common Areas) including, without limitation, (a) actions or inactions taken, or nuisances caused, by neighboring Owners (b) noise from maintenance equipment, (c) use of pesticides, herbicides and fertilizers, (d) view restrictions caused by maturation of trees and shrubbery, (e) reduction in privacy caused by the removal or pruning of shrubbery or trees within Simonton Court and (f) design of any portion of Simonton Court. Each such person entering onto any portion of Simonton Court also expressly indemnifies and agrees to hold harmless Developer, Association, Builders and their respective employees, directors, representatives, officers, agents, partners, affiliates and attorneys (collectively, "Indemnified Parties") from any and all damages, whether direct or consequential, arising from or related to the person's use of the Common Areas, including for attorneys' fees, paraprofessional fees and costs, pre-trial and at all levels of proceedings, including appeals. Without limiting the foregoing, all persons using the Common Areas, including without limitation, all waterbodies, lakes, pools or areas adjacent to a lake, do so at their own risk. BY ACCEPTANCE OF A DEED, EACH OWNER ACKNOWLEDGES THAT THE COMMON AREAS MAY CONTAIN WILDLIFE SUCH AS ALLIGATORS, DOGS, RACCOONS, SNAKES, DUCKS, DEER, SWINE, TURKEYS, AND FOXES. DEVELOPER, BUILDERS, AND ASSOCIATION SHALL HAVE NO RESPONSIBILITY FOR MONITORING SUCH WILDLIFE OR NOTIFYING OWNERS OR OTHER PERSONS OF THE PRESENCE OF SUCH WILDLIFE. EACH OWNER AND HIS OR HER GUESTS AND INVITEES ARE RESPONSIBLE FOR THEIR OWN SAFETY.

9.8.6 Owner's Obligation to Indemnify. Each Owner agrees to indemnify and hold harmless the Indemnified Parties against all actions, injury, claims, loss, liability, damages, costs and expenses of any kind or nature whatsoever ("Losses") incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect, or consequential, as a result of or in any way related to the Common Areas including, without limitation, use of the lakes and other waterbodies within Simonton Court by Owners, and their guests, family members, invitees, or agents, or the interpretation of this Declaration and/or exhibits attached hereto and/or from any act or omission of Developer, Builders, Association, or of any of the Indemnified Parties. Should any Owner bring suit against Developer, Builders, Association, or any of the Indemnified Parties for any claim or matter and fail to obtain judgment therein against such Indemnified Parties, such Owner shall be liable to such parties for all Losses, costs and expenses incurred by the Indemnified Parties in the defense of such suit, including attorneys' fees, paraprofessional fees and costs, pre-trial and at all levels of proceedings, including appeals.

## 9.9 Rules and Regulations.

9.9.1 Generally. Prior to and including the Turnover Date, Developer, and thereafter Association, shall have the right to adopt Rules and Regulations governing the use of the Common Areas and Simonton Court. The Rules and Regulations need not be recorded in the Public Records. The Common Areas shall be used in accordance with this Declaration and Rules and Regulations promulgated hereunder.

9.9.2 Developer Not Subject to Rules and Regulations. The Rules and Regulations shall not apply to Developer nor shall such Rules and Regulations apply to any property owned by Developer and the same shall not be applied in a manner which would prohibit or restrict the development or operation of Simonton Court or adversely affect the interests of Developer. In addition to the foregoing, Developer shall have the right, but not the obligation, to exempt Builders from all or certain of the Rules and Regulations pursuant to a written document which specifically exempts such Builder from such Rules and Regulations. Without limiting the foregoing, Developer shall have the right to: (i) develop and construct commercial, club uses and industrial uses, Homes, Common Areas and related improvements within Simonton Court, and make any additions, alterations, improvements, or changes thereto; (ii) maintain sales offices (for the sale and re-sale of (a) Homes and/or Lots and (b) residences and properties located outside of Simonton Court), general office and construction operations within Simonton Court; (iii) place, erect or construct portable, temporary or accessory buildings or structure within Simonton Court for sales, construction storage or other purposes; (iv) temporarily deposit, dump or accumulate materials, trash, refuse and rubbish in connection with the development or construction of any portion of Simonton Court; (v) post, display, inscribe or affix to the exterior of any portion of the Common Areas or portions of Simonton Court owned by Developer, signs and other materials used in developing, constructing, selling or promoting the sale of any portion Simonton Court including, without limitation, Parcels and Homes; (vi) excavate fill from any lakes or waterways within and/or contiguous to Simonton Court by dredge or dragline, store fill within Simonton Court and remove and/or sell excess fill; (vii) grow or store plants and trees within, or contiguous to, Simonton Court and use and/or sell excess plants and trees; and (viii) undertake all activities which, in the sole opinion of Developer, are necessary for the development and sale of any lands and improvements comprising Simonton Court.

9.10 Public Facilities. Simonton Court may include one or more facilities which may be open and available for the use of the general public. By way of example, there may be a public park, fire station, police station, lift station or other facility within the boundaries of Simonton Court; provided, however, no such facility shall result in expense to the general taxpayers of the County or assumption by the County of any responsibility for maintenance of any portion thereof.

9.11 Default by Another Owner. No default by any Owner in the performance of the covenants and promises contained in this Declaration or by any person using the Common Areas or any other act of omission by any of them shall be construed or considered (a) a breach by Developer or Association or a non-defaulting Owner or other person or entity of any of their promises or covenants in this Declaration; or (b) an actual, implied or constructive dispossession of another Owner from the Common Areas; or (c) an excuse, justification, waiver or indulgence of the covenants and promises contained in this Declaration.

9.12 Special Taxing Districts. For as long as Developer controls Association, Developer shall have the right, but not the obligation, to dedicate or transfer or cause the dedication or transfer of all or portions of the Common Areas of Association to a special taxing district, or a public agency or authority under such terms as Developer deems appropriate in order to create or contract with special taxing districts and community development districts (or others) for lighting, perimeter walls, entrance features, roads, landscaping, irrigation areas, lakes, waterways, ponds, surface water management systems, wetlands mitigation areas, parks, recreational or other services, security or communications, or other similar purposes deemed appropriate by Developer including, without limitation, the maintenance and/or operation of any of the foregoing; provided, however, that any such dedication or transfer shall not result in expense to the general taxpayers of the County or assumption by the County of any responsibility for maintenance of any portion of the Common Areas. As hereinafter provided, Developer may sign any taxing district petition as attorney-in-fact for each Owner and/or Builder. Each Builder and/or Owner's obligation to pay taxes associated with such district shall be in addition to such Builder and/or Owner's obligation to pay Assessments and/or other monetary obligations to the Association. Any special taxing district shall positively provide for the proper and continuous payment of taxes for Common Areas and maintenance thereof without expense to the general taxpayers of the County and shall be created pursuant to all applicable ordinances of County and all other applicable governing entities having jurisdiction with respect to the same.

9.13 Water Transmission and Distribution Facilities Easement and Repair. Developer hereby grants and conveys to the City of Coconut Creek (the "City"), its successors and assigns, the non-exclusive right, privilege and easement to construct, re-construct, lay, install, operate, maintain, relocate, repair, replace, improve and inspect water transmission and distribution facilities and sewer collection facilities and all appurtenances thereto, and all appurtenant equipment, with the full right of ingress thereto and egress therefrom, within Simonton Court (excluding such facilities located inside a Home) in accordance with plans approved by Developer or Association. Certain water transmission and distribution facilities and sewer collection facilities may be covered with decorative brick pavers that do not conform to City regulations ("Non-Conforming Pavers") in the course of construction of Homes and Common Areas, as and to the extent permitted under the terms of this Declaration. In the event City or any of its subdivisions, agencies and/or divisions shall damage any Non-Conforming Pavers as a result of construction, repair or maintenance operations of the water and/or sewer facilities or the City's use of its easement rights granted in this Section 17.4 then Association shall replace or repair such damage at the expense of the Owner of the affected Home and such cost shall be billed to such Owner as an Individual Assessment, unless, and only to the extent that, such cost is not paid by City or such other subdivisions, agencies and/or divisions. Association shall indemnify and hold harmless City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance by Association of Association's obligations under this Section 9.13.

9.14 Association's Obligation to Indemnify. Association and Owners each covenant and agree jointly and severally to indemnify, defend and hold harmless Developer and Builders and their officers, directors, shareholders, representatives, agents, partners, affiliates and any related persons or corporations and their employees from and against any and all claims, suits, actions, causes of action or damages arising from any personal injury, loss of life, or damage to property, sustained on or about the Common Areas or other property serving Association, and improvements thereon, or resulting from or arising out of activities or operations of Association or Owners, and from and against all costs, expenses, court costs, attorneys' fees and paraprofessional fees (including, but not limited to, attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals), expenses and liabilities incurred or arising from any such claim, the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments or decrees which may be entered relating thereto. The costs and expense of fulfilling this covenant of indemnification shall be Operating Costs to the extent such matters are not covered by insurance maintained by Association.

9.15 Site Plans and Plats. Simonton Court may be subject to one or more plats (each individually, a "Plat"). The Plat may identify some of the Common Areas within Simonton Court. The description of the Common Areas on a Plat is subject to change (contingent upon receipt of the appropriate plat approval(s)) and the notes on a Plat are not a guarantee of what facilities will be constructed on such Common Areas. Site plans used by Developer in its marketing efforts illustrate the types of facilities which may be constructed on the Common Areas, but such site plans are not a guarantee of what facilities will actually be constructed. Owners should not rely on a Plat or any site plans used for illustration purposes as the Declaration governs the rights and obligations of Developer and Owners with respect to the Common Areas.

## 10. Party Walls.

10.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section the general rule of law regarding Party Walls and liability for personal damage due to negligence of willful acts or omissions shall apply to all Party Walls within Simonton Court, which are built by Builders as part of the original construction of the Townhomes and any replacement thereof. In the event any portion of any structure or facility, as originally constructed by a Builder, including, without limitation, any Party Wall, shall protrude over an adjoining Townhome, it shall be deemed that such Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the projection or Party Wall. The foregoing shall also apply to any replacements of any Party Walls. The foregoing shall be perpetual in duration and shall not be subject to amendment of this Declaration.

### 10.2 Sharing of Repair, Replacement and Maintenance for Party Walls.

10.2.1 Generally. The cost of reasonable repair and/or maintenance of Party Walls (other than painting) shall be shared equally by the Owners of the Townhomes, sharing such improvements without prejudice, subject however, to the right of any Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions. The repair and/or replacement of Party Walls must be to original construction.

10.2.2 Failure to Contribute. In the event an Owner shall fail or refuse to pay his or her pro rata share of costs of repair, maintenance, or replacement of a Party Wall (whether or not through his or her own fault or the failure of his or her insurance company to pay any claim), then and in that event, the Owner advancing monies therefor and/or such Owner's Lender shall have the right to file a claim of lien for such monies advanced in the Public Records and shall have the right to foreclose such lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a construction lien; provided, however, such claim of lien shall be filed within ninety (90) days from date repairs or replacements are made to the Party Wall and suit thereon shall be commenced one (1) year from date such lien is filed. Notwithstanding the foregoing, Association shall have the right, but not the obligation, to advance monies for the repair, replacement, and /or maintenance of Party Wall(s) and charge the responsible Owner(s) an Individual Assessment for such Owner's pro-rata share of the costs.

10.2.3 Alterations. The Owner of a Townhome sharing a Party Wall with an adjoining Townhome shall not cut windows or other openings in the Party Wall, nor make any alterations, additions or structural changes in the Party Wall.

10.2.4 Weatherproofing. Notwithstanding any other provisions of this Declaration, an Owner who by his or her negligent or willful act causes a Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

10.2.5 Easements. Each Owner sharing a Party Wall shall have all easement rights reasonably necessary to perform the obligation contained herein over the Townhomes sharing the Party Wall.

## 11. Party Roofs.

11.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Section the general rule of law regarding party roofs and liability for personal damage due to negligence of willful acts or omissions shall apply to all Party Roofs within Simonton Court, which are built by Builders as part of the original construction of the Townhomes and any replacement thereof. In the event any portion of any structure or facility, as originally constructed by a Builder, including, without limitation, any Party Roof, shall protrude over an adjoining Townhome, it shall be deemed that such Owners have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the protrusion or Party Roof. The foregoing shall also apply to any replacements of any Party Roof. The foregoing shall be perpetual in duration and shall not be subject to amendment of this Declaration.

### 11.2 Sharing of Repair, Replacement and Maintenance for Party Roofs.

11.2.1 Generally. Association shall repair, maintain and/or replace the Party Roofs of Townhome Buildings within Simonton Court, at such time as the Board deems any such repairs, maintenance and/or replacement necessary or desirable in its sole discretion, and the costs of the same shall be charged as an Individual Assessment to each Owner whose Party Roof is maintained, repaired and/or replaced in accordance with this Section. The cost of reasonable repair and maintenance of Party Roofs shall be shared equally by the Owners of the Townhomes sharing such improvements without prejudice, subject however, to the right of any Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

11.2.2 Failure to Contribute. In the event an Owner shall fail or refuse to pay his or her pro rata share of costs to repair, maintain and/or replace his or her portion of the Party Roof (whether or not through his or her own fault or the failure of his or her insurance company to pay any claim), then and in that event, the Owner advancing monies therefor shall have the right to file a claim of lien in the Public Records for such monies advanced and shall have the right to foreclose such lien in accordance with the same procedural requirements as now provided for in Florida Statutes for foreclosure of a construction lien; provided, however, such claim of lien shall be filed within ninety (90) days from date repairs and/or replacements are made to the Party Roof and the suit thereon shall be commenced one (1) year from the date such lien is filed. Notwithstanding the foregoing, Association shall have the right, but not the obligation, to advance monies for the repair, replacement, and /or maintenance of Party Roof(s) and charge the responsible Owner(s) an Individual Assessment for such Owner's pro-rata share of the costs.

11.2.3 Alterations. Subject to applicable building codes, the Owner of a Townhome sharing a Party Roof with an adjoining Townhome shall not make any alterations, additions or structural changes in the Party Roof without the prior written consent of the ACC.

11.2.4 Easements. Each Owner and Association shall have all easement rights reasonably necessary to perform the obligations contained herein over the Townhomes sharing the Party Roof.

12. Maintenance by Association.

12.1 Common Areas. Except as otherwise specifically provided in this Declaration to the contrary, Association shall at all times maintain, repair, replace and insure the Common Areas, and all improvements placed thereon including, without limitation, all Common Area landscaping and irrigation.

12.2 Lawn Maintenance. If so provided in Association's budget, Association shall cut and edge the lawn in the entire yard of each Home, subject to the limitations provided in this Section. Association shall maintain the trees and hedges in the yard of each Home, and shall fertilize the yard of each Home. Association may also weed the plant bed(s) in the yard of each Home, provided that the Owner of such Home has not modified the plant bed(s) from the original plant bed(s) installed by Developer. In the event an Owner modifies the plant bed(s) as initially installed by Developer, then such Owner shall be solely responsible for maintenance of such plant bed(s). Each Owner is responsible for replacing any trees, shrubs, grass or landscaping that require replacement. Each Owner is specifically responsible for maintaining all landscaping and improvements within any portion of such Home that are fenced. EACH OWNER ACKNOWLEDGES THAT SOME HOMES MAY NOT HAVE FRONT YARDS, AND OTHER HOMES MAY HAVE FRONT YARDS THAT ARE LARGER OR SMALLER THAN THE FRONT YARDS OF OTHER HOMES. NOTWITHSTANDING THE FOREGOING, ALL LAWN MAINTENANCE EXPENSES SHALL BE DEEMED PART OF THE OPERATING COSTS OF ASSOCIATION, AND EACH OWNER SHALL PAY AN EQUAL SHARE OF SUCH COSTS. Each Owner shall be required to ensure that the Association has access to their respective yard.

12.3 Irrigation and Sprinkler Systems. As there is a single irrigation system serving Simonton Court, Association shall be responsible to maintain the irrigation and sprinkler system within the Common Areas and the yards of Lots. Builders are solely responsible for the initial installation of the irrigation pipes and irrigation system within their Lots/Parcels, including the connection thereof to the main irrigation system serving Simonton Court. Neither Developer nor the Association is liable to any Owner or Builder for any defect (workmanship or otherwise) in the installation of any irrigation pipes and irrigation system within the Lots/Parcels. Association shall have an easement over, under, across and through all of Simonton Court, including the Lots and Parcels, for the purpose of maintaining the irrigation and sprinkler system, and each Owner shall be responsible for making certain that the Association has access to all portions of the irrigation and sprinkler system, including fenced portions of a Home. Association shall be required to irrigate the grass and landscaping located on the Common Areas and Lot(s) in a routine and ordinary manner, subject to all water use restrictions imposed by applicable governmental entities. Notwithstanding the foregoing, in the event the irrigation system is temporarily unavailable (whether due to maintenance, breaks in the line or otherwise), Owners shall be responsible for irrigating their respective Lots (by hose or sprinklers connected to a hose or hoses) until otherwise notified by the Association. To the extent that Owners are instructed by the Association to irrigate their respective Lots, each Owner shall comply with all water use restrictions imposed by applicable governmental entities. To the extent an Owner fails to comply with any such water use restrictions and Association is subsequently fined due to such water use, Association may impose an Individual Assessment upon such Owner for the payment of any fine(s) imposed on Association.

12.4 Lake Common Areas. The rear or side yard of some Homes and/or Lots may contain lake slopes and/or lake banks. Association shall maintain such lake slopes and/or lake banks in order to maintain the viability of the drainage systems and drainage facilities as an Operating Cost, and Owner shall not modify the lake slopes and/or lake banks. Each Owner hereby grants Association an easement of ingress and egress across his or her Lot to all adjacent lake areas for the purpose of insuring compliance with the requirements of this Section.

12.5 Painting. Association shall be responsible for repainting the exterior of each Townhome within Simonton Court, at such time as Association deems such repainting necessary in its sole discretion, and the costs of the same shall be charged as an Individual Assessment to each Owner whose Townhome is repainted in accordance with this Section. The Board shall determine the colors to be used for any such painting in the Board's sole and absolute discretion.

12.6 Perimeter Walls and Sign Walls. Association shall be responsible for maintaining any perimeter wall of Simonton Court located within the Common Areas including, but not limited to, any fencing within the Common Areas separating Simonton Court and neighboring communities. Association shall be responsible for maintaining, if any, any sign wall located in the median of the entrance road. Notwithstanding the foregoing, each Owner shall be responsible for maintaining any approved fencing within his or her Lot.

12.7 Private Roads. All roads which are privately owned, if any, shall be maintained by Association or an entity other than County.

12.8 Public Roads. If the Association is obligated or elects to maintain the rights-of-way, medians and swales of all public roads pursuant to an agreement with the appropriate governmental entities, the cost of such maintenance by Association shall be an Operating Cost.

## 12.9 Surface Water Management System.

12.9.1 Duty to Maintain. The Surface Water Management System within Simonton Court will be owned, maintained and operated by Association as permitted by SFWMD. If owned by Association as Common Areas, the costs of the operation and maintenance of the Surface Water Management System shall be part of the Operating Costs of Association. Notwithstanding the foregoing, SFWMD has the right to take enforcement action, including a civil action for an injunction and penalties against Association to compel it to correct any outstanding problems with the Surface Water Management System facilities or in mitigation or conservation areas under the responsibility or control of Association. Association shall accept any and all transfer of permits from Developer. Association shall cooperate with Developer with any applications, certifications, documents or consents required to effectuate any such transfer of permits to Association.

12.9.2 Amendments to Association Documents. Any proposed amendment to the Association Documents which will affect the Surface Water Management System, including any environmental conservation area and the water management portions of the Common Areas, must have the prior written approval of SFWMD. Association's registered agent shall maintain copies of all Surface Water Management System permits and correspondence respecting such permits, and any future SFWMD permit actions shall be maintained by Association's registered agent for Association's benefit.

12.10 Adjoining Areas. Except as otherwise provided herein, Association shall also maintain those drainage areas, swales, lake maintenance easements, driveways, lake slopes and banks, and landscape areas that are within the Common Areas, provided that such areas are readily accessible to Association. Under no circumstances shall Association be responsible for maintaining any areas within fences or walls that form a part of a Home.

12.11 Negligence. The expense of any maintenance, repair or construction of any portion of the Common Areas necessitated by the negligent or willful acts of an Owner or persons utilizing the Common Areas, through or under an Owner shall be borne solely by such Owner and the Home, Lot and/or Parcel owned by that Owner, as the case may be, shall be subject to an Individual Assessment for that expense. By way of example, and not of limitation, an Owner shall be responsible for the removal of all landscaping and structures placed within easements or Common Areas without the prior written approval of Association.

12.12 Right of Entry. Developer and Association are granted a perpetual and irrevocable easement over, under and across Simonton Court, including the Lots and Parcels, for the purposes herein expressed, including, without limitation, for inspections to ascertain compliance with the provisions of this Declaration, and for the performance of any maintenance, alteration or repair which it is entitled to perform. Without limiting the foregoing, each of Developer and Association specifically reserves easements for all purposes necessary to comply with any governmental requirement or to satisfy any condition that is a prerequisite for a governmental approval. By way of example, and not of limitation, Developer and/or Association may construct, maintain, repair, alter, replace and/or remove improvements; install landscaping; install utilities; and/or remove structures on any portion of Simonton Court if Developer is required to do so in order to obtain the release of any bond posted with any governmental agency.

12.13 Maintenance of Property Owned by Others. Association shall, if designated by Developer (or by Association after the Community Completion Date) by amendment to this Declaration or any document of record including, without limitation declaration(s) of condominium, maintain vegetation, landscaping, sprinkler system, community identification/features and/or other areas or elements designated by Developer (or by Association after the Community Completion Date) upon areas which are within or outside of Simonton Court. Such areas may abut, or be proximate to, Simonton Court, and may be owned by, or be dedicated to, others including, but not limited to, a utility, governmental or quasi-governmental entity. These areas may include (for example and not limitation) swale areas, landscape buffer areas, berm areas or median areas within the right-of-way of public streets, roads, drainage areas, community identification or entrance features, community signage or other identification and/or areas within canal rights-of-ways or other abutting waterways. To the extent there is any agreement between Developer and Association for the maintenance of any lakes or ponds outside Simonton Court, Association shall maintain the same as part of the Common Areas. Without limiting the foregoing, the Association shall be obligated to comply with the obligations imposed thereon as described in that certain Declaration of Drainage Easement, recorded on June 10, 2005 in Official Records Book 39826, Page 1357, in the Public Records, that certain Storm Water Retention Easement Agreement, recorded on February 27, 2006, in Official Records Book 41531, Page 1660, in the Public Records, and any other obligations set forth in the Title Documents.

13. Maintenance by Owners. All lawns, landscaping and sprinkler systems and any property, structures, improvements and appurtenances not maintained by Association shall be well maintained and kept in first class, good, safe, clean, neat and attractive condition consistent with the general appearance of Simonton Court by the Owner of each Home. To the extent not maintained by the Association, each Owner is specifically responsible for maintaining all grass, landscaping and improvements within any portion of their Lot in accordance with the standards set forth below.

13.1 Lawn Maintenance Standards. The following maintenance standards (the "Lawn Maintenance Standards") apply to landscaping maintained by Owners.

13.1.1 Trees. Trees are to be pruned as needed.

13.1.2 Shrubs. All shrubs are to be trimmed as needed.

13.1.3 Grass.

13.1.3.1 Cutting Schedule. Grass shall be maintained in a neat and appropriate manner. In no event shall an Owner's lawn get in excess of five inches (5") in height.

13.1.3.2 Edging. Edging of all streets, curbs, beds and borders shall be performed as needed. Chemical edging shall not be permitted.

13.1.3.3 Dead Grass. Owner shall be responsible to replace dead grass. Neither Developer nor Association shall be responsible to replace dead grass.

13.1.4 Mulch. Mulch is to be turned four (4) times per year and shall be replenished as needed on a yearly basis.

13.1.5 Insect Control and Disease. Disease and insect control shall be performed on an as needed basis.

13.1.6 Fertilization. Fertilization of all turf, trees, shrubs, and palms shall be performed at a minimum of three (3) times a year during the following months: February, June and October.

13.1.7 Post Lights. Each Owner shall maintain all post lights (whether gas or electric) which are located within the boundaries of his or her Lot.

13.1.8 Weeding. All beds are to be weeded upon every cut. Weeds growing in joints in curbs, driveways, and expansion joints shall be removed as needed. Chemical treatment is permitted.

13.1.9 Trash Removal. Dirt, trash, plant and tree cuttings and debris resulting from all operations shall be removed and all areas left in clean condition before the end of the day.

13.1.10 Perimeter Walls. To the extent any perimeter walls are located within the boundaries of a Lot, each Owner shall be responsible for the portion of such perimeter wall located within his or her Lot.

13.1.11 Right of Association to Enforce. Each Owner grants Association an easement over his or her Home and/or Lot for the purpose of insuring compliance with the requirements of this provision and the Lawn Maintenance Standards. In the event an Owner does not comply with this Section, Association may perform the necessary maintenance to the lawn and charge the costs thereof to the non-complying Owner as an Individual Assessment. Association shall have the right to enforce the foregoing Lawn Maintenance Standards by all necessary legal action. In the event that Association is the prevailing party with respect to any litigation respecting the Lawn Maintenance Standards, it shall be entitled to recover all of its attorneys' fees and paraprofessional fees, and costs, pre-trial and at all levels of proceedings, including appeals.

13.1.12 Landscaping and Irrigation of Lots; Removal of Sod and Shrubbery; Additional Planting.

13.1.12.1 Without the prior consent of the ACC, no sod, topsoil, tree or shrubbery shall be removed from Simonton Court, and there shall be no change in the plant landscaping, elevation, condition of the soil or the level of the land of such areas which results in any change in the flow and drainage of surface water which the ACC, in its sole discretion, considers detrimental or potentially detrimental to person or property. Notwithstanding the foregoing, Owners who install improvements to the Home (including, without limitation, concrete or brick pavers) which result in any change in the flow and/or drainage of surface water shall be responsible for all of the costs of drainage problems resulting from such improvement. Further, in the event that such Owner fails to pay for such required repairs, each Owner agrees to reimburse the Association for all expenses incurred in fixing such drainage problems including, without limitation, removing excess water and/or repairing the Surface Water Management System.

13.1.12.2 No landscape lighting shall be installed by an Owner without the prior written approval of the ACC.

13.1.12.3 No weeds, underbrush, or other unsightly growth shall be permitted to be grown or remain upon any Lot. No refuse or unsightly objects shall be allowed to be placed or suffered to remain upon any Lot.

13.1.12.4 Each Owner shall be responsible to timely repair, maintain and/or replace the driveway which comprises part of a Home, the sidewalk abutting the front Lot or side of the Home and any swale areas between the Lot and the paved Common Areas including, but not limited to, any damage caused by Developer, Builder, Association or by the holder of any easement over which such driveway or sidewalk is constructed. Each Owner, by acceptance of a deed to a Lot, shall be deemed to have agreed to indemnify, defend and hold harmless Association, Builders, the Developer and the holder of any such easement including, without limitation, all applicable utility companies and governmental agencies, their agents, servants, employees and elected officials, from and against any and all actions or claims whatsoever arising out of the use of the Common Areas and any easement or the construction and/or maintenance of any driveway or sidewalk in that portion of the Common Areas, easement area, or in a public right-of-way between the boundary of such Owner's Lot and the edge of the adjacent paved roadway. Further, each Owner agrees to reimburse Association any expense incurred in repairing

any damage to such driveway or sidewalk in the event that such Owner fails to make the required repairs, together with interest at the highest rate allowed by law.

13.1.12.5 No material alteration, addition or modification to a Parcel, Lot or Home, or material change in the appearance thereof, shall be made without the prior written approval of the ACC, as required by this Declaration.

13.1.12.6 No artificial grass, plants or other artificial vegetation, or rocks or other landscape devices, shall be placed or maintained upon the exterior portion of any Home, Lot or Parcel, unless approved by the ACC.

14. Use Restrictions. Each Owner must comply with the following:

14.1 Animals. No animals of any kind shall be raised, bred or kept within Simonton Court for commercial purposes. Association may prohibit breeds of dogs that the Board considers dangerous in its sole discretion. Otherwise, Owners may keep domestic pets as permitted by County ordinances and otherwise in accordance with the Rules and Regulations established by the Board from time to time. Notwithstanding the foregoing, pets may be kept or harbored in a Home only so long as such pets or animals do not constitute a nuisance. A determination by the Board that an animal or pet kept or harbored in a Home is a nuisance shall be conclusive and binding on all parties. All pets shall be walked on a leash. No pet shall be permitted outside a Home unless such pet is kept on a leash or within an enclosed portion of the yard of a Lot, as approved by the ACC. No pet or animal shall be "tied out" on the exterior of the Home or in the Common Areas, or left unattended in a yard or on a balcony, porch, or patio. No dog runs or enclosures shall be permitted on any Lot. When notice of removal of any pet is given by the Board, the pet shall be removed within forty-eight (48) hours of the giving of the notice. All pets shall defecate only in the "pet walking" areas within Simonton Court designated for such purpose, if provided by Association, or on that Owner's Lot. The person walking the pet or the Owner shall clean up all matter created by the pet. Each Owner shall be responsible for the activities of its pet. Notwithstanding anything to the contrary, seeing eye dogs shall not be governed by the restrictions contained in this Section.

14.2 Cars and Trucks.

14.2.1 Parking. Owners' automobiles shall be parked in the garage or driveway, if provided, and shall not block the sidewalk. No vehicles of any nature shall be parked on any portion of Simonton Court or a Lot except on the surfaced parking area thereof. All lawn maintenance vehicles shall park on the driveway of the Home and not in the roadway or swale. No vehicles used in business for the purpose of transporting goods, equipment and the like, or any trucks or vans which are larger than one (1) ton shall be parked in Simonton Court except during the period of a delivery. Personal vans, personal trucks of one (1) ton capacity or smaller, and other personal vehicles may only be parked within the driveway or garage of a Home, if any. If at any time parking is permitted in the streets within Simonton Court, such street parking shall be limited to one side of the street. Owners may park in guest parking spaces located on the Common Areas provided, however, such Owners shall not park their vehicles in guest parking spaces for more than twenty-four (24) consecutive hours.

14.2.2 Repairs and Maintenance of Vehicles. No vehicle which cannot operate on its own power shall remain within Simonton Court for more than twenty-four (24) hours unless the same is stored in the garage of a Home. No repair or maintenance, except emergency repair, of vehicles shall be made within Simonton Court. No vehicles shall be stored on blocks. Tarpaulin covers on vehicles shall not be permitted without ACC approval.

14.2.3 Prohibited Vehicles. No commercial vehicle, limousines, house trailers, and trailers of every other type, kind or description, may be kept within Simonton Court except in the garage of a Home. No recreational vehicles or campers shall be stored within Simonton Court. No boats shall be stored within Simonton Court. The term commercial vehicle shall not be deemed to include law enforcement vehicles or recreational or utility vehicles (*i.e.*, Broncos™, Blazers™, Explorers™, Navigators™, *etc.*) or clean "non-working" (*i.e.*, not used for commercial purposes) vehicles such as pick-up trucks, vans, or cars if they are used by the Owner on a daily basis for normal transportation. Notwithstanding any other provision in this Declaration to the contrary, the foregoing provisions shall not apply to construction vehicles in connection with the construction, improvement, installation, or repair by Developer or Builder of Homes, Common Areas, or any other Simonton Court facility. No vehicles displaying commercial advertising shall be parked within the public view. No vehicles bearing a "for sale" sign shall be parked within the public view anywhere on Simonton Court. For any Owner who drives an automobile issued by the County or other governmental entity (*i.e.*, police cars), such automobile shall not be deemed to be a commercial vehicle and may be parked in the garage or driveway of the Home. No vehicle shall be used as a domicile or residence either temporarily or permanently. No vehicle with expired registration or license plates may be kept within public view anywhere on Simonton Court. Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained in this Declaration or in the Rules and Regulations now or subsequently adopted may (without obligation) be towed by Association at the sole expense of the owner of such vehicle. 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. Notwithstanding the foregoing, each Owner acknowledges that such Owner and its family, guests, tenants, and invitees shall abide by all parking regulations issued by the local governing authority having jurisdiction.

14.3 Casualty Destruction to Improvements. In the event that a Home or other improvement is damaged or destroyed by casualty loss or other loss, then within a reasonable period of time after such incident, the Owner thereof shall either commence to rebuild or repair the damaged Home or improvement and diligently continue such rebuilding or repairing until completion, or properly clear the damaged Home or improvement and



restore or repair the Home as approved by the ACC. As to any such reconstruction of a destroyed Home or improvements, the same shall only be replaced as approved by the ACC.

14.4 Commercial Activity. Except for normal construction activity, sale, and re-sale of a Home or Lot, sale or re-sale of other property owned by Developer, administrative offices of Developer or Builders, no commercial or business activity shall be conducted in any Lot within Simonton Court. Notwithstanding the foregoing, and subject to applicable statutes and ordinances, an Owner may maintain a home business office within a Home for such Owner's personal use; provided, however, business invitees, customers, and clients shall not be permitted to meet with Owners in Homes unless the Board provides otherwise in the Rules and Regulations. No Owner may actively engage in any solicitations for commercial purposes within Simonton Court. No solicitors of a commercial nature shall be allowed within Simonton Court, without the prior written consent of Association. No garage sales are permitted, except as permitted by Association. No day care center or facility may be operated out of a Home. Prior to the Community Completion Date, Association shall not permit any garage sales without the prior written consent of Developer.

14.5 Completion and Sale of Homes or Lots. No person or entity shall interfere with the completion and sale of Homes or Lots within Simonton Court. WITHOUT LIMITING THE FOREGOING, EACH OWNER, BY ACCEPTANCE OF A DEED, AGREES THAT ACTIONS OF OWNERS MAY IMPACT THE VALUE OF HOMES; THEREFORE EACH OWNER IS BENEFITED BY THE FOLLOWING RESTRICTION: PICKETING AND POSTING OF NEGATIVE SIGNS OR POSTING OF NEGATIVE WEBSITES ON THE INTERNET, NEGATIVE ADVERTISING, NEGATIVE INFORMATION PROVIDED OR POSTED AT PUBLIC GATHERINGS ARE STRICTLY PROHIBITED IN ORDER TO PRESERVE THE VALUE OF THE LOTS OR HOMES IN SIMONTON COURT AND THE RESIDENTIAL ATMOSPHERE THEREOF.

14.6 Control of Contractors. Except for direct services which may be offered to Owners (and then only according to the Rules and Regulations relating thereto as adopted from time to time), no person other than an Association officer or representative of the management company retained by Association shall direct, supervise, or in any manner attempt to assert any control over any contractor of Association.

14.7 Cooking. No cooking shall be permitted nor shall any goods or beverages be consumed on the Common Areas except in areas designated for those purposes by Association. No cooking shall be permitted in the Front Yard or driveway of any Home or Lot. The ACC shall have the right to prohibit or restrict the use of grills or barbeque facilities throughout Simonton Court.

14.8 Decorations. No decorative objects including, but not limited to, birdbaths, windchimes, figurines, light fixtures, sculptures, statues, weather vanes, or flagpoles shall be installed or placed within or upon any portion of Simonton Court without the prior written approval of the ACC. Notwithstanding the foregoing, no statues, sculptures or birdbaths of any kind can be installed or placed within the Front Yard or visible from the street. Notwithstanding the foregoing, holiday lighting and decorations shall be permitted to be placed upon the exterior portions of the Home and upon the Lot in the manner permitted hereunder commencing on Thanksgiving and shall be removed not later than January 15th of the following year. The ACC may establish standards for holiday lights. The ACC may require the removal of any lighting that creates a nuisance (e.g., unacceptable spillover to adjacent Home or Lot).

14.9 Disputes as to Use. If there is any dispute as to whether the use of any portion of Simonton Court complies with this Declaration, such dispute shall, prior to the Community Completion Date, be decided by Developer, and thereafter by Association. A determination rendered by such party with respect to such dispute shall be final and binding on all persons concerned.

14.10 Drainage System. Drainage systems and drainage facilities may be part of the Common Areas and/or Lots/Homes. The maintenance of such systems and/or facilities within the Common Areas shall be the responsibility of the Association. Once drainage systems or drainage facilities are installed by Developer, the maintenance of such systems and/or facilities thereafter within the boundary of a Lot shall be the responsibility of the Owner of the Lot which includes such system and/or facilities. In the event that such system or facilities (whether comprised of swales, pipes, pumps, waterbody slopes, or other improvements) is adversely affected by landscaping, fences, structures (including, without limitation, pavers), or additions, the cost to correct, repair, or maintain such drainage system and/or facilities shall be the responsibility of the Owner of each Lot containing all or a part of such drainage system and/or facilities. By way of example, and not of limitation, if the Owner of one Lot plants a tree (pursuant to ACC approval) and the roots of such tree subsequently affect pipes or other drainage facilities within another Lot, the Owner that plants the tree shall be solely responsible for the removal of the roots that adversely affect the adjacent Lot. Likewise, if the roots of a tree located within the Common Areas adversely affect an adjacent Lot, Association shall be responsible for the removal of the roots and the costs thereof shall be Operating Costs. Notwithstanding the foregoing, Association and Developer shall have no responsibility or liability for drainage problems of any type whatsoever.

14.11 Extended Vacation and Absences. In the event a Home will be unoccupied for an extended period, the Home must be prepared prior to departure by: (i) notifying Association in writing; (ii) removing all removable furniture, plants and other objects from outside the Home; and (iii) designating a responsible firm or individual to care for the Home, should the Home suffer damage or require attention, and providing a key to that firm or individual. The name of the designee shall be furnished to Association. Neither Association nor Developer shall have any responsibility of any nature relating to any unoccupied Home.

14.12 Fences and Walls. No walls or fences shall be erected or installed without prior written consent of the ACC. All enclosures of balconies or patios, including, without limitation addition of vinyl windows, and decks

shall require the prior written approval of the ACC. Fences on the sides of a Home shall be six (6) feet, wood (natural wood stain or other color approved by the ACC), shadowbox or stockade. The rear fencing of lakefront Homes shall only be permitted to be black aluminum railing which may only be four (4) feet in height. No chain link fencing shall be permitted within Simonton Court. No fences, walls, structures or trees shall be permitted within any lake maintenance easement of the Association or within any Common Area property abutting the lakes.

14.13 Fuel Storage. No fuel storage shall be permitted within Simonton Court, except as may be necessary or reasonably used for swimming pools, spas, barbecues, fireplaces, emergency generators or similar devices and as otherwise permitted by this Declaration.

14.14 Garages. Each Home may have its own garage. No garage shall be converted into a general living area. Garage doors shall remain closed at all times except when vehicular or pedestrian access is required.

14.15 Garbage Cans. Trash collection and disposal procedures established by Association shall be observed. If Association ever provides for garbage pick-up, the cost of the same shall be part of the Operating Costs. No outside burning of trash or garbage is permitted. No garbage cans, supplies or other similar articles shall be maintained on any Lot so as to be visible from outside the Home, Lot or Parcel. Each Owner shall be responsible for properly depositing his or her garbage and trash in garbage cans and trash containers sufficient for pick-up by the appropriate collection agencies in accordance with the requirements of any such agency. All such trash receptacles shall be maintained in a sanitary condition and shall be shielded from the view of adjacent properties and streets. Garbage cans and trash containers shall not be placed outside the Home for pick-up earlier than 6:00 p.m. on the day preceding the pick-up and must be returned to the Lots so that they are not visible from outside the Lot on the day of pickup.

14.16 General Use Restrictions. Each Lot, the Common Areas and any portion of Simonton Court shall not be used in any manner contrary to the Association Documents.

14.17 Hurricane Shutters. Any hurricane shutters or other protective devices visible from outside a Home shall be of a type as approved in writing by the ACC. Panel, accordion and roll-up style hurricane shutters may not be left closed during hurricane season (nor at any other time). Any such approved hurricane shutters may be installed or closed up to forty-eight (48) hours prior to the expected arrival of a hurricane and must be removed or opened within seventy-two (72) hours after the end of a hurricane watch or warning or as the Board may determine otherwise. Except as the Board may otherwise decide, shutters may not be closed at any time other than a storm event. An approval by the ACC shall not be deemed an endorsement of the effectiveness of hurricane shutters.

14.18 Irrigation. The water used in the irrigation system is not suitable for drinking or water sports. Children and pets should not play in such water. Such water shall not be used by Owners to irrigate lawns. Due to water quality, irrigation systems may cause staining on Homes, other structures, paved areas, or vehicles. It is each Owner's responsibility to treat and remove any such staining. Association may require from time to time, that Owners adopt systems to prevent stains (e.g., automatic deionization systems). The yard of each Lot may be equipped with irrigation lines, depending on the model of the Home. No Owner whose Lot adjoins a waterway or lake, if any, may utilize the waterway or lake to irrigate unless so provided by Builder as part of original construction and approved by Developer in writing, subject to applicable permitting. Use of lake water, if any, by Owners is prohibited and is at the Owner's sole risk as chemicals are used to control aquatic vegetation in lakes. Association may use waterways and lakes to irrigate Common Areas, subject to applicable permitting and Developer, Builders and Association shall not be liable for same. BY ACCEPTANCE OF A DEED TO A LOT, HOME OR PARCEL, EACH OWNER ACKNOWLEDGES THAT THE WATER LEVELS OF ALL LAKES AND WATERBODIES MAY VARY. THERE IS NO GUARANTEE BY DEVELOPER OR ASSOCIATION THAT WATER LEVELS WILL BE CONSTANT OR AESTHETICALLY PLEASING AT ANY PARTICULAR TIME. Developer and/or Association shall have the right to use one or more pumps to remove water from lakes and waterbodies for irrigation purposes at all times, subject to applicable permitting. Developer or Association may utilize a computerized loop system to irrigate the Common Areas and/or Lots. Owners shall not be entitled to use, pump or remove water from lakes and waterbodies for irrigation purposes. Any computerized loop irrigation system that is not specifically the maintenance obligation of an Owner, shall be the maintenance obligation of Association and shall be deemed part of the Common Areas.

14.19 Laundry. Subject to the provisions of Section 163.04 of the Florida Statutes, to the extent applicable, no rugs, mops or laundry of any kind, or any other similar type article, shall be shaken, hung or exposed so as to be visible outside the Home or Parcel.

14.20 Lawful Use. No immoral, improper, offensive, unlawful or obnoxious use shall be made in any portion of Simonton Court. All laws, zoning ordinances and regulations of all governmental entities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental entities for maintenance, modification or repair of a portion of Simonton Court shall be the same as the responsibility for maintenance and repair of the property concerned.

14.21 Leases. Homes may be leased, licensed or occupied only in their entirety and no fraction or portion may be rented. No bed and breakfast facility may be operated out of a Home. Individual rooms of a Home may not be leased on any basis. No transient tenants may be accommodated in a Home. To the extent that an Owner does not reside in his or her Home, but desires to permit family or friends to occupy such Home without a lease, all prospective occupants of the Home, prior to moving into the Home and irrespective of their relation to the Owner, must be registered with the Association and shall be subject to the Association's screening and approval process which is used for prospective tenants seeking to lease a Home within Simonton Court. All leases or occupancy agreements shall be in writing and a copy of all leases of Homes shall be provided to Association. All

leases shall be on forms approved by Association and shall provide (or if not provided, shall be automatically deemed to provide) that Association shall have the unilateral right to terminate the lease upon default by the tenant in observing any of the provisions of the Association Documents or other applicable provisions of any agreement, document or instrument governing Simonton Court or administered by Association. Each Owner hereby acknowledges and agrees that any and all leases entered into by such Owner in connection with his or her Home shall be deemed to incorporate by this reference a collateral assignment of rents and leases in favor of Association, which collateral assignment of rents and leases shall provide that in the event such Owner leasing his or her Home is past due in the payment of his or her Assessments, Association shall have the power and authority to take actions including, but not limited to: (i) collecting rents now due or that become due directly from such Owner's tenant(s) (or other party in possession of the Home); and/or (ii) pursuing any and all legal remedies available against such Owner and/or such Owner's tenant(s) including, but not limited to, actions for eviction of such Owner's tenant(s). Owners are responsible for providing their tenants with copies of all such Association Documents or instruments at such Owner's sole cost and expense. Leasing of Homes shall also be subject to the prior written approval of Association, as more particularly explained in Section 25 hereof. No Home may be subject to more than two (2) leases in any twelve (12) month period, regardless of the lease term. No lease term shall be less than six (6) months. No subleasing or assignment of lease rights by the tenant is permitted. No time-share or other similar arrangement is permitted. In no event shall occupancy of a leased Home (except for temporary occupancy by visiting guests) exceed two (2) persons per bedroom. Each Owner shall be jointly and severally liable with the tenant to Association for all costs incurred by Association for the repair of any damage to Common Areas or to pay any claim for injury or damage to property caused by tenants. Association shall repair any such damage and the cost of such repair shall be invoiced as an Individual Assessment to the Owner. Additionally, as a condition to the approval by Association of a proposed lease of a Home, Association has the authority to require that a security deposit in an amount not to exceed the equivalent of one (1) month's rent be deposited into an account maintained by Association. The security deposit shall protect against damages to the Common Areas or Association Property. A security deposit held by Association under this Section shall be governed by Chapter 83 of the Florida Statutes, as it may be renumbered from time to time. Association may also charge a reasonable fee of no more than One Hundred (\$100.00) dollars to offset the costs of a background check on tenant. Association and its directors or officers, or any person acting on behalf of any of them, shall not be liable for any cost or damages incurred by any party whatsoever, due to any mistakes in judgment, negligence, or any action or inaction of Association, its officers, or directors, in connection with the approval or disapproval of tenants. Each Owner agrees, individually and on behalf of its prospective tenants, current tenants, heirs, successors and assigns by acquiring title to a Lot, that he or she (or any other of the aforementioned parties) shall not bring any action or suit against Association or its directors or officers, or any of the Association's agents or other parties acting on Association's behalf, in order to recover any damages alleged or caused by the actions of Association, or its officers or directors in connection with the provisions of this Section. All leases shall also comply with and be subject to the provisions of Section 25 hereof. Notwithstanding the foregoing, this Section shall not apply to a situation where an Owner or resident of a Home receives in-home care by a professional caregiver residing within the Home.

14.22 Minor's Use of Facilities. Each Owner shall be responsible for all actions of minor children dwelling in and/or visiting his or her Home. Developer and Association shall not be responsible for any use of the facilities and Common Areas by anyone, including minors. Children under the age of sixteen (16) shall be accompanied by an adult at all times.

14.23 Nuisances. No nuisance or any use or practice that is the source of unreasonable annoyance to others or which interferes with the peaceful possession and proper use of Simonton Court is permitted. The final determination of what constitutes a nuisance shall be made by the Board in its sole discretion. No firearms shall be discharged within Simonton Court. Nuisances shall include, without limitation, the playing of loud music or the gathering in front of homes or Common Areas by any Owner or permitted occupant thereof, its immediate family, guests, tenants and invitees. Nothing shall be done or kept within the Common Areas, or any other portion of Simonton Court, including a Home or Lot which will increase the rate of insurance to be paid by Association.

14.24 Oil and Mining Operations. No oil, drilling development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or on any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot.

14.25 Personal Property. All personal property of Owners or other occupants of Homes shall be stored within the Homes. No personal property, except usual patio furniture, may be stored on, nor any use made of, the Common Areas, any Parcel or Home, or any other portion of Simonton Court, which is unsightly or which interferes with the comfort and convenience of others.

14.26 Pools. Pools shall not be permitted within Simonton Court other than the community pool located in the Common Areas.

14.27 Removal of Soil and Additional Landscaping. Without the prior approval of the ACC, no Owner shall remove soil from any portion of Simonton Court, change the level of the land within Simonton Court, or plant landscaping which results in any permanent change in the flow and drainage of surface water within Simonton Court. Owners may place additional plants, shrubs, or trees within any portion of Simonton Court with the prior approval of the ACC.

14.28 Roofs, Exterior Surfaces and Pressure Treatment. Roofs and/or exterior surfaces including, but not limited to, walkways, of each Home shall be pressure treated by the Owner of such Home within thirty (30) days of notice by the ACC. Each Owner shall be responsible to pressure clean between paintings. Notwithstanding the foregoing, in the event that any Owner fails to pressure treat their respective roof or exterior surfaces within thirty

(30) days notice by the ACC, the Association may, but shall not be obligated to, pressure treatment any or all of such areas and may charge all of the costs relating to the same to the applicable Owner as an Individual Assessment.

14.29 Satellite Dishes and Antennas. No exterior visible antennas, radio masts, towers, poles, aerials, satellite dishes, or other similar equipment shall be placed on any Home or Lot without the prior written approval of the ACC as required by this Declaration. The ACC may require, among other things, that all such improvements be screened so that they are not visible from adjacent Homes, or from the Common Areas. Each Owner agrees that the location of satellite dishes, antennas and other equipment under this Section must be first approved by the ACC in order to address the welfare of the residents of Simonton Court. No Owner shall operate any equipment or device which will interfere with the radio or television reception of others and satellite dishes must be on the fascia board when possible with no exposed wires. All antennas not permitted by the Federal Communications Commission ("FCC") rules are prohibited. Installation, maintenance, and use of all antennas shall comply with restrictions adopted by the Board and shall be governed by the then current rules of the FCC.

14.30 Signs and Flags. No sign (including brokerage or for sale/lease signs), flag, banner, notice or other lettering shall be exhibited, displayed, inscribed, painted or affixed in, or upon any part of Simonton Court that is visible from the outside without the prior written approval from the ACC as required by this Declaration; and without the prior written approval thereof by governmental agencies, if necessary (e.g., permit boards); provided, however, signs required by governmental agencies and approved by the ACC may be displayed. "For Sale" and "For Rent" signs must be approved by the ACC and shall be no larger than 12" x 12". Notwithstanding the foregoing, no broker, "For Sale" or "For Rent" signs shall be exhibited, displayed, inscribed, painted or affixed in or upon any part of Simonton Court while the Developer still holds any Homes for sale in the ordinary course of business. No sign may be placed in the window of a Home. Developer and Builders are exempt from this Section. No in-ground flag poles (except as Developer may use) shall be permitted within Simonton Court, unless written approval of the ACC is obtained. Notwithstanding the foregoing, flags which are no larger than 24" x 36" attached to a Home and displayed for the purpose of a holiday, and United States of America flags shall be permitted without ACC approval.

14.31 Sports Equipment. No recreational, playground or sports equipment shall be installed or placed within or about any portion of Simonton Court without prior written approval of the ACC. No basketball backboards, skateboard ramps, or play structures will be permitted without written approval of the ACC. Such approved equipment shall be located at the rear of the Home or on the inside portion of corner Homes within the setback lines. Tree houses or platforms of a similar nature shall not be constructed on any part of a Home. No basketball hoops shall be attached to a Home and any portable basketball hoops must be stored inside the Home. No tennis courts are permitted within Lots.

14.32 Storage. No temporary or permanent utility or storage shed, storage building, tent, or other structure or improvement shall be permitted and no other structure or improvement shall be constructed, erected, altered, modified or maintained without the prior approval of the ACC, which approval shall conform to the requirements of this Declaration. Water softeners, trash containers, propane tanks and other similar devices shall be properly screened from the street in a manner approved by the ACC.

14.33 Subdivision and Regulation of Land. No portion of any Home, Lot or Parcel shall be divided or subdivided or its boundaries changed without the prior written approval of Association. No Owner or Builder shall inaugurate or implement any variation from, modification to, or amendment of governmental regulations, land use plans, land development regulations, zoning, or any other development orders or development permits applicable to Simonton Court, without the prior written approval of Developer, which may be granted or denied in its sole discretion.

14.34 Substances. No flammable, combustible or explosive fuel, fluid, chemical, hazardous waste, or substance shall be kept on any portion of Simonton Court or within any Lot, Home or Parcel, except those which are required for normal household use. All propane tanks and bottled gas for household and/or pool purposes (excluding barbecue grill tanks) must be installed underground or in a manner to be screened from view by landscaping or other materials approved by the ACC.

14.35 Swimming, Fishing, Boating, Docks and Wildlife. Swimming, fishing and feeding wildlife are prohibited within any of the lakes or waterbodies within or adjacent to Simonton Court. Boating and personal watercraft (e.g., jet skis) are prohibited. No private docks may be erected within any waterbody.

14.36 Use of Homes. Each Home is restricted to residential use as a residence by the Owner or permitted occupant thereof, its immediate family, guests, tenants and invitees. To the extent that an Owner does not reside in his or her Home, but desires to permit family or friends to occupy such Home without a lease, all prospective occupants of the Home, prior to moving into the Home and irrespective of their relation to the Owner, must be registered with the Association and shall be subject to the Association's screening and approval process which is used for prospective tenants seeking to lease a Home within Simonton Court.

14.37 Visibility on Corners. Notwithstanding anything to the contrary in these restrictions, no obstruction to visibility at street intersections shall be permitted and such visibility clearances shall be maintained as required by the ACC and governmental agencies. No vehicles, objects, fences, walls, hedges, shrubs or other planting shall be placed or permitted on a corner Lot where such obstruction would create a traffic problem.

14.38 Water Intrusion. Florida experiences heavy rainfall and humidity on a regular basis. Each Owner is responsible for making sure his or her Home remains watertight including, without limitation, checking caulking around windows and seals on doors. Each Owner acknowledges that running air conditioning machinery with

windows and/or doors open in humid conditions can result in condensation, mold and/or water intrusion. Neither Developer nor Association shall have liability under such circumstances for any damage or loss that an Owner may incur.

14.39 Wells. Wells are not permitted.

14.40 Wetlands Areas. Simonton Court may contain preserves, wetlands, and/or mitigation areas. No Owner or other person shall take any action or enter onto such areas so as to adversely affect the same. Such areas are to be maintained in their natural state.

14.41 Windows or Wall Units. No window or wall air conditioning unit may be installed in any window or wall of a Home.

14.42 Window Treatments. Window treatments shall consist of drapery, blinds, decorative panels, or other window covering, and no newspaper, aluminum foil, sheets or other temporary window treatments are permitted, except for periods not exceeding one (1) week after an Owner or tenant first moves into a Home or when permanent window treatments are being cleaned or repaired. No security bars shall be placed on the windows of any Home without prior written approval of the ACC. No awnings, canopies or shutters shall be affixed to the exterior of a Home without the prior written approval of the ACC. No reflective tinting or mirror finishes on windows shall be permitted unless approved by the ACC. Window treatments facing the street shall be of a neutral color, such as white, off-white or wood tones.

14.43 Workers. Workers hired by any Owner or Builder for any purpose including, without limitation, construction of Homes, maintenance, landscaping, and/or housekeeping may not congregate in or about the Common Areas or make any personal use of such Common Areas.

14.44 Builder Exemption. Developer shall be entitled to exempt Builders from any or all of the restrictions contained in this Section 14 pursuant to a written agreement between the Developer and any such Builder.

15. Easement for Unintentional and Non-Negligent Encroachments. If any other building or improvement on a Home shall encroach upon another Home or the Common Areas by reason of original construction by a Builder, then an easement for such encroachment shall exist so long as the encroachment exists. It is contemplated that each Home shall contain an improvement with exterior walls, footings, and other protrusions which may pass over or underneath an adjacent Home or the Common Areas. A perpetual nonexclusive easement is herein granted to allow the footers for such walls and such other protrusions and to permit any natural water run off from roof overhangs, eaves and other protrusions onto an adjacent Home. In the event that a Home protrudes into the Common Areas or is constructed on a property line separating the Home from the Common Areas, a two (2) foot easement along the property line is hereby created for the Owner of such Home for maintenance purposes.

16. Requirement to Maintain Insurance.

16.1 Association. Association shall maintain the following insurance coverage:

16.1.1 Flood Insurance. If the Common Areas are located within an area which has special flood hazards and for which flood insurance has been made available under the National Flood Insurance Program ("**NFIP**"), coverage in appropriate amounts, available under NFIP for all buildings and other insurable property within any portion of the Common Areas located within a designated flood hazard area.

16.1.2 Liability Insurance. Commercial general liability insurance coverage providing coverage and limits deemed appropriate. Such policies must provide that they may not be canceled or substantially modified by any party, without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date), and Association.

16.1.3 Directors and Officers Liability Insurance. Each member of the Board shall be covered by directors and officers liability insurance in such amounts and with such provisions as approved by the Board.

16.1.4 Other Insurance. Such other insurance coverage as appropriate from time to time. All coverage obtained by Association shall cover all activities of Association and all properties maintained by Association, whether or not Association owns title thereto.

16.1.5 Developer. Prior to and including the Turnover Date, Developer shall have the right, at Association's expense, to provide any such insurance coverage it deems appropriate under its master insurance policy in lieu of any of the foregoing.

16.2 Homes.

16.2.1 Requirement to Maintain Insurance. Each Owner shall be required to obtain and maintain adequate insurance of his or her Home. Such insurance shall be sufficient for necessary repair or reconstruction work, and related costs or shall cover the costs to demolish a damaged Home as applicable, remove the debris, and to resod and landscape land comprising the Home. Upon the request of Association, each Owner shall be required to supply the Board with evidence of insurance coverage on his Home which complies with the provisions of this Section. Without limiting any other provision of this Declaration or the powers of Association,

Association shall specifically have the right to bring an action to require an Owner to comply with his or her obligations hereunder.

16.2.2 Requirement to Reconstruct or Demolish. In the event that any Home is destroyed by fire or other casualty, the Owner of such Home shall do one of the following: the Owner shall commence reconstruction and/or repair of the Home ("Required Repair"), or Owner shall tear the Home down, remove all the debris, and resod and landscape the property comprising the Home as required by the ACC ("Required Demolition") to the extent permitted under law. If an Owner elects to perform the Required Repair, such work must be commenced within thirty (30) days of the Owner's receipt of the insurance proceeds respecting such Home. If an Owner elects to perform the Required Demolition, the Required Demolition must be completed within six (6) months from the date of the casualty or such longer period of time established by the Board in its sole discretion subject to extension if required by law. If an Owner elects to perform the Required Repair, such reconstruction and/or repair must be completed in a continuous, diligent, and timely manner. Association shall have the right to inspect the progress of all reconstruction and/or repair work. Without limiting any other provision of this Declaration or the powers of Association, Developer or Association shall have a right to bring an action against an Owner who fails to comply with the foregoing requirements. By way of example, Developer or Association may bring an action against an Owner who fails to either perform the Required Repair or Required Demolition on his or her Home within the time periods and in the manner provided herein. Each Owner acknowledges that the issuance of a building permit or a demolition permit in no way shall be deemed to satisfy the requirements set forth herein, which are independent of, and in addition to, any requirements for completion of work or progress requirements set forth in applicable statutes, zoning codes, and/or building codes.

16.2.3 Standard of Work. The standard for all demolition, reconstruction, and other work performed as required by this Section shall be in accordance with the Community Standards and any other standards established by Developer or Association with respect to any casualty that affects all or a portion of Simonton Court.

16.2.4 Additional Rights of Association If an Owner refuses or fails, for any reason, to perform the Required Repair or Required Demolition as herein provided, then Developer or Association, in its sole discretion, is hereby irrevocably authorized, but not obligated to, by such Owner to perform the Required Repair or Required Demolition. All Required Repair performed by Association pursuant to this Section shall be in conformance with the original plans and specifications for the Home. Developer or Association shall have the absolute right to perform the Required Demolition to a Home pursuant to this Section if any contractor certifies in writing to Developer or Association that such Home cannot be rebuilt or repaired. The Association may levy an Individual Assessment against the Owner in whatever amount sufficient to adequately pay for Required Repair or Required Demolition performed by Association.

16.2.5 Rights of County. In the event that any Home is destroyed by fire or other casualty, County or other authorized governmental agency shall have the right, but not the obligation, to enter such Owner's Lot and/or Home for the purpose of inspecting and assessing the damage to such Home. County shall further have the right to enforce any local laws and/or ordinances with regard to the Required Repair or the Required Demolition of the Home.

16.2.6 Association Has No Liability. Notwithstanding anything to the contrary in this Section, neither Developer nor Association, or their respective directors, officers, members, managers, employees, agents, successor and assigns, shall be liable to any Owner should an Owner fail for any reason whatsoever to obtain insurance coverage on a Lot or Home. Moreover, Developer and Association, and their respective directors, officers, members, managers, employees, employees, agents, successors and assigns, shall not be liable to any person if Developer or Association does not enforce the rights given to Developer or Association in this Section.

16.3 Fidelity Bonds. If available, a blanket fidelity bond for all officers, directors, trustees and employees of Association, and all other persons handling or responsible for funds of, or administered by, Association. In the event Association delegates some or all of the responsibility for the handling of the funds to a professional management company or licensed manager, such bonds shall be required for its officers, employees and agents, handling or responsible for funds of, or administered on behalf of Association. The amount of the fidelity bond shall be based upon reasonable business judgment. The fidelity bonds required herein must meet the following requirements (to the extent available at a reasonable premium):

16.3.1 The bonds shall name Association as an obligee.

16.3.2 The bonds shall contain waivers, by the issuers of the bonds, of all defenses based upon the exclusion of persons serving without compensation from the definition of "employee" or similar terms or expressions.

16.3.3 The premiums on the bonds (except for premiums on fidelity bonds maintained by a professional management company, or its officers, employees and agents), shall be paid by Association.

16.3.4 The bonds shall provide that they may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days' prior written notice to Developer (until the Community Completion Date), and Association.

16.4 Association as Agent. Association is irrevocably appointed agent for each Owner of any interest relating to the Common Areas to adjust all claims arising under insurance policies purchased by Association and to execute and deliver releases upon the payment of claims.

16.5 Casualty to Common Areas. In the event of damage to the Common Areas, or any portion thereof, Association shall be responsible for reconstruction after casualty. In the event of damage to a Parcel, Lot or Home, or any portion thereof, the Owner shall be responsible for reconstruction after casualty.

16.6 Nature of Reconstruction. Any reconstruction of improvements hereunder shall be substantially in accordance with the plans and specifications of the original improvement, or as the improvement was last constructed, subject to modification to conform with the then current governmental regulation(s).

16.7 Additional Insured. Developer and its Lender(s), if any, shall be named as additional insured on all policies obtained by Association, as their interests may appear.

16.8 Cost of Insurance. The costs of all insurance maintained by Association hereunder, and any other fees or expenses incurred which may be necessary or incidental to carry out the provisions hereof are Operating Costs. Notwithstanding the foregoing or any other provisions in this Declaration, expenses incurred during the guarantee period which result from a natural disaster or an act of God occurring during such guarantee period, which are not covered by proceeds from insurance maintained by Association (*i.e.*, the costs of any deductible, the costs incurred which are in excess of the Association's coverage, etc.), shall not be Operating Costs (and as such, are not part of the Developer's deficit funding obligation under its guarantee, if any) and may be charged as a Special Assessment against all Owners of record as of the date that the Special Assessment is assessed.

## 17. Property Rights.

17.1 Owners' Easement of Enjoyment. Every Owner, and its immediate family, tenants, guests and invitees, and every owner of an interest in Simonton Court shall have a non-exclusive right and easement of enjoyment in and to those portions of the Common Areas which it is entitled to use for their intended purpose, subject to the following provisions:

17.1.1 Easements, restrictions, reservations, conditions, limitations and declarations of record, now or hereafter existing, and the provisions of this Declaration, as amended.

17.1.2 Rules and Regulations adopted governing use and enjoyment of the Common Areas.

17.1.3 The right of Association to suspend an Owner's rights hereunder or to impose fines in accordance with Section 720.305, Florida Statutes, as amended from time to time.

17.1.4 The right to suspend the right to use all (except vehicular and pedestrian ingress and egress and necessary utilities) or a portion of the Common Areas by an Owner, its immediate family, etc. for any period during which any Assessment against that Owner remains unpaid.

17.1.5 The right of Developer and/or Association to dedicate or transfer all or any part of the Common Areas. No such dedication or transfer shall be effective prior to the Community Completion Date without prior written consent of Developer.

17.1.6 The right of Developer and/or Association to modify the Common Areas as set forth in this Declaration.

17.1.7 The perpetual right of Developer to access and enter the Common Areas at any time, even after the Community Completion Date, for the purposes of inspection and testing of the Common Areas. Association and each Owner shall give Developer unfettered access, ingress and egress to the Common Areas so that Developer and/or its agents can perform all tests and inspections deemed necessary by Developer. Developer shall have the right to make all repairs and replacements deemed necessary by Developer. At no time shall Association and/or an Owner prevent, prohibit and/or interfere with any testing, repair or replacement deemed necessary by Developer relative to any portion of the Common Areas.

17.1.8 The rights of Developer, Builders and/or Association regarding Simonton Court as reserved in this Declaration, including the right to utilize the same and to grant use rights, etc. to others.

17.1.9 An Owner relinquishes use of the Common Areas at any time that a Home is leased to a Lessee.

17.1.10 The right of Association to evict occupants, tenants, guests and invitees as provided in this Declaration.

17.2 Ingress and Egress. An easement for ingress and egress is hereby created for pedestrian traffic over, and through and across sidewalks, paths, walks, driveways, passageways, and lanes as the same, from time to time, may exist upon, or be designed as part of, the Common Areas, and for vehicular traffic over, through and across such portions of the Common Areas as, from time to time, may be paved and intended for such purposes.

17.3 Development Easement. In addition to the rights reserved elsewhere herein, Developer reserves an easement for itself, its nominees, and Builders, over, upon, across, and under Simonton Court as may be required in connection with the development of Simonton Court and other lands designated by Developer and to promote or otherwise facilitate the development, construction and sale and/or leasing of Homes, any portion of Simonton Court and other lands designated by Developer. Without limiting the foregoing, Developer specifically reserves for itself, its nominees, and Builders the right to use all paved roads and rights of way within Simonton Court for vehicular

and pedestrian ingress and egress to and from construction sites and for the construction and maintenance of any Telecommunications Systems provided by Developer. Specifically, each Owner acknowledges that construction vehicles and trucks may use portions of the Common Areas. Developer shall have no liability or obligation to repave, restore, or repair any portion of the Common Areas as a result of the use of the same by construction traffic, and all maintenance and repair of such Common Areas shall be deemed ordinary maintenance of Association payable by all Owners as part of Operating Costs. Without limiting the foregoing, at no time shall Developer or any Builder be obligated to pay any amount to Association on account of Developer or Builder's use of the Common Areas for construction purposes. Developer intends to use, and may permit Builders to use, the Common Areas for sales of new Homes. Further, Developer may market other residences and commercial properties located outside of Simonton Court from Developer's sales facilities located within Simonton Court. Developer and Builders (after obtaining Developer's prior written consent) have the right to use all portions of the Common Areas in connection with its marketing activities including, without limitation, allowing members of the general public to inspect model Homes, installing signs and displays, holding promotional parties and picnics, and using the Common Areas for every other type of promotional or sales activity that may be employed in the marketing of new residential Homes. The easements created by this Section, and the rights reserved herein in favor of Developer and Builders, shall be construed as broadly as possible and supplement the rights of Developer. At no time shall Developer or Builder incur any expense whatsoever in connection with its use and enjoyment of such rights and easements. Without limiting any other provision of this Declaration, Developer may non-exclusively assign any or all its rights hereunder to each Builder.

17.4 Public Easements. Fire, police, school transportation, health, sanitation and other public service and utility company personnel and vehicles shall have a permanent and perpetual easement for ingress and egress over and across the Common Areas. In addition, Telecommunications Providers shall also have the right to use all paved roadways for ingress and egress to and from Telecommunications Systems within Simonton Court.

17.5 Delegation of Use. Every Owner shall be deemed to have delegated its right of enjoyment to the Common Areas to occupants or lessees of that Owner's Home subject to the provisions of this Declaration and the Rules and Regulations, as may be promulgated, from time to time. Any such delegation or lease shall not relieve any Owner from its responsibilities and obligations provided herein.

17.6 Easement for Encroachments. In the event that any improvement upon Common Areas, as originally constructed, shall encroach upon any other property or improvements thereon, or for any reason, then an easement appurtenant to the encroachment shall exist for so long as the encroachment shall naturally exist.

17.7 Permits, Licenses and Easements. Prior to the Community Completion Date, Developer, and thereafter Association shall, in addition to the specific rights reserved to Developer herein, have the right to grant, modify, amend and terminate permits, licenses and easements over, upon, across, under and through Simonton Court (including Lots, Parcels and/or Homes) for Telecommunications Systems, utilities, roads and other purposes reasonably necessary or useful as it determines, in its sole discretion. To the extent legally required, each Owner shall be deemed to have granted to Developer and, thereafter, Association an irrevocable power of attorney, coupled with an interest, for the purposes herein expressed.

17.8 Support Easement and Maintenance Easement. An easement is hereby created for the existence and maintenance of supporting structures (and the replacement thereof) in favor of the entity required to maintain the same. An easement is hereby created for maintenance purposes (including access to perform such maintenance) over and across Simonton Court (including Lots, Parcels, and Homes) for the reasonable and necessary maintenance of Common Areas, utilities, cables, wires and other similar facilities.

17.9 Drainage. A non-exclusive easement shall exist in favor of Developer, Association, and their designees, and any applicable water management district, state agency, county agency and/or federal agency having jurisdiction over Simonton Court over, across and upon Simonton Court for drainage, irrigation and water management purposes. A non-exclusive easement for ingress, egress and access exists as shown on the Plat for such parties to enter upon and over any portion of Simonton Court (including Homes) in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary, any water management areas, conservation areas, mitigation areas, irrigation systems and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of Simonton Court and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through Simonton Court and/or water management areas and facilities or otherwise interfere with any drainage, irrigation and/or easement provided for in this Section or the use rights set forth elsewhere in this Declaration.

17.10 Blanket Easement in Favor of Association. Association is hereby granted an easement over all of Simonton Court, including all Homes and Lots, for the purposes of (a) constructing, maintaining, replacing and operating all Common Areas, including, but not limited to, lakes, perimeter walls and fences and (b) performing any obligation of an Owner for which Association intends to impose an Individual Assessment.

17.11 Construction Easement. Developer reserves an easement for itself and all Builders over all Homes for all construction purposes. By way of example, Developer or Builder and Developer's or Builder's construction crews may be required to enter onto a completed Home in order to complete construction of an adjacent Home. This easement shall permit all ingress and egress necessary to complete Homes adjacent to other Homes, and still be construed as broadly as possible.

17.12 Duration. All easements created herein or pursuant to the provisions hereof shall be perpetual unless stated to the contrary.



## 18. Assessments.

18.1 Types of Assessments. Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title in any manner (whether or not so expressed in the deed), including any purchaser at a judicial sale, shall hereafter be deemed to have covenanted and agreed to pay to the Association at the time and in the manner required by the Board, assessments or charges, Reserves and any Special Assessments as are fixed, established and collected from time to time by Association (collectively, the "Assessments"). All Owners shall pay Assessments. During the time which Developer deficit funds the Association, Developer may require Builders to pay such portion of the Operating Costs which directly benefits any Lot(s) or Parcel(s) owned by such Builder(s), which amount may be less than one hundred percent (100%) of the Assessments, as mutually agreed to in writing by the Builder(s), and the Developer, from time to time. During the time period that Developer does not deficit fund and on and after the Turnover Date, the Developer and Builders shall pay Assessments on their respective Lots as follows: (a) for a Lot that contains a Home as evidenced by a certificate of occupancy, said Lot shall be assessed one hundred percent (100%) of all Assessments levied by the Association; or (b) for a vacant Lot, a Lot that contains a home without a certificate of occupancy, or a Lot with a model Home (used for marketing and sales activities and not sold to a third party), said Lot shall be assessed sixty percent (60%) of all Assessments levied by the Association; provided, however, that Developer and Builders shall not be obligated to pay Special Assessments or Reserves. The statutory rights afforded to Association including, without limitation, the right of Association to file liens, bring actions for foreclosure and/or the right of Association to accelerate the amount of Assessments due upon non-payment of Assessments, shall also apply to Assessments (or portions of Operating Costs) owed by Builders with respect to Homes and/or Lots owned by such Builders. Additionally, all legal fees, late fees, interest and attorneys' fees and costs relating to the collection of Assessments from Builders shall be fully recoverable by Association against Builders.

18.2 Purpose of Assessments. The Assessments levied by Association shall be used for, among other things, the purpose of promoting the recreation, health and welfare of the residents of Simonton Court, and in particular for the improvement and maintenance of the Common Areas and any easement in favor of Association, including, but not limited to the following categories of Assessments as and when levied and deemed payable by the Board:

18.2.1 Any monthly or quarterly assessment (as determined by the Board) or charge for the purpose of operating Association and accomplishing any and all of its purposes, as determined in accordance herewith including, without limitation, payment of Operating Costs and collection of amounts necessary to pay any deficits from prior years' operation (hereinafter "Installment Assessments");

18.2.2 Any special assessments for capital improvements, major repairs, emergencies the repair or replacement of the Common Areas, or nonrecurring expenses (hereinafter "Special Assessments");

18.2.3 Any specific fees, dues or charges to be paid by Owners for any special services provided to or for the benefit of an Owner or Lot/Home, for any special or personal use of the Common Areas, or to reimburse Association for the expenses incurred in connection with that service or use (hereinafter "Use Fees"); and

18.2.4 Assessments of any kind for the creation of reasonable reserves for any of the aforesaid purposes. At such time as there are improvements in any Common Areas for which Association has a responsibility to maintain, repair, and replace, the Board may, but shall have no obligation to, include a "Reserve for Replacement" in the Installment Assessments in order to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements comprising a portion of the Common Area (hereinafter "Reserves"). Assessments pursuant to this Section shall be payable in such manner and at such times as determined by Association, and may be payable in installments extending beyond the fiscal year in which the Reserves are approved. Until the Community Completion Date, Reserves shall be subject to the prior written approval of Developer, which may be withheld for any reason.

18.2.5 Assessments for which one or more Owners (but less than all Owners) within Simonton Court is subject ("Individual Assessments") such as costs of special services provided to a Lot, Home or Owner (*i.e.*, painting and/or pressure cleaning treatments of Townhomes) or cost relating to enforcement of the provisions of this Declaration or the architectural provisions hereof as it relates to a particular Owner or Home/Lot. By way of example, and not of limitation, all of the Owners within a Plat may be subject to Individual Assessments for maintenance, repair and/or replacement of facilities serving only the residents of such Plat. Further, in the event an Owner fails to maintain the exterior of his Home (other than those portions of a Home maintained by Association) in a manner satisfactory to Association, Association shall have the right, through its agents and employees, to enter upon the Home and to repair, restore, and maintain the Home as required by this Declaration. The cost thereof, plus the reasonable administrative expenses of Association, shall be an Individual Assessment. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment. As a further example, if one or more Owners receive optional Telecommunications Services such as Toll Calls, Cable Services and/or Data Transmission Services, and Association pays a Telecommunications Provider for such services, then the cost of such services shall be an Individual Assessment as to each Owner receiving such services. Further, in the event that Association decides it is in the best interest of Simonton Court that Association perform any other obligation of an Owner under this Declaration, the cost of performing such obligation shall be an Individual Assessment. The lien for an Individual Assessment may be foreclosed in the same manner as any other Assessment.

18.3 Designation. The designation of Assessment type shall be made by Association. Prior to the Community Completion Date, any such designation must be approved by Developer. Such designation may be made on the budget prepared by Association. The designation shall be binding upon all Owners.

18.4 Allocation of Operating Costs.

18.4.1 For the period until the adoption of the first annual budget, the allocation of Operating Costs shall be as set forth in the initial budget prepared by Developer.

18.4.2 Commencing on the first day of the period covered by the annual budget, and until the adoption of the next annual budget, the Installment Assessments shall be allocated so that each Owner shall pay his pro rata portion of Installment Assessments, Special Assessments, and Reserves based upon a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in Simonton Court conveyed to Owners or any greater number determined by Developer from time to time. Developer, in its sole and absolute discretion may change such denominator from time to time. Under no circumstances will the denominator be less than the number of Lots owned by Owners other than Developer.

18.4.3 In the event the Operating Costs as estimated in the budget for a particular fiscal year are, after the actual Operating Costs for that period is known, less than the actual costs, then the difference shall, at the election of Association: (i) be added to the calculation of Installment Assessments, as applicable, for the next ensuing fiscal year; or (ii) be immediately collected from the Owners as a Special Assessment. Association shall have the unequivocal right to specially assess Owners retroactively on January 1st of any year for any shortfall in Installment Assessments, which Special Assessment shall relate back to the date that the Installment Assessments could have been made. No vote of the Owners shall be required for such Special Assessment (or for any other Assessment except to the extent specifically provided herein).

18.4.4 Each Owner agrees that so long as it does not pay more than the required amount it shall have no grounds upon which to object to either the method of payment or non-payment by other Owners of any sums due.

18.5 General Assessments Allocation. Except as hereinafter specified to the contrary, Installment Assessments, Special Assessments and Reserves shall be allocated equally to each Owner.

18.6 Use fees and Individual Assessments. Except as hereinafter specified to the contrary, Use Fees and Individual Assessments shall be made against the Owners benefiting from, or subject to the special service or cost as specified by Association.

18.7 Commencement of First Assessment. Assessments shall commence as to each Owner on the day of the conveyance of title of a Lot to an Owner. The applicable portion of Assessments shall commence as to each Builder on the day of the conveyance of title of a Lot to the Builder.

18.8 Deficit Funding, Shortfalls and Surpluses. Each Owner acknowledges that because Installment Assessments, Special Assessments, and Reserves are allocated based on the formula provided herein, the total number of Lots to be included in Simonton Court, or upon the number of Lots conveyed to Owners on or prior to September 30 of the prior fiscal year (as determined in Developer's discretion), it is possible that Association may collect more or less than the amount budgeted for Operating Costs. Notwithstanding any provision of this Declaration to the contrary, for so long as Developer is the owner of any Lot or Parcel, the Developer is not liable to the Association for Assessments against said Lots/Parcels, provided that Developer fund any deficit in the Operating Costs exclusive of Reserves, costs of capital improvements, non-budgeted repairs or replacement, management fees and bad debt expenses/reserves. For purposes hereof, a deficit shall be computed by subtraction from said Operating Costs (exclusive of the items described in the foregoing sentence) all Assessments, contributions and other sums and income received or receivable by the Association. The Developer may at any time commence to pay Assessments on Lots/Parcels that it owns and thereby automatically terminate its obligations to fund a deficit in the Operating Costs of the Association, or any time or from time to time elect again to fund deficits as aforesaid. When all of Developer's Lots/Parcels are sold and conveyed to third-party buyers, including Builders, Developer shall have no further liability of any kind to the Association for the payment of Assessments or deficits other than those that arose prior to such time. If Developer has cumulatively overfunded Operating Costs and/or prepaid expenses of Association including, but not limited to, loaning Association uncollected Assessments due from Owners which are not timely paid, Association shall refund such amounts to Developer immediately upon such prepaid or loaned amounts being received by Association (through legal collection efforts or otherwise), but in no event later than the Turnover Date or as soon as possible thereafter (e.g. once the amount is finally determined), or, in Developer's sole and absolute discretion, pursuant to terms and conditions (e.g., payment plan) approved by Developer. Developer shall never be required to (i) pay Installment Assessments if Developer has elected to fund the deficit instead of paying Installment Assessments on Homes or Lots owned by Developer, (ii) pay Special Assessments, cost of capital improvements, non-budgeted repair or replacement fees, management fees or Reserves, or (iii) pay amounts due from, but not paid by, Owners, as referenced above. Any surplus Assessments collected by Association may be (i) allocated toward the next year's Operating Costs, (ii) used to fund Reserves, whether or not budgeted, (iii) retained by Association, and/or (iv) used for any other purpose, in Association's sole and absolute discretion, to the creation of Reserves, whether or not budgeted. Under no circumstances shall Association be required to pay surplus Assessments to Owners.

18.8.1 Without limiting Developer's rights under Section 18.8 of the Declaration, and in lieu of Developer's rights under Section 18.8 above, Developer may elect to be excused from the payment of its share of the Installment Assessments relating to Lots it is offering for sale, for a period beginning with the recording of this Declaration and ending the earlier of the Turnover Date or December 31 of the year in which the Declaration is recorded (the "Guarantee Expiration Date"), provided that the Installment Assessments for Operating Costs equally imposed on each Owner other than Developer shall not increase during such period over \$1,000.00 per month and provided further that Developer shall be obligated to pay any amount of Operating Costs actually

incurred during such period and not produced by the Installment Assessments at the guaranteed level receivable from Owners and all other income. The period that Developer is excused from the payment of the share of Installment Assessments relating to Lots it is offering for sale may be unilaterally extended by Developer for one or more successive periods of three months each.

18.8.2 If an audit of the Association's financial records, performed for the period which includes the Guarantee Expiration Date (including any extensions thereof), reveals that Developer has funded a greater amount (e.g. including, without limitation, pre-paid amounts, deposits for utilities, Developer's funding of delinquent Installment Assessments, or portion thereof, not paid by Owners, etc.) than required under this Section, then any such excess shall be promptly refunded to the Developer by Association.

18.8.3 If Developer elects to loan funds to Association for any purpose including, but not limited to, covering uncollected Assessments due from Owners which are not timely paid, Developer may, but shall have no obligation to, require the Association to sign a promissory note. Notwithstanding the foregoing, irrespective of whether a promissory note exists with respect to any loan to Association by Developer, Association shall be liable to Developer for all amounts loaned.

18.9 Budgets. The initial budget prepared by Developer is adopted as the budget for the period of operation until adoption of the first annual Association budget. Thereafter, annual budgets shall be prepared and adopted by Association. To the extent Association has commenced or will commence operations prior to the date this Declaration is recorded or the first Lot is closed, the Operating Costs may vary in one or more respects from that set forth in the initial budget. A Builder shall pay Assessments as per the budget for each Lot owned by such Builder commencing from the date the Builder obtained title to such Lot. Developer shall fund entirely all Operating Costs not covered by Builders' Assessments until the month prior to the closing of the first Lot. Thereafter, Assessments shall be payable by each Owner and Builder as provided in this Declaration. THE INITIAL BUDGET OF ASSOCIATION IS PROJECTED (NOT BASED ON HISTORICAL OPERATING FIGURES). THEREFORE, IT IS POSSIBLE THAT ACTUAL ASSESSMENTS MAY BE LESSER OR GREATER THAN PROJECTED.

18.10 Establishment of Assessments. Assessments shall be established in accordance with the following procedures:

18.10.1 Installment Assessments shall be established by the adoption of a twelve (12) month operating budget by the Board. The budget shall be in the form required by Section 720.303(6) of the Florida Statutes, as amended from time to time. Written notice of the amount and date of commencement thereof shall be given to each Owner not less than ten (10) days in advance of the due date of the first installment thereof. Notwithstanding the foregoing, the budget may cover a period of less than twelve (12) months if the first budget is adopted mid-year or in order to change the fiscal year of Association.

18.10.2 Special Assessments and Individual Assessments against the Owners may be established by Association, from time to time, and shall be payable at such time or time(s) as determined. Until the Community Completion Date, no Special Assessment shall be imposed without the consent of Developer.

18.10.3 Association may establish Use Fees, from time to time, by resolution, rule or regulation, or by delegation to an officer or agent, including, a professional management company. The sums established shall be payable by the Owner utilizing the service or facility as determined by Association.

18.11 Initial Contribution. With the exception of initial sales of Lots/Parcels from Developer to Builders, the first purchaser of each Lot, Home or Parcel from Developer or Builder, as the case may be, at the time of closing of the conveyance, shall pay to the Developer an initial contribution in an amount equal to three (3) months of the then Assessments (the "Initial Contribution to Developer"). The funds derived from the Initial Contribution to Developer shall be used at the discretion of Developer for any purpose whatsoever. The Initial Contribution to Developer is not an Assessment, Reserve, Special Assessment, Individual Assessment or capital contribution, and shall not be considered an advance payment of Assessments, Reserves, Special Assessments or Individual Assessments. Developer's right to collect Initial Contribution to Developer shall survive the Turnover Date. The Initial Contribution to Developer is secured by a continuing lien against the Lots and Parcels.

18.12 Resale Contribution. A Five Hundred Dollar (\$500.00) resale contribution ("Resale Contribution") shall be due and payable to the Association by the transferee upon every conveyance of ownership interest in a Lot by an Owner other than Developer or Builders. The Resale Contribution shall not be applicable to conveyances from Developer or Builder. After the Lot has been conveyed by Developer or a Builder there shall be a recurring assessment payable to Association upon all succeeding conveyances of a Lot. The Board of Directors may increase the amount of the Resale Contribution by not more than ten (10%) over the previous calendar year and the manner of payment thereof by resolution of the Board from time to time; provided, however, all Lots shall be assessed a uniform amount. The Resale Contribution shall be collected at closing and, upon payment, may be used to pay any Operating Cost. The Resale Contribution is secured by a continuing lien against the Lots and Parcels. However, the Resale Contribution is not an Assessment, Reserve, Special Assessment, Individual Assessment or capital contribution, and shall not be considered an advance payment of Assessments, Reserves, Special Assessments or Individual Assessments. Payment of the Resale Contribution shall be the legal obligation of the transferee of the Lot or Parcel. For purposes of this Section 18.12, the term "conveyance" shall mean the transfer of title to a Lot or Parcel by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed, transfer of an interest in a land trust or similar conveyance of a beneficial interest. With the exception of Developer and Builders, if the Owner is a corporation, limited liability company or other business entity, the term "conveyance"

shall include the sale, issuance or transfer of any voting capital stock or interest of Owner or any corporate entity which directly or indirectly controls the Owner which shall result in a change in the voting control of the Owner or the legal entity or person who controls the Owner. With the exception of the Developer or a Builder, if the Owner is a partnership, the sale, issuance or transfer of a majority interest therein, or the transfer of a majority interest in or a change in the voting control of a partnership which directly or indirectly controls the Owner, or the transfer of any portion of any general partnership or managing partnership interest which shall result in a change in control over the Owner, shall be deemed a "conveyance" within this meaning of this Section 18.12. Notwithstanding the foregoing, the following conveyances shall be exempt from payment of a Resale Contribution: (a) to any person who was a co-Owner immediately prior to such conveyance; (b) to the Owner's estate, surviving spouse or other heirs resulting from the death of said Owner; (c) to a trustee or the Owner's current spouse, solely for bona fide estate planning or tax reasons; and (d) to the Developer or Builder or their respective successors, assigns, affiliates or subsidiaries. A conveyance that occurs following an exempt conveyance described in subsections (a) – (d) above, the Resale Contribution shall be due and payable.

**18.13 Assessment Estoppel Certificates.** No Owner shall sell or convey its interest in a Lot unless all sums due Association have been paid in full and an estoppel certificate in recordable form shall have been received by such Owner. Association shall prepare and maintain a ledger noting Assessments due from each Owner. The ledger shall be kept in the office of Association, or its designees, and shall be open to inspection by any Owner. Within ten (10) days of a written request therefor, there shall be furnished to an Owner an estoppel certificate in writing setting forth whether the Assessments have been paid and/or the amount which is due as of any date. As to parties other than Owners who, without knowledge of error, rely on the certificate, the certificate shall be conclusive evidence of the amount of any Assessment therein stated. The Owner requesting the estoppel certificate shall be required to pay Association a reasonable sum to cover the costs of examining records and preparing such estoppel certificate. Each Owner waives its rights (if any) to an accounting related to Operating Costs or Assessments.

**18.14 Payment of Home Real Estate Taxes.** Each Owner shall pay all taxes and obligations relating to its Lot/Home which, if not paid, could become a lien against the Lot/Home which is superior to the lien for Assessments created by this Declaration.

**18.15 Creation of the Lien and Personal Obligation.** Each Owner, by acceptance of a deed or instrument of conveyance for the acquisition of title to a Lot, shall be deemed to have covenanted and agreed that the Assessments, and/or other charges and fees set forth herein, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, shall be a charge and continuing lien in favor of Association encumbering the Lot and all personal property located thereon owned by the Owner against whom each such Assessment is made. The lien is effective from and after recording a claim of lien in the Public Records stating the legal description of the Lot, name of the Owner, and the amounts due as of that date, but shall relate back to the date that this Declaration was recorded. The claim of lien shall also cover any additional amounts which accrue thereafter until satisfied. Each Assessment, together with interest, late fees, costs and reasonable attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, and other costs and expenses provided for herein, shall be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due, as well as the Owner's heirs, devisees, personal representatives, successors or assigns.

**18.16 Subordination of Lien to Mortgages.** The lien for Assessments shall be a lien superior to all other liens save and except tax liens, and, except as set forth in this Section, mortgage liens, provided such mortgage liens are first liens against the property encumbered thereby, subject only to tax liens, and secure indebtedness which is amortized in monthly or quarter-annual payments over a period of not less than ten (10) years. Any lease of a Parcel, Home or Lot shall be subordinate and inferior to the Association's lien on the Parcel, Home or Lot, regardless of when the lease was executed. An acquirer of title to a Lot, whether by foreclosure, deed in lieu of foreclosure, or otherwise, shall be liable for all unpaid Assessments, interest, late fees and reasonable attorney's fees and costs incurred by Association in the collection of unpaid amounts that became due prior to such acquirer's acquisition. Notwithstanding the foregoing, with respect to a Lender or its successor or assignees who acquire title to a Lot by foreclosure or by deed in lieu of foreclosure, unless a greater amount is provided for by Florida law, as amended from time to time, such Lender's liability respecting the unpaid Assessments (but not late fees, interest or reasonable attorney's fees or costs incurred by Association in the collection of unpaid amounts) that became due prior to the Lender's acquisition of title shall be limited to the lesser of: (i) the Lot's unpaid Assessments which accrued or came due during the twelve (12) months immediately preceding the acquisition of title and for which payment in full has not yet been received by Association; or (ii) one percent (1%) of the original mortgage debt. The limitations on Lender liability provided in this Section apply only if the Lender filed suit against the Owner and initially (and not through amendment or re-foreclosure) joined Association as a defendant in the Lender's foreclosure action when such action was first filed with a court. Joinder of Association is not required if, on the date the complaint is filed, Association was dissolved or did not maintain an office or agent for service of process at a location that was known to or reasonably discoverable by the Lender. In addition to the foregoing, any acquirer of title to a Lot including, without limitation, a Lender or other third party, shall be liable for all late fees and interest charged against the former Owner of the Lot and all reasonable attorney's fees and costs incurred by Association in collection efforts against the former Owner of the Lot. Unless specifically provided otherwise by Association in writing from time to time and in its sole and absolute discretion, late fees, interest and reasonable attorney's fees and costs shall not be considered Assessments as that term is used in this Section. The Lender or its successor or assignees acquiring title to a Lot shall pay all of the foregoing amounts owed including, but not limited to, Assessments (as the same may be limited above), late fees, interest, attorneys fees and costs owed to Association within thirty (30) days after transfer of title. Failure to pay the full amount due when due shall entitle Association to record a claim of lien against the Lot and proceed in the same manner as provided in this Declaration for the collection of unpaid Assessments and other amounts. The provisions of this Section shall not be available to shield a Lender from liability for Assessments and other amounts in any case where the unpaid Assessments and other

amounts sought to be recovered by Association are secured by a lien recorded prior to the recording of the mortgage. Additionally, in order to be afforded the limitations of liability for Lenders included in this Section, a Lender must give written notice to Association if the mortgage held by such Lender is in default. Association shall have the right, but not the obligation, to cure such default within the time periods applicable to Owner. In the event Association makes such payment on behalf of an Owner, Association shall, in addition to all other rights reserved herein, be subrogated to all of the rights of Lender. All amounts advanced on behalf of an Owner pursuant to this Section shall be added to the Assessments payable by such Owner with appropriate interest. Any unpaid Assessments for which an acquirer of title is not liable (*i.e.*, where a Lender takes title to a Lot, and where Florida law, as amended from time to time, does not provide for a greater amount, any past due Assessment amounts which exceed the lesser of 12 months of Assessments or one percent (1%) of the original mortgage debt) may be reallocated and assessed to all Owners (including such acquirer of title) as part of Operating Costs included within Assessments. Any sale or transfer pursuant to a foreclosure (or by deed in lieu of foreclosure or otherwise) shall not relieve the acquiring party from liability for, nor the Lot from the lien of any Assessments made thereafter. Nothing herein contained shall be construed as releasing the party liable for any delinquent Assessments from the payment thereof, or the enforcement of collection by means other than a foreclosure.

18.17 Survival of the Association's Lien. To the extent that the Association forecloses upon its lien, as permitted by Florida law and the Association Documents, and becomes the owner of record title to a Home or Lot, the Association's lien shall survive foreclosure, and all amounts due in connection with the Association's foreclosure including, but not limited to, past due Assessments, late fees, interest, attorneys fees and costs shall be the joint and several liability of the Owner that was foreclosed by the Association and the Owner that takes title to the Home or Lot after the Association, and the Association shall have no liability for the same.

18.18 Acceleration. In the event of a default in the payment of any Assessment, Association may accelerate the Assessments then due for up to the next ensuing twelve (12) month period.

18.19 Non-Payment of Assessments. If any Assessment is not paid within fifteen (15) days (or such other period of time established by the Board) after the due date, a late fee equal to the greater of \$25.00 or five percent (5%) of the amount of each Installment Assessment, together with interest in an amount equal to the maximum rate allowable by law (or such lesser rate established by the Board), per annum, beginning from the due date until paid in full, may be levied. The late fee shall compensate Association for administrative costs, loss of use of money, and accounting expenses. Association may, at any time thereafter, bring an action at law against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot/Home, or both. Association shall not be required to bring such an action if it believes that the best interests of Association would not be served by doing so. To the extent permitted by Florida law, the lien granted to Association may be established and foreclosed in the Circuit Court in and for the County, and in any suit for the foreclosure of such lien, Association shall be entitled to seek an order of court that it is entitled to (i) collect a reasonable rent from the Owner, if the Owner remains in possession of a Lot after a judgment of foreclosure is entered and (ii) obtain the appointment of a receiver for such Lot to collect the rent if the Lot is leased or rented during the pendency of the foreclosure action. There shall be added to the Assessment all costs expended in preserving the priority of the lien and all costs and expenses of collection, including attorneys' fees, pre-trial and at all levels of proceedings, including appeals, collection and bankruptcy. No Owner may waive or otherwise escape liability for Assessments provided for herein by non-use of, or the waiver of the right to use the Common Areas by abandonment of a Lot. The Association may suspend the voting rights of an Owner for the non-payment of a monetary obligation owed to the Association pursuant to Section 720.305, Florida Statutes, as amended from time to time.

18.20 Exemption. Developer, at Developer's sole option, may pay Assessments on Lots owned by it, or fund the deficit, if any, as set forth in Section 18.8 herein. In addition, the Board shall have the right to exempt any portion of Simonton Court subject to this Declaration from the Assessments, provided that such part of Simonton Court exempted is used (and as long as it is used) for any of the following purposes:

- 18.20.1 Any easement or other interest therein dedicated and accepted by the local public authority and devoted to public use;
- 18.20.2 Any real property interest held by a Telecommunications Provider;
- 18.20.3 Common Areas or property (other than a Lot);
- 18.20.4 Any of Simonton Court exempted from ad valorem taxation by the laws of the State of Florida or exempted from Assessments by other provisions of this Declaration; and
- 18.20.5 Any Association Common Areas.

18.21 Collection by Developer. If for any reason Association shall fail or be unable to levy or collect Assessments, then in that event, Developer shall at all times have the right, but not the obligation: (i) to advance such sums as a loan to Association to bear interest and to be repaid as hereinafter set forth; and/or (ii) to levy and collect such Assessments by using the remedies available as set forth above, which remedies; including, but not limited to, recovery of attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, shall be deemed assigned to Developer for such purposes. If Developer advances sums, it shall be entitled to immediate reimbursement, on demand, from Association for such amounts so paid, plus interest thereon at the Wall Street Journal Prime Rate plus two percent (2%), plus any costs of collection including, but not limited to, reasonable attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals.

18.22 Rights to Pay Assessments and Receive Reimbursement. Association, Developer, and any Lender of a Lot shall have the right, but not the obligation, jointly and severally, and at their sole option, to pay any Assessments or other charges which are in default and which may or have become a lien or charge against any Lot. If so paid, the party paying the same shall be subrogated to the enforcement rights of Association with regard to the amounts due.

18.23 Mortgagee Right. Each Lender may request in writing that Association notify such Lender of any default of the Owner of the Lot subject to the Lender's mortgage under the Association Documents which default is not cured within thirty (30) days after Association learns of such default. A failure by Association to furnish notice to any Lender shall not result in liability of Association because such notice is given as a courtesy to a Lender and the furnishing of such notice is not an obligation of Association to Lender.

18.24 Collection of Assessments. Installment Assessments shall be paid by each Owner directly to Association. Any collection proceedings for an Owner's failure to pay Assessments shall be the sole responsibility of Association. Each Owner shall be responsible to pay all Assessments to Association on time and in full.

19. Information to Lenders and Owners.

19.1 Availability. In accordance with Chapter 720, Florida Statutes, as amended from time to time, and any Rules and Regulations adopted by the Association from time to time, there shall be available for inspection upon request, during normal business hours or under other reasonable circumstances, to Owners and Lenders current copies of the Association Documents.

19.2 Copying. Any Owner and/or Lender shall be entitled, upon written request, and at its cost, to a copy of the documents referred to above.

19.3 Notice. Upon written request by a Lender (identifying the name and address of the Lender and the name and address of the applicable Owner), the Lender will be entitled to timely written notice of:

19.3.1 Any condemnation loss or casualty loss which affects a material portion of a Lot to which Lender has a first mortgage to the extent Association is notified of the same;

19.3.2 Any delinquency in the payment of Assessments owed by an Owner of a Lot subject to a first mortgage held by the Lender, which remains uncured for a period of sixty (60) days;

19.3.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained hereunder;

19.3.4 Any proposed action (if any) which would require the consent of a specific mortgage holder;

19.3.5 The failure by Association to furnish any of the foregoing information or notices to any Lender shall not result in liability of Association because such information and notices are given as a courtesy to a Lender and the furnishing of such information and notices are not an obligation of Association to Lender.

20. Architectural Control. The following provisions govern Simonton Court.

20.1 Architectural Control Committee. The ACC shall be a permanent committee of Association and shall administer and perform the architectural and landscape review and control functions relating to Simonton Court. The ACC shall consist of all of the members of the Developer appointed Board of Directors of the Association. The ACC shall have the right to form subcommittees to review ACC applications. The ACC shall oversee such subcommittees and shall take precedence over any decision made by such subcommittees. Until the Community Completion Date, Developer shall have the right to change the number of members on the ACC, and to appoint, remove, and replace all members of the ACC. Developer shall determine which members of the ACC shall serve as its chairman and co-chairman. In the event of the failure, refusal, or inability to act of any of the members appointed by Developer, Developer shall have the right to replace any member within thirty (30) days of such occurrence. If Developer fails to replace that member, the remaining members of the ACC shall fill the vacancy by appointment. From and after the Community Completion Date, the Board shall have the same rights as Developer with respect to the ACC. The ACC shall enforce Simonton Court Standards.

20.2 Membership. There is no requirement that any member of the ACC be an Owner or a member of Association.

20.3 General Plan. It is the intent of this Declaration to create a general plan and scheme of development of Simonton Court. Accordingly, the ACC shall have the right to approve or disapprove all architectural, landscaping, and improvements within Simonton Court by Owners other than Developer. The ACC shall have the right to evaluate all plans and specifications as to harmony of exterior design, landscaping, location of any proposed improvements, relationship to surrounding structures, topography and conformity with such other reasonable requirements as shall be adopted by ACC. The ACC may impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning, or other local governmental codes. Prior to the Community Completion Date, any additional standards or modification of existing standards shall require the consent of Developer, which may be granted or denied in its sole discretion.

20.4 Master Plan. Developer has established an overall Master Plan. However, notwithstanding the above, or any other document, brochures or plans, Developer reserves the right to modify the Master Plan or any site plan at any time as it deems desirable in its sole discretion and in accordance with applicable laws and ordinances. WITHOUT LIMITING THE FOREGOING, DEVELOPER OR BUILDERS MAY PRESENT TO THE PUBLIC OR TO OWNERS RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS RESPECTING SIMONTON COURT. SUCH RENDERINGS, PLANS, MODELS, GRAPHICS, TOPOGRAPHICAL TABLES, SALES BROCHURES, OR OTHER PAPERS ARE NOT A GUARANTEE OF HOW SIMONTON COURT WILL APPEAR UPON COMPLETION AND DEVELOPER RESERVES THE RIGHT TO CHANGE ANY AND ALL OF THE FOREGOING AT ANY TIME AS DEVELOPER DEEMS NECESSARY IN ITS SOLE AND ABSOLUTE DISCRETION.

20.5 Community Standards. Each Owner and Builder and their respective contractors and employees shall observe, and comply with, the Community Standards which now or may hereafter be promulgated by the ACC and approved by the Board of Association from time to time. The Community Standards shall be effective from the date of adoption; shall be specifically enforceable by injunction or otherwise; and shall have the effect of covenants as set forth herein verbatim. The Community Standards shall not require any Owner to alter the improvements previously constructed in accordance with the then Community Standards and approved by the ACC. Until the Community Completion Date, Developer shall have the right to approve the Community Standards, which approval, may be granted in its sole discretion.

20.6 Quorum. A majority of the ACC shall constitute a quorum to transact business at any meeting. The action of a majority present at a meeting at which a quorum is present shall constitute the action of the ACC. In lieu of a meeting, the ACC may act in writing.

20.7 Power and Duties of the ACC. No improvements shall be constructed on any Parcel, Lot or any portion of Simonton Court, no exterior of a Home shall be repainted, no landscaping, sign, or improvements erected, removed, planted, or maintained on any portion of Simonton Court, nor shall any material addition to or any change, replacement, or alteration of the improvements as originally constructed by Builders or Developer (visible from the exterior of the Home) be made until the plans and specifications showing the nature, kind, shape, height, materials, floor plans, color scheme, and the location of same shall have been submitted to and approved in writing by the ACC.

20.8 Procedure. In order to obtain the approval of the ACC, each Owner and Builder shall observe the following:

(a) Each Owner and Builder shall submit an application to the ACC with respect to any proposed improvement or material change in an improvement, together with the required application(s) and other fee(s) as established by the ACC. The applications shall include such information as may be required by the application form adopted by the ACC. The ACC may also require submission of samples of building materials and colors proposed to be used. At the time of such submissions, the Owner and Builder shall, if requested, submit to the ACC, such site plans, plans and specifications for the proposed improvement, prepared and stamped by a registered Florida architect or residential designer, and landscaping and irrigation plans, prepared by a registered landscape architect or designer showing all existing trees and major vegetation stands and surface water drainage plan showing existing and proposed design grades, contours relating to the predetermined ground floor finish elevation, pool plans and specifications and the times scheduled for completion, all as reasonably specified by the ACC.

(b) In the event the information submitted to the ACC is, in the ACC's opinion, incomplete or insufficient in any manner, the ACC may request and require the submission of additional or supplemental information. The Owner or Builder shall, within fifteen (15) days thereafter, comply with the request.

(c) No later than forty-five (45) days after receipt of all information required by the ACC for final review, the ACC shall approve or deny the application in writing. The ACC shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the ACC's sole discretion, for aesthetic or any other reasons or to impose qualifications and conditions thereon. In approving or disapproving such plans and specifications, the ACC shall consider the suitability of the proposed improvements, the materials of which the improvements are to be built, the site upon which the improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property. In the event the ACC fails to respond within such forty-five (45) day period, the plans and specifications shall be deemed disapproved by the ACC.

(d) Construction of all improvements shall be completed within the time period set forth in the application and approved by the ACC.

(e) In the event that the ACC disapproves any plans and specifications, the Owner or Builder may request a rehearing by the ACC for additional review of the disapproved plans and specifications. The meeting shall take place no later than forty-five (45) days after written request for such meeting is received by the ACC, unless applicant waives this time requirement in writing. The ACC shall make a final written decision no later than forty-five (45) days after such meeting. In the event the ACC fails to provide such written decision within such forty-five (45) days, the plans and specifications shall be deemed disapproved.

(f) Upon disapproval, the applicant may appeal the decision of the ACC to the Board within forty-five (45) days of the ACC's written review and disapproval. Review by the Board shall take place no later than forty-five (45) days subsequent to the receipt by the Board of the Owner's or Builder's request therefor. If the

Board fails to hold such a meeting within forty-five (45) days after receipt of request for such meeting, then the plans and specifications shall be deemed approved. The Board shall make a final decision no later than sixty (60) days after such meeting. In the event the Board fails to provide such written decision within such sixty (60) days after such meeting, such plans and specifications shall be deemed disapproved. The decision of the ACC, or if appealed, the Board of Association, shall be final and binding upon the Owner, Builder and his/her/its heirs, legal representatives, successors and assigns.

20.9 Alterations. Any and all alterations, deletions, additions and changes of any type or nature whatsoever to then existing improvements or the plans or specifications previously approved by the ACC shall be subject to the approval of the ACC in the same manner as required for approval of original plans and specifications.

20.10 Variances. Association or ACC (but subject to final approval of said variance from the Board) shall have the power to grant variances from any requirements set forth in this Declaration or from the Community Standards, on a case by case basis, provided that the variance sought is reasonable and results from a hardship upon the applicant. The granting of a variance shall not nullify or otherwise affect the right to require strict compliance with the requirements set forth herein or in the Community Standards on any other occasion.

20.11 Permits. The Owner or Builder is solely responsible to obtain all required building and other permits from all governmental authorities having jurisdiction. To the extent that an Owner or Builder fails to obtain all required permits and or consents from local and/or governmental authorities, any applicable ACC approvals shall be deemed withdrawn.

20.12 Construction by Owners. The following provisions govern construction activities by Owners and Builders after consent of the ACC has been obtained:

(a) Each Owner or Builder shall deliver to the ACC, if requested, copies of all construction and building permits as and when received by the Owner. Each construction site in Simonton Court shall be maintained in a neat and orderly condition throughout construction. Construction activities shall be performed on a diligent, workmanlike and continuous basis. Roadways, easements, swales, Common Areas and other such areas in Simonton Court shall be kept clear of construction vehicles, construction materials and debris at all times. No construction office or trailer shall be kept in Simonton Court and no construction materials shall be stored in Simonton Court subject, however, to such conditions and requirements as may be promulgated by the ACC. All refuse and debris shall be removed or deposited in a dumpster on a daily basis. No materials shall be deposited or permitted to be deposited in any canal or waterway or Common Areas or other Homes in Simonton Court or be placed anywhere outside of the Home upon which the construction is taking place. No hazardous waste or toxic materials shall be stored, handled and used, including, without limitation, gasoline and petroleum products, except in compliance with all applicable federal, state and local statutes, regulations and ordinances, and shall not be deposited in any manner on, in or within the construction or adjacent property or waterways. All construction activities shall comply with the Community Standards. If a contractor, Builder or Owner shall fail to comply in any regard with the requirements of this Section, the ACC may require that such Owner or contractor post security with Association in such form and such amount deemed appropriate by the ACC in its sole discretion.

(b) There shall be provided to the ACC, if requested, a list (name, address, telephone number and identity of contact person), of all contractors, subcontractors, materialmen and suppliers (collectively, "Contractors") and changes to the list as they occur relating to construction. Each Builder and all of its employees and Contractors and their employees shall utilize those roadways and entrances into Simonton Court as are designated by the ACC for construction activities. The ACC shall have the right to require that each Builder's and Contractor's employees check in at the designated construction entrances and to refuse entrance to persons and parties whose names are not registered with the ACC.

(c) Each Owner and Builder is responsible for insuring compliance with all terms and conditions of these provisions and of the Community Standards by all of its employees and Contractors. In the event of any violation of any such terms or conditions by any employee or Contractor, or, in the opinion of the ACC, the continued refusal of any employee or Contractor to comply with such terms and conditions, after five (5) days' notice and right to cure, the ACC shall have, in addition to the other rights hereunder, the right to prohibit the violating employee or Contractor from performing any further services in Simonton Court.

(d) The ACC may, from time to time, adopt standards governing the performance or conduct of Owners, Builders, Contractors and their respective employees within Simonton Court. Each Owner, Builder and Contractor shall comply with such standards and cause its respective employees to also comply with same. The ACC may also promulgate requirements to be inserted in all contracts relating to construction within Simonton Court and each Owner and Builder shall include the same therein.

20.13 Inspection. There is specifically reserved to Association and ACC and to any agent or member of either of them, the right of entry and inspection upon any portion of Simonton Court at any time within reasonable daytime hours, for the purpose of determination whether there exists any violation of the terms of any approval or the terms of this Declaration or the Community Standards.

20.14 Violation. Without limiting any other provision herein, if any improvement shall be constructed or altered without prior written approval, or in a manner which fails to conform with the approval granted, the Owner or Builder shall, upon demand of Association or the ACC, cause such improvement to be removed, or restored until approval is obtained or in order to comply with the plans and specifications originally approved. The Owner or Builder shall be liable for the payment of all costs of removal or restoration, including all costs and attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, collections and



bankruptcy, incurred by Association or ACC. The costs shall be deemed an Individual Assessment and enforceable pursuant to the provisions of this Declaration. The ACC and/or Association is specifically empowered to enforce the architectural and landscaping provisions of this Declaration and the Community Standards, by any legal or equitable remedy.

20.15 Court Costs. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed improvement or to cause the removal of any unapproved improvement, Association and/or ACC shall be entitled to recover court costs, expenses and attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, collections and bankruptcy, in connection therewith.

20.16 Certificate. In the event that any Owner or Builder fails to comply with the provisions contained herein, the Community Standards, or other rules and regulations promulgated by the ACC, Association and/or ACC may, in addition to all other remedies contained herein, record a Certificate of Non-Compliance against the Home stating that the improvements on the Home fail to meet the requirements of this Declaration and that the Home is subject to further enforcement remedies.

20.17 Certificate of Compliance. If requested by an Owner or Builder, prior to the occupancy of any improvement constructed or erected on any Home by other than Developer, or its designees, the Owner or Builder thereof shall obtain a Certificate of Compliance from the ACC, certifying that the Owner has complied with the requirements set forth herein. The ACC may, from time to time, delegate to a member or members of the ACC, the responsibility for issuing the Certificate of Compliance. The issuance of a Certificate of Compliance does not abrogate the ACC's rights set forth in Section 20.13 herein.

20.18 Exemption. Notwithstanding anything to the contrary contained herein, or in the Community Standards, any improvements of any nature made or to be made by Developer or its nominees, including, without limitation, improvements made or to be made to the Common Areas or any Home, shall not be subject to the review of the ACC, Association, or the provisions of the Community Standards. By way of example, and not of limitation, Developer shall be entitled to exempt Builders from all or certain of the terms and provisions of this Section 20 (i.e., such Builder shall not be subject to ACC review or any of the requirements contained in Section 20) pursuant to a written agreement between Developer and any such Builder.

20.19 Exculpation. Developer, Association, the directors or officers of Association, the ACC, the members of the ACC, or any person acting on behalf of any of them, shall not be liable for any cost or damages incurred by any Owner or Builder or any other party whatsoever, due to any mistakes in judgment, negligence, or any action of Developer, Association, ACC or their members, officers, or directors, in connection with the approval or disapproval of plans and specifications. Each Owner and Builder agrees, individually and on behalf of his/her/its heirs, devisees, successors and assigns, and legal and personal representatives by acquiring title to a Lot, that it shall not bring any action or suit against Developer, Association or their respective directors or officers, the ACC or the members of the ACC, or their respective agents, in order to recover any damages caused by the actions of Developer, Association, or ACC or their respective members, officers, or directors in connection with the provisions of this Section. Association does hereby indemnify, defend and hold Developer and the ACC, and each of their members, officers, and directors harmless from all costs, expenses, and liabilities, including attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, of all nature resulting by virtue of the acts of the Owners, Association, ACC or their members, officers and directors. Developer, Association, its directors or officers, the ACC or its members, or any person acting on behalf of any of them, shall not be responsible for any defects in any plans or specifications or the failure of same to comply with applicable laws or code nor for any defects in any improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

20.20 Government Approval. Each Owner and Builder acknowledges and agrees that ACC approval, as discussed herein, shall not be deemed to constitute an approval by any governmental authority, nor shall it relieve any Owner or Builder of the obligation to obtain necessary governmental approvals at such Owner's or Builder's sole cost and expense. Additionally, in the event any governmental authority denies an Owner's or Builder's application for a permit or otherwise in connection with planned alterations or improvements, such denial shall prohibit construction of such improvements (regardless of whether the ACC has previously approved the Owner's or Builder's planned alterations or improvements by certificate or otherwise). Decisions of the ACC with respect to architectural control shall be based upon proposed improvements being consistent with the overall aesthetics and master plan of Simonton Court and such decisions shall not be deemed a waiver of an Owner's or Builder's obligation to comply with state and local codes and/or ordinances. In the event that any Owner or Builder, with or without ACC approval, constructs any improvements or makes any changes to his/her/its Home without the required governmental permits or approvals, such Owner or Builder shall be solely liable for all fines and/or citations imposed by any governmental authority and shall further bear all costs in connection with the removal, repair or reconstruction of improvements required by such governmental authority. In addition, to the extent an Owner or a Builder fails to obtain governmental permits and/or approvals prior to constructing improvements which require the same, or if any governmental entity requires the repair, removal or reconstruction of any improvements, Association shall be permitted to cause such Owner or Builder to repair, remove or reconstruct any unapproved improvement at the Owner's or Builder's sole and absolute cost, and in the event such Owner or Builder fails to remove the same within a reasonable time, Association may, but shall not be obligated to remove the improvement and charge all costs in connection with the same to the Owner as an Individual Assessment. Each Owner and Builder further agrees to remise, release, acquit, satisfy, and forever discharge Developer and Association of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, sums of money, accounts, bills, covenants, controversies, agreements, promises, damages (including consequential, incidental, punitive, special or other), judgments, executions, claims, liabilities and demands,

whatsoever, at law and in equity (including, but not limited to, claims founded on tort, contract, contribution, indemnity or any other theory whatsoever) in any way related to any construction of any requested improvements due to any defects to the marketability, ability to obtain a loan, and/or insurability of a Home caused therefrom; any encroachment caused by requested improvements; and/or the repair, reconstruction or removal of the improvements as required by any governmental or court action.

21. Owners Liability.

21.1 Loop System Irrigation. Some or all Lots and Common Areas may receive irrigation pursuant to a loop system. If an Owner desires to make any alterations or improvements to a Lot that in any way affect the loop irrigation system, then the Owner shall be responsible for taking measures to "cap off" the main line of the loop irrigation system that leads to the Lot and shall be liable for any damage caused to the system as a result thereof. In the event that damage is caused to the loop system by an Owner or his/her contractor(s), the Association may take any action necessary to repair the loop system and charge all costs relating to the same to the applicable Owner as an Individual Assessment. In addition, the Owner shall be obligated to obtain the prior written approval of Association before taking any action that may adversely affect the loop irrigation system. Once the main line is "capped off," the Owner shall then be responsible for maintaining the irrigation system for his or her Lot. Any damages to the Lot resulting from an Owner's failure to comply with the terms set forth herein shall be the sole responsibility of such Owner, and Developer shall not be liable for the same. Furthermore, each Owner understands that as provided in this Declaration, an Owner may be permitted to install, without limitation, a patio, and/or screened enclosure ("Improvement") on the Lot upon the prior written approval of the ACC as set forth in this Declaration and/or the Community Standards. If an Improvement is approved to be installed, then a five (5) foot gate must also installed. Before the ACC approves the installation of an Improvement, the irrigation system that will be within the Improvement portion of that Lot must be re-routed, if necessary, by a professional irrigation company. In order for the ACC to approve the Improvement installation, a letter or other evidence by a professional irrigation company must be given to the ACC at least ten (10) days before the Improvement installation stating that the effectiveness of the Simonton Court drainage system will not be affected by the re-routing of the irrigation system. Should an Owner install the Improvement without providing the necessary letter or other evidence from a professional irrigation company in advance as required herein, then Association may conduct the necessary inspection, repair any necessary drainage facilities and charge the work as an Individual Assessment to such Owner, all as further provided in this Declaration and/or Community Standards.

21.2 Right to Cure. Should any Owner do any of the following:

21.2.1 Fail to perform its responsibilities as set forth herein or otherwise breach the provisions of the Declaration including, without limitation, any provision herein benefiting SFWMD; or

21.2.2 Cause any damage to any improvement or Common Areas; or

21.2.3 Impede Developer or Association from exercising its rights or performing its responsibilities hereunder; or

21.2.4 Undertake unauthorized improvements or modifications to a Lot and/or the Common Areas; or

21.2.5 Impede Developer from proceeding with or completing the development of Simonton Court.

Then Developer and/or Association, where applicable, after reasonable prior written notice, shall have the right, through its agents and employees, to cure the breach, including, but not limited to, entering upon the Lot causing the default to be remedied and/or the required repairs or maintenance to be performed, or as the case may be, removing unauthorized improvements or modifications. The cost thereof, plus reasonable overhead costs and attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, incurred shall be assessed against the Owner as an Individual Assessment.

21.3 Non-Monetary Defaults. In the event of a violation by any Owner, other than the nonpayment of any Assessment or other monies, of any of the provisions of this Declaration, Developer or Association shall notify the Owner of the violation, by written notice. If such violation is not cured as soon as practicable and in any event within seven (7) days after such written notice, the party entitled to enforce same may, at its option:

21.3.1 Commence an action to enforce the performance on the part of the Owner or to enjoin the violation or breach or for equitable relief as may be necessary under the circumstances, including injunctive relief; and/or

21.3.2 Commence an action to recover damages; and/or

21.3.3 Take any and all action reasonably necessary to correct the violation or breach.

21.4 Expenses. All expenses incurred in connection with the violation or breach, or the commencement of any action against any Owner, including reasonable attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals, shall be assessed against the Owner, as an Individual Assessment, and shall be immediately due and payable without further notice.

21.5 No Waiver. The failure to enforce any right, provision, covenant or condition in this Declaration, shall not constitute a waiver of the right to enforce such right, provision, covenant or condition in the future.

21.6 Rights Cumulative. All rights, remedies, and privileges granted to Developer, Association and/or the ACC pursuant to any terms, provisions, covenants or conditions of this Declaration, or Community Standards, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude any of them from pursuing such additional remedies, rights or privileges as may be granted or as it might have by law.

21.7 Enforcement By or Against Other Persons. In addition to the foregoing, this Declaration or Community Standards may be enforced by Developer and/or Association by any procedure at law or in equity against any person violating or attempting to violate any provision herein, to restrain such violation, to require compliance with the provisions contained herein, to recover damages, or to enforce any lien created herein. The expense of any litigation to enforce this Declaration or Community Standards shall be borne by the person against whom enforcement is sought, provided such proceeding results in a finding that such person was in violation of this Declaration or the Community Standards.

21.8 Fines. Association may suspend, for reasonable periods of time, the rights of an Owner or an Owner's tenants, guests and invitees, or both, or use the Common Areas and/or common services including, but not limited to, cable services, and/or other services which are paid through Common Expenses, and may levy reasonable fines, not to exceed the maximum amounts permitted by Section 720.305(2) of the Florida Statutes, against an Owner, tenant, guest or invitee, for failure to comply with any provision of this Declaration including, without limitation, those provisions benefiting SFWMD.

21.8.1 A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. Fines in the aggregate are not capped to any amount.

21.8.2 Unless otherwise permitted by Florida law, fines or suspensions may not be imposed without notice of at least fourteen (14) days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three (3) persons (the "Violations Committee") appointed by the Board who are not officers, directors or employees of Association, or the spouse, parent, child, brother, sister of an officer, director or employee. If the Violations Committee does not by a majority vote approve a fine or suspension the same may not be imposed. The written notice of violation shall be in writing to the Owner, tenant, guest or invitee and detail the infraction or infractions. Included in the notice shall be the date and time of the hearing of the Violations Committee.

21.8.3 The non-compliance shall be presented to the Violations Committee acting as a tribunal, after which the Violations Committee shall hear reasons why a fine should not be imposed. The hearing shall be conducted in accordance with the procedures adopted by the Violations Committee from time to time. A written decision of the Violations Committee shall be submitted to the Owner, tenant, guest or invitee, as applicable, by not later than twenty-one (21) days after the meeting of the Violations Committee. The Owner, tenant, guest or invitee shall have a right to be represented by counsel and to cross-examine witnesses.

21.8.4 The Violations Committee may impose Individual Assessments against the Owner in the amount of \$100 (or any greater amount permitted by law from time to time) for each violation. Each day of non-compliance shall be treated as a separate violation and there is no cap on the aggregate amount the Violations Committee may fine an Owner, tenant, guest or invitee. Individual Assessment fines shall be paid not later than five (5) days after notice of the imposition of the Individual Assessment. All monies received from fines shall be allocated as directed by the Board of Directors.

21.9 Right of Association to Evict Tenants, Occupants, Guests and Invitees. With respect to any tenant or any person present in any Lot or Home or any portion of Simonton Court than an Owner and the members of his/her immediate family permanently residing with him/her in the Lot or Home, if such person shall violate any provision of the Association Documents or shall create a nuisance or an unreasonable and continuous source of annoyance to a resident of Simonton Court in Association's sole discretion, or shall willfully damage or destroy any of the Common Areas or personal property of Association, then upon written notice by Association, such person shall be required to immediately leave Simonton Court and if such person does not do so, Association shall be authorized to commence an action to evict such tenant or compel such person to leave Simonton Court and, where necessary, to enjoin such person from returning. Any expense incurred by Association in connection with any such action including, without limitation, attorneys' fees, shall be charged by Association to the applicable Owner of such Lot/Home as an Individual Assessment.

## 22. Additional Rights of Developer.

22.1 Sales and Administrative Offices. Developer and/or a Builder (to the extent a written agreement between Developer and such Builder provides for the same) shall have the perpetual right to take such action reasonably necessary to transact any business necessary to consummate the development of Simonton Court and sales and re-sales of Homes. Without limiting any other provision of this Declaration, Developer may assign its rights, in whole or in part, hereunder to each Builder. This right shall include, but not be limited to, the right to maintain models, sales offices and parking associated therewith, have signs on any portion of Simonton Court, including Common Areas, employees in the models and offices, without the payment of rent or any other fee, maintain offices in models, and use of the Common Areas to show Homes. The sales office, models, signs and all items pertaining to development and sales remain the property of Developer and each Builder, as the case may be.

Developer and Builders shall have all of the foregoing rights without charge or expense. The rights reserved hereunder shall extend beyond the Community Completion Date.

22.2 Modification. The development and marketing of Simonton Court will continue as deemed appropriate in Developer's sole discretion, and nothing in this Declaration or Community Standards, or otherwise, shall be construed to limit or restrict such development and marketing. It may be necessary or convenient for the development of Simonton Court to, as an example and not a limitation, amend a Plat and/or the Master Plan, modify the boundary lines of the Common Areas, grant easements, dedications, agreements, licenses, restrictions, reservations, covenants, rights-of-way, and to take such other actions which Developer, or its agents, affiliates, or assignees may deem necessary or appropriate. Association and Owners shall, at the request of Developer, execute and deliver any and all documents and instruments which Developer deems necessary or convenient, in its sole discretion, to accomplish the same. Without limiting anything to the contrary in this Declaration, prior to and including the Turnover Date, all agreements and/or contracts which are entered into by Association shall require the prior written approval of Developer or may otherwise be voided by Developer in its sole and absolute discretion.

22.3 Promotional Events. Prior to the Community Completion Date, Developer and its successors and assigns shall have the right, at any time, to hold marketing, special and/or promotional events within Simonton Court and/or on the Common Areas, without any charge for use. Developer, its agents, affiliates, or assignees shall have the right to market Simonton Court and Lots or Homes in advertisements and other media by making reference to Simonton Court, including, but not limited to, pictures or drawings of Simonton Court, Common Areas, Parcels and Homes constructed in Simonton Court. All logos, trademarks, and designs used in connection with Simonton Court are the property of Developer, and Association shall have no right to use the same after the Community Completion Date except with the express written permission of Developer. Without limiting any other provision of this Declaration, Developer may assign its rights in whole or in part hereunder to each Builder.

22.4 Use by Prospective Purchasers. Prior to the Community Completion Date, Developer shall have the right, without charge, to use the Common Areas for the purpose of entertaining prospective purchasers of Lots or Homes, or other properties owned by Developer outside of Simonton Court.

22.5 Franchises. Developer may grant franchises or concessions to commercial concerns on all or part of the Common Areas and shall be entitled to all income derived therefrom.

22.6 Management. Developer may manage the Common Areas by contract with Association. Developer may also contract with a third party ("Manager") for management of Association and the Common Areas. Each Owner acknowledges that Developer may receive lump sum or monthly compensation from any Manager in connection with the costs of services provided by such Manager. Such compensation may be paid on a per Home or other basis. All such compensation shall be the sole property of Developer, who shall have no duty to account for or disclose the amount of such compensation.

22.7 Easements. Until the Community Completion Date, Developer reserves the exclusive right to grant, in its sole discretion, easements, permits and/or licenses for ingress and egress, drainage, utilities service, maintenance, Telecommunications Services; and other purposes over, under, upon and across Simonton Court so long as any such easements do not materially and adversely interfere with the intended use of Homes previously conveyed to Owners. By way of example, and not of limitation, Developer may be required to take certain action, or make additions or modifications to the Common Areas in connection with an environmental program. All easements necessary for such purposes are reserved in favor of Developer, in perpetuity, for such purposes. Without limiting the foregoing, Developer may relocate any easement affecting a Lot, or grant new easements over a Lot, after conveyance to an Owner, without the joinder or consent of such Owner, so long as the grant of easement or relocation of easement does not materially and adversely affect the Owner's use of the Home as a residence. As an illustration, Developer may grant an easement for Telecommunications Systems, irrigation, drainage lines or electrical lines over any portion of a Parcel so long as such easement is outside the footprint of the foundation of any residential improvement constructed on such Parcel. Developer shall have the sole right to any fees of any nature associated therewith, including, but not limited to, license or similar fees on account thereof. Association and Owners will, without charge, if requested by Developer: (a) join in the creation of such easements, etc. and cooperate in the operation thereof; and (b) collect and remit fees associated therewith, if any, to the appropriate party. Association will not grant any easements, permits or licenses to any other entity providing the same services as those granted by Developer, nor will it grant any such easement, permit or license prior to the Community Completion Date without the prior written consent of Developer which may be granted or denied in its sole discretion.

22.8 Right to Enforce. Developer has the right, but not the obligation, to enforce the provisions of this Declaration and the Community Standards and to recover all costs relating thereto, including attorneys' fees and paraprofessional fees, pre-trial and at all levels of proceedings, including appeals. Such right shall include the right to perform the obligations of Association and to recover all costs incurred in doing so.

22.9 Additional Development. If Developer withdraws portions of Simonton Court from the operation of this Declaration, Developer may, but is not required to, subject to governmental approvals, create other forms of residential property ownership or other improvements of any nature on the property not subjected to or withdrawn from the operation of this Declaration. Developer shall not be liable or responsible to any person or entity on account of its decision to do so or to provide, or fail to provide, the amenities and/or facilities which were originally planned to be included in such areas. If so designated by Developer, owners or tenants of such other forms of housing or improvements upon their creation, may share in the use of all or some of the Common Areas and other facilities and/or roadways which remain subject to this Declaration. The expense of the operation of such facilities shall be allocated to the various users thereof, if at all, as determined by Developer.

22.10 Representations. Developer makes no representations concerning development both within and outside the boundaries of Simonton Court including, but not limited to, the number, design, boundaries, configuration and arrangements, prices of all Parcels, Lots or Homes and buildings in all other proposed forms of ownership and/or other improvements on Simonton Court or in Simonton Court or adjacent to or near Simonton Court, including, but not limited to, the size, location, configuration, elevations, design, building materials, height, view, airspace, number of homes, number of buildings, location of easements, parking and landscaped areas, services and amenities offered.

22.11 Telecommunications Services.

22.11.1 Right to Contract for Telecommunications Services. The Developer (for the benefit of Association) or Association shall have the right, but not the obligation, to enter into one or more contracts for the provision of one or more Telecommunications Services for all or any part of Simonton Court. Prior to the Community Completion Date, all contracts between a Telecommunications Provider and Association, shall be subject to the prior written approval of Developer. Developer and/or its nominees, successors, assigns, affiliates, and licensees may contract with Association and act as a Telecommunications Provider for one or more Telecommunications Services, subject only to the requirements of all applicable laws, statutes, and regulations. If Developer is not the Telecommunications Provider for any particular Telecommunications Service, Developer shall have the right to receive, on a perpetual basis, all or a portion of access fees and/or the revenues derived from such Telecommunications Service within Simonton Court as agreed, from time to time, between the Telecommunications Provider and Developer.

22.11.2 Easements. Developer (i) reserves unto itself and its nominees, successors, assigns, affiliates, and licensees, and (ii) grants to each Telecommunications Provider that has entered into an agreement with Association respecting Telecommunications Services and/or Telecommunications Systems a perpetual right, privilege, easement and right-of-way across, over, under and upon Simonton Court for the installation, construction and maintenance of Telecommunications Systems together with a perpetual right, privilege and easement of ingress and egress, access, over and upon Simonton Court for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing facilities and equipment constituting such Telecommunications Systems. If, and to the extent, Telecommunications Services provided by such Telecommunications Providers are to serve all of Simonton Court, then the amounts payable to such Telecommunications Providers under their written agreements with Association shall be part of Operating Costs of Association and shall be assessed as a part of the Assessments.

22.11.3 Restoration. Upon the completion of any installation, upgrade, maintenance, repair, or removal of the Telecommunications Systems or any part thereof, each Telecommunications Provider shall restore the relevant portion of the Common Areas and/or any Lot or Home to as good a condition as that which existed prior to such installation, maintenance, repair or removal. Failure by Telecommunications Provider to commence such restoration within twenty (20) days after receiving written notice from Association of such failure or the Telecommunications Provider's failure to complete such restoration within ninety (90) days of commencement shall vest in Association the right (but not the obligation) to restore or cause to be restored such portion of the Common Areas and/or Lot or Home disturbed by such work, all at such Telecommunications Provider's sole cost and expense, except for in emergency situations whereby Association may restore or cause to be restored such disturbed portion of the Common Areas and/or Lot or Home immediately. In the event that Association exercises the right of self-help, each Telecommunications Provider agrees in advance that Association shall have the sole right to (i) select the contractors to perform such work and (ii) determine the extent of required restoration. This remedy of self-help is in addition to all other remedies of Association hereunder. All reasonable expenses incurred by Association in connection with such restoration shall be paid by Telecommunications Provider within twenty (20) days of completion of restoration and delivery to Telecommunications Provider of Association's invoice therefor. Any expenses not so paid when due shall bear interest from the due date at the lesser of (i) the maximum rate of interest allowed by the law of the State of Florida for such obligations, or (ii) as provided in an agreement between Association and a Telecommunications Provider.

22.11.4 Operating Costs. Each Owner understands that the expense of any Telecommunications Service may not be charged on a bulk basis, but may be charged at the rate equal to any rate paid by individual home owners that are not subject to a homeowners association in County. Each Owner acknowledges that Developer may receive lump sum or monthly compensation from any Telecommunications Provider in connection with the supply of Telecommunications Services. Such compensation may be paid on a per Home or other basis. All such compensation shall be the sole property of Developer, who shall have no duty to account for or disclose the amount of such compensation.

22.12 Non-Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ASSOCIATION DOCUMENTS, THE ASSOCIATION, BUILDERS AND THE DEVELOPER SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF SIMONTON COURT INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, LESSEES, LICENSEES, INVITEES, AGENTS, SERVANTS, CONTRACTORS, AND/OR SUBCONTRACTORS OR FOR ANY PROPERTY OF ANY SUCH PERSONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING:

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

ENHANCING AND MAINTAINING THE ENJOYMENT OF SIMONTON COURT AND THE VALUE THEREOF; AND

22.12.2 DEVELOPER AND/OR ASSOCIATION ARE NOT EMPOWERED, AND HAVE NOT BEEN CREATED, TO ACT AS AGENCIES WHICH ENFORCE OR ENSURE THE COMPLIANCE WITH THE LAWS OF THE STATE OF FLORIDA AND/OR BROWARD COUNTY OR PREVENT TORTIOUS ACTIVITIES. NEITHER DEVELOPER, ANY BUILDER, NOR ASSOCIATION SHALL BE LIABLE FOR THE UNLAWFUL OR UNDESIRABLE ACTIONS OR INACTIONS OF OWNERS OR THEIR RESPECTIVE FAMILIES, TENANTS, GUESTS, INVITEES OR ANY OTHER OCCUPANTS OF HOMES WITHIN SIMONTON COURT AND SHALL FURTHER HAVE NO OBLIGATION TO TAKE ANY AFFIRMATIVE ACTION NOT SPECIFICALLY SET FORTH IN THIS DECLARATION IN ORDER TO STOP, ENJOIN OR PREVENT ANY SUCH ACTIONS BY ANY OWNER OR THEIR FAMILIES, TENANTS, GUESTS, INVITEES OR ANY OTHER OCCUPANTS OF HOMES WITHIN SIMONTON COURT; AND

22.12.3 THE PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO HEALTH AND WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF ASSOCIATION TO PROTECT OR FURTHER THE HEALTH OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

EACH OWNER (BY VIRTUE OF HIS ACCEPTANCE OF TITLE TO A LOT) AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON, OR MAKING A USE OF, ANY PORTION OF SIMONTON COURT (BY VIRTUE OF ACCEPTING SUCH INTEREST OR LIEN OR MAKING SUCH USE) SHALL BE BOUND BY THIS SECTION AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST ASSOCIATION AND DEVELOPER ARISING FROM OR CONNECTED WITH ANY MATTER FOR WHICH THE LIABILITY OF ASSOCIATION HAS BEEN DISCLAIMED IN THIS SECTION OR OTHERWISE. AS USED IN THIS SECTION, "ASSOCIATION" SHALL INCLUDE WITHIN ITS MEANING ALL OF ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE AND BOARD MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS).

22.13 Resolution of Disputes. BY ACCEPTANCE OF A DEED, EACH OWNER AGREES THAT THE ASSOCIATION DOCUMENTS ARE VERY COMPLEX; THEREFORE, ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION, WITH RESPECT TO ANY ACTION, PROCEEDING, CLAIM, COUNTERCLAIM, OR CROSS CLAIM, WHETHER IN CONTRACT AND/OR IN TORT (REGARDLESS IF THE TORT ACTION IS PRESENTLY RECOGNIZED OR NOT), BASED ON, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY RELATED TO ASSOCIATION DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT, VALIDATION, PROTECTION, ENFORCEMENT ACTION OR OMISSION OF ANY PARTY SHOULD BE HEARD IN A COURT PROCEEDING BY A JUDGE AND NOT A JURY IN ORDER TO BEST SERVE JUSTICE. DEVELOPER HEREBY SUGGESTS THAT EACH OWNER UNDERSTAND THE LEGAL CONSEQUENCES OF ACCEPTING A DEED TO A LOT.

22.14 Venue. EACH OWNER AND BUILDER ACKNOWLEDGES REGARDLESS OF WHERE SUCH OWNER OR BUILDER (i) EXECUTED A PURCHASE AND SALE AGREEMENT, (ii) RESIDES, (iii) OBTAINS FINANCING OR (iv) CLOSED ON A LOT, THIS DECLARATION LEGALLY AND FACTUALLY WAS EXECUTED IN COUNTY. DEVELOPER HAS AN OFFICE IN COUNTY AND EACH LOT IS LOCATED IN COUNTY. ACCORDINGLY, AN IRREBUTTABLE PRESUMPTION EXISTS THAT THE ONLY APPROPRIATE VENUE FOR THE RESOLUTION OF ANY DISPUTE LIES IN COUNTY. IN ADDITION TO THE FOREGOING, EACH OWNER, BUILDER AND DEVELOPER AGREE THAT THE VENUE FOR RESOLUTION OF ANY DISPUTE LIES IN COUNTY.

22.15 Reliance. BEFORE ACCEPTING A DEED TO A LOT, EACH OWNER HAS AN OBLIGATION TO RETAIN AN ATTORNEY IN ORDER TO CONFIRM THE VALIDITY OF THIS DECLARATION. BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER ACKNOWLEDGES THAT HE HAS SOUGHT AND RECEIVED SUCH AN OPINION OR HAS MADE AN AFFIRMATIVE DECISION NOT TO SEEK SUCH AN OPINION. DEVELOPER IS RELYING ON EACH OWNER CONFIRMING IN ADVANCE OF ACQUIRING A LOT THAT THIS DECLARATION IS VALID, FAIR AND ENFORCEABLE. SUCH RELIANCE IS DETRIMENTAL TO DEVELOPER. ACCORDINGLY, AN ESTOPPEL AND WAIVER EXISTS PROHIBITING EACH OWNER FROM TAKING THE POSITION THAT ANY PROVISION OF THIS DECLARATION IS INVALID IN ANY RESPECT. AS A FURTHER MATERIAL INDUCEMENT FOR DEVELOPER TO SUBJECT SIMONTON COURT TO THIS DECLARATION, EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DEVELOPER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE AGAINST DEVELOPER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS, AND ITS AFFILIATES AND ASSIGNS, FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING THIS DECLARATION, OR THE EXHIBITS HERETO. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

22.16 Access Control System. Developer may, but is not obligated to, install a tele-entry system at the entrance to Simonton Court. Association shall have the right, but not the obligation, to contract for the installation of additional Access Control System facilities for Simonton Court. Prior to the Community Completion Date, all contracts for Access Control Systems shall be subject to the prior written approval of Developer. ASSOCIATION AND DEVELOPER SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OR FAILURE TO PROVIDE ADEQUATE ACCESS CONTROL OR INEFFECTIVENESS OF ACCESS CONTROL MEASURES UNDERTAKEN. Each and every Owner, occupant of each Home and Builder acknowledges that Developer, Association, and their employees, agents, managers, directors, and officers, are not insurers of Owners, Builders or Homes, or the personal property located within Homes. Developer and Association will not be responsible or liable for losses, injuries, or deaths resulting from any casualty or intrusion into a Home. Notwithstanding anything to the contrary in this Declaration, prior to the Community Completion Date, Developer shall have the unilateral right to control the operation of the community gates, if any, and the same shall remain open during normal business hours or as otherwise determined in the sole and absolute discretion of Developer.

22.17 Construction of Homes and Townhomes. EACH OWNER ACKNOWLEDGES THAT DEVELOPER IS NOT CONSTRUCTING ANY HOMES OR TOWNHOMES WITHIN SIMONTON COURT. ALL HOMES AND TOWNHOMES CONSTRUCTED IN SIMONTON COURT WILL BE CONSTRUCTED BY BUILDERS. EACH OWNER DOES HEREBY RELEASE, WAIVE, DISCHARGE, COVENANT NOT TO SUE, ACQUIT, SATISFY AND FOREVER DISCHARGE DEVELOPER, ITS OFFICERS, DIRECTORS, MANAGERS, MEMBERS, INVESTORS, EMPLOYEES, AND AGENTS AND ITS AFFILIATES AND ASSIGNS FROM ANY AND ALL LIABILITY, CLAIMS, COUNTERCLAIMS, DEFENSES, ACTIONS, CAUSES OF ACTION, SUITS, CONTROVERSIES, AGREEMENTS, PROMISES AND DEMANDS WHATSOEVER IN LAW OR IN EQUITY WHICH AN OWNER MAY HAVE IN THE FUTURE, OR WHICH ANY PERSONAL REPRESENTATIVE, SUCCESSOR, HEIR OR ASSIGN OF OWNER HEREAFTER CAN, SHALL OR MAY HAVE FOR, UPON OR BY REASON OF ANY MATTER, CAUSE OR THING WHATSOEVER RESPECTING ANY HOME OR TOWNHOME OR THE CONSTRUCTION THEREOF. THIS RELEASE AND WAIVER IS INTENDED TO BE AS BROAD AND INCLUSIVE AS PERMITTED BY THE LAWS OF THE STATE OF FLORIDA.

23. Refund of Taxes and Other Charges. Unless otherwise provided herein, Association agrees that any taxes, fees or other charges paid by Developer to any governmental authority, utility company or any other entity which at a later date are refunded in whole or in part, shall be returned to Developer in the event such refund is received by Association.

24. Assignment of Powers. All or any part of the rights, exemptions and powers and reservations of Developer herein contained may be conveyed or assigned in whole or part to other persons or entities by an instrument in writing duly executed, acknowledged, and, at Developer's option, recorded in the Public Records.

25. Selling, Leasing and Mortgaging of Homes. In order to maintain complementary uses, congenial neighbors and to protect the value of Homes and Lots, the transfer of title to or possession of Homes by any Owner shall be subject to the following provisions so long as Association exists, which provisions each Owner covenants to observe:

25.1 Transfers Subject to Approval.

25.1.1 Sale. No Owner or Builder may dispose of a Home or Lot or any interest therein by sale without approval of Association.

25.1.2 Lease. No Owner or Builder may transfer possession of a Home or any interest therein by lease for any period without approval of Association. The renewal of any lease, including any lease previously approved by Association under this Section 25, shall be re-submitted for approval by Association. No Owner or Builder may transfer possession of a Home or any interest therein by lease for any period until such Owner or Builder is current in payment of all assessments due to Association under the terms of this Declaration, and Association shall have the right to withhold approval of any lease until such time as the Owner is current in payment of such Assessments.

25.1.3 Gift. If any Owner proposes to transfer a Home by gift, the proposed transfer shall be subject to the approval of Association.

25.2 Approval by Association. To obtain approval of Association which is required for the transfer of Homes, each Owner and Builder shall comply with the following requirements:

25.2.1 Notice to Association.

25.2.1.1 Sale. An Owner or Builder intending to make a bona fide sale of his or her Lot or Home, or any interest therein, shall give to Association a transfer fee (in an amount determined by the Board and permitted by Florida Statutes) and notice pursuant to a form approved by Association of such intentions, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as Association may reasonably require.

25.2.1.2 Lease. An Owner or Builder intending to make a bona fide lease of his or her or any interest therein shall give to Association a transfer fee (in an amount determined by the Board and permitted by Florida Statutes) and notice pursuant to a form approved by Association of such intention, together with the name and address of the intended lessee, such other information concerning the intended lessee as

Association may reasonably require, and an executed copy of the proposed lease, which lease shall provide that it is subject to approval by Association. The Association may require a background check, credit check and personal interview for and/or with any proposed lessee and his or her spouse if any, and any other proposed occupant, as a precondition to approval. Each Owner and Builder is solely responsible to obtain all required permits relating to leasing property from all applicable governmental authorities having jurisdiction. To the extent that an Owner or Builder fails to obtain all required permits and or consents from local and/or governmental authorities, any and all Association approvals shall be deemed withdrawn.

25.2.1.3 Gift. An Owner or Builder who proposes to transfer his or her title by gift shall give to Association a transfer fee (in an amount determined by the Board and permitted by Florida Statutes) and notice pursuant to a form approved by Association of the proposed transfer of his or her title, together with such information concerning the transferee as Association may reasonably require, and a copy of all instruments to be used in transferring title.

25.2.1.4 Failure to Give Notice. If the notice to Association herein required is not given, then at any time after receiving knowledge of a transaction or event transferring ownership or possession of a Home, Association at its discretion and without notice may approve or disapprove the lease, sale or transfer. If Association disapproves the transaction or ownership, Association shall proceed as if it had received the required notice on the date of such disapproval.

25.2.1.5 Effect and Manner of Notice. The giving of notice shall constitute a representation and warranty by the offeror to Association and any purchaser produced by the Board that the offering is a bona fide offer in all respects. The notice shall be given by certified mail, return receipt requested, or delivered by professional courier or by hand-delivery to Association which shall give a receipt therefor.

#### 25.2.2 Certificate of Approval.

25.2.2.1 Sale. If the proposed transaction is a sale, then, within thirty (30) days after receipt of such notice and information, Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the proper officers of Association in recordable form and shall be delivered to the purchaser and may be recorded in the Public Records of County (the "Public Records").

25.2.2.2 Lease. If the proposed transaction is a lease then, within thirty (30) days after receipt of such notice and information, Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the proper officers of Association and shall be delivered to the lessee. Permitted grounds for the disapproval of a proposed lease shall include the following:

(a) the Owner is delinquent in the payment of Assessments and other fees and charges, including fines, due to the Association at the time the application is considered;

(b) the Owner has a history of leasing to troublesome lessees/tenants and/or refusing to control or accept responsibility for the occupancy of his/her Home;

(c) the real estate company rental agent handling the leasing transaction on behalf of the Owner has a history of failing to adequately screen lessee/tenant applicants, recommending undesirable lessees/tenants, or entering into leases without the Association's prior approval;

(d) the application on its face indicates that the prospective lessee/tenant seeking approval intends to conduct himself/herself in a manner inconsistent with the governing documents of the Association (*i.e.*, the Declaration, Articles, By-Laws and the Rules and Regulations of the Association) and/or Chapter 720, Florida Statutes;

(e) the prospective lessee/tenant has been convicted of a crime involving violence to persons or property, a crime involving the sale or possession of a controlled substance, a crime demonstrating dishonesty or moral turpitude, a crime involving a sexual offence, or a felony;

(f) the prospective lessee/tenant or any of his or her family members that will occupy the Home is a registered sex offender or predator and/or is a wanted person;

(g) the prospective lessee/tenant has a history of conduct which evidences disregard for the rights and property of others;

(h) the prospective lessee/tenant evidences a strong probability of financial irresponsibility;

(i) the prospective lessee/tenant, during previous occupancy in this Association, has evidenced an attitude of disregard for the Association, the Association's property, and the governing documents of the Association (*i.e.*, the Declaration, Articles, By-Laws, and the Rules and Regulations of the Association) and/or Chapter 720, Florida Statutes;

(j) the prospective lessee/tenant gives false or incomplete information to the Board as part of the application procedure, the Owner and/or prospective lessee/tenants fails to pay the required lease application fee and/or security deposit, or the prospective lessee/tenant fails to appear for the required interview; or



(k) the Owner fails to give proper and timely written notice of his/her intention to lease his/her Home to the Board.

25.2.2.3 Devise or Inheritance. Any person who has obtained a Home by devise or inheritance (except for the spouse, parents or children of the immediately previous Owner of such Home) shall give to Association notice thereof together with such information concerning the person(s) obtaining such Home as may be reasonably required by the Board and a certified copy of the instrument by which such Home was obtained. If such notice is not given to Association, then at any time after receiving knowledge thereof, the Board shall proceed in accordance with Section 26.2.4 as if it had been given such notice on the date of receipt of such knowledge. Within thirty (30) days after receipt of such notice and information, Association must either approve or disapprove the proposed transfer. If approved, the approval shall be stated in a certificate executed by the proper officers of Association in recordable form and shall be delivered to the person receiving title by devise or inheritance.

25.2.2.4 Gift. If the Owner or Builder giving notice proposes to transfer his or her title by gift, then, within thirty (30) days after receipt of such notice and information, Association must either approve or disapprove the proposed transfer of title to the Home. If approved, the approval shall be upon such terms and conditions as Association may reasonably require, and the approval shall be stated in a certificate executed by the proper officers of Association in recordable form and shall be delivered to the Owner and shall be recorded in the Public Records.

25.2.3 Approval of Owner Other Than an Individual. Inasmuch as the Home may be used only for residential purposes, and a corporation, limited liability company, trust or other entity cannot occupy a Home for such use, if the Owner or purchaser of a Home is a corporation, limited liability company, trust or other entity, the approval of ownership by the corporation, limited liability company, trust or other entity shall be conditioned upon the primary occupant or the beneficial owners of the entity being approved by Association. Any change in such primary occupant or beneficial owners of the Home shall be deemed a change of ownership subject to Association approval pursuant to this Section.

25.3 Disapproval by Association. Although an Owner complies with the foregoing requirements, Association may disapprove of the transfer. If Association disapproves a transfer or ownership of a Home or Lot, the matter shall be disposed of in the following manner:

25.3.1 Sale. If the proposed transaction is a sale and if the notice of sale given by the Owner shall so demand, then, within thirty (30) days after receipt of such notice and information by Association, Association shall deliver by professional courier or hand-delivery, or mail by certified mail, to the Owner an agreement to purchase by Association, or a purchaser approved by Association who will purchase and to whom the Owner must sell the Home, upon the following terms:

25.3.1.1 The price to be paid by the purchaser, to be identified in the agreement, shall be that stated in the disapproved contract to sell.

25.3.1.2 The purchase price shall be paid by official check or federal wire.

25.3.1.3 The sale shall be closed within ninety (90) days after the delivery or mailing of the agreement to purchase to the Owner and shall be upon terms no less favorable than the terms of the disapproved contract.

25.3.1.4 If Association fails to provide a purchaser upon the demand of the Owner in the manner provided, or if a purchaser furnished by Association shall default in his or her agreement to purchase, the proposed transaction shall be deemed to have been approved and Association shall furnish a certificate of approval as provided in this Section 25.

25.3.2 Lease. In the event the Board disapproves of a transfer of possession of a Home by lease, then the Owner may not lease the Home to the intended lessee for whom the Owner sought approval.

25.3.3 Transfer by Gift, Devise or Inheritance. In the event the Board disapproves of such transfer of title by gift, devise or inheritance, the Board shall advise in writing within such thirty (30) day period, the person who has obtained such title of a purchaser approved by the Board to purchase the respective Home at its fair market value. The fair market value of the Home will be determined by any one of the following methods determined by the Board: (i) by three (3) M.A.I. appraisers, one of whom shall be selected by the Association's proposed purchaser, one by the person holding title, and one by the two (2) appraisers so selected; or (ii) by mutual agreement by the Association's proposed purchaser and the person holding title. All costs for such appraisal shall be paid by the Association's proposed purchaser. The purchase price shall be paid by federal wire or official check and the sale closed within thirty (30) days after the determination of the purchase price. Simultaneously upon notification to the person holding title that the Board has a purchaser for the respective Home, the person holding title and such purchaser shall execute a contract providing for the acquisition of such Home in accordance with the terms of this Declaration. In the event the purchaser furnished by Association shall default in his or her obligation to purchase such Home, then the Board shall be required to approve the passage of title to the person then holding title thereof and shall issue and deliver a certificate of approval therefor.

25.4 Exceptions. The foregoing provisions of this Section shall not apply to a purchase by a Lender or other approved mortgagee which acquires its title as the result of owning a mortgage upon the Home concerned, and this shall be so whether the title is acquired by deed from the mortgagor or its successor in title or through foreclosure proceedings; but such provisions apply to a sale or lease by a Lender or other approved mortgagee which

so acquires its title. Neither shall such provisions require the approval of a purchaser who acquires the title to a Home at a duly advertised public sale with open bidding which is provided by law including, but not limited to, an execution sale, foreclosure sale, judicial sale or tax sale. The provisions of this Section shall not apply to Developer and Developer shall be entitled to exempt Builders from this Section pursuant to a written agreement between Developer and any such Builder.

25.5 Unauthorized Transactions. Any sale, transfer mortgage or lease which is not authorized pursuant to the terms of this Declaration shall be void unless subsequently approved by Association.

25.6 Notice of Lien or Suit.

25.6.1 Notice of Lien. An Owner shall give notice to Association of every lien upon his or her Home other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of such lien.

25.6.2 Notice of Suit. An Owner shall give notice to Association of every suit or other proceeding which may affect the title to his or her Lot or Home; such notice is to be given within five (5) days after the Owner receives knowledge thereof. Owner acknowledges that if the Association is named as a party in any such suit or proceeding and, as a result thereof, incurs fees and costs, including attorneys' fees and costs, in connection with such suit or proceeding, then Owner hereby acknowledges and agrees that said fees and costs incurred by Association in connection with any such suit or proceeding, including, without limitation, attorneys' fees, shall be charged by Association to the Owner of such Lot/Home as an Individual Assessment.

25.6.3 Failure to Comply. Failure to comply with this Section will not affect the validity of any judicial sale.

26. General Provisions.

26.1 Authority of Board. Except when a vote of the membership of Association is specifically required, all decisions, duties, and obligations of Association hereunder may be made by the Board. Association and Owners shall be bound thereby.

26.2 Severability. Invalidation of any of the provisions of this Declaration by judgment or court order shall in no way affect any other provision, and the remainder of this Declaration shall remain in full force and effect.

26.3 Interpretation. The Board shall be responsible for interpreting the provisions hereof and of any of the exhibits attached hereto. Such interpretation shall be binding upon all parties unless wholly unreasonable. An opinion of counsel that any interpretation adopted by Association is not unreasonable shall conclusively establish the validity of such interpretation.

26.4 Execution of Documents. Developer's plan of development for Simonton Court (including, without limitation, the creation of one (1) or more special taxing districts may necessitate from time to time the execution of certain documents as required by governmental agencies. To the extent that such documents require the joinder of Owners or Builders other than Developer, Developer, by its duly authorized officers, may, as the agent or the attorney-in-fact for the Builder(s) and Owners, execute, acknowledge and deliver such documents (including, without limitation, any consents or other documents required by any governmental agencies in connection with the creation of any special taxing district); and the Builder(s) and Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Developer, through its duly authorized officers, as their proper and legal attorneys-in-fact, for such purpose. Such appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Builder and Owner agree, by their acceptance of a deed to a Lot or Home or any other portion of Simonton Court, to execute or otherwise join in any petition and/or other documents required in connection with the creation of any special taxing district relating to Simonton Court or any portion(s) thereof. In addition to the foregoing, all Builders and Owners within Simonton Court shall be required to execute a joinder acknowledging and agreeing to the terms and provisions of this Declaration.

26.5 Affirmative Obligation of Association. In the event that Association believes that Developer has failed in any respect to meet Developer's obligations under this Declaration or has failed to comply with any of Developer's obligations under law or the Common Areas are defective in any respect, Association shall give written notice to Developer detailing the alleged failure or defect. Association agrees that once Association has given written notice to Developer pursuant to this Section, Association shall be obligated to permit Developer and its agents to perform inspections of the Common Areas and to perform all tests and make all repairs/replacements deemed necessary by Developer to respond to such notice at all reasonable times. Association agrees that any inspection, test and/or repair/replacement scheduled on a business day between 9 a.m. and 5 p.m. shall be deemed scheduled at a reasonable time. The rights reserved in this Section include the right of Developer to repair or address, in Developer's sole option and expense, any aspect of the Common Areas deemed defective by Developer during its inspections of the Common Areas. Association's failure to give the notice and/or otherwise comply with the provisions of this Section will damage Developer. At this time, it is impossible to determine the actual damages Developer might suffer. Accordingly, if Association fails to comply with its obligations under this Section in any respect, Association shall pay to Developer liquidated damages in the amount of \$250,000.00 which Association and Developer agree is a fair and reasonable remedy.

26.6 Letter(s) of Credit. During the development of Simonton Court, Developer may be required to obtain letter(s) of credit or bond(s) in connection with or as security for matters relating to Association including,

without limitation, the Association's maintenance and utility obligations. From and after the Turnover Date, Association agrees that it shall indemnify and be liable to Developer for any amounts drawn or due from any such letter(s) of credit or bonds which result from the Association's failure to act in accordance with the terms of this Declaration, any applicable law, ordinance or requirement of any governmental agency or utility provider. In addition to the foregoing, Association agrees that immediately following the Turnover Date, the Association shall take all measures necessary to reimburse Developer for all amounts expended in connection with the letter of credit and/or bonds and take all action necessary to secure replacement letters of credit and/or bonds.

26.7 Notices. Any notice required to be sent to any person, firm, or entity under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address at the time of such mailing.

26.8 Florida Statutes. Whenever this Declaration refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date this Declaration is recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

26.9 Construction Activities. ALL OWNERS, OCCUPANTS AND USERS OF SIMONTON COURT ARE HEREBY PLACED ON NOTICE THAT (1) DEVELOPER, BUILDER AND/OR THEIR RESPECTIVE AGENTS, CONTRACTORS, SUBCONTRACTORS, LICENSEES AND OTHER DESIGNEES AND/OR (2) ANY OTHER PARTIES WILL BE, FROM TIME TO TIME, CONDUCTING CONSTRUCTION ACTIVITIES, BLASTING, EXCAVATION, CONSTRUCTION AND OTHER ACTIVITIES WITHIN OR IN PROXIMITY TO SIMONTON COURT. BY THE ACCEPTANCE OF THEIR DEED OR OTHER CONVEYANCE OR MORTGAGE, LEASEHOLD, LICENSE OR OTHER INTEREST, AND BY USING ANY PORTION OF SIMONTON COURT, EACH SUCH OWNER, OCCUPANT AND USER AUTOMATICALLY ACKNOWLEDGES, STIPULATES AND AGREES (i) THAT NONE OF THE AFORESAID ACTIVITIES SHALL BE DEEMED NUISANCES OR NOXIOUS OR OFFENSIVE ACTIVITIES, HEREUNDER OR AT LAW GENERALLY, (ii) NOT TO ENTER UPON, OR ALLOW THEIR CHILDREN OR OTHER PERSONS UNDER THEIR CONTROL OR DIRECTION TO ENTER UPON (REGARDLESS OF WHETHER SUCH ENTRY IS A TRESPASS OR OTHERWISE) ANY PROPERTY WITHIN OR IN PROXIMITY TO SIMONTON COURT WHERE SUCH ACTIVITY IS BEING CONDUCTED (EVEN IF NOT BEING ACTIVELY CONDUCTED AT THE TIME OF ENTRY, SUCH AS AT NIGHT OR OTHERWISE DURING NON-WORKING HOURS), (iii) DEVELOPER AND THE OTHER AFORESAID RELATED PARTIES SHALL NOT BE LIABLE FOR ANY AND ALL LOSSES, DAMAGES (COMPENSATORY, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURIES OR DEATHS ARISING FROM OR RELATING TO THE AFORESAID ACTIVITIES, EXCEPT RESULTING DIRECTLY FROM DEVELOPER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND (iv) ANY PURCHASE OR USE OF ANY PORTION OF SIMONTON COURT HAS BEEN AND WILL BE MADE WITH FULL KNOWLEDGE OF THE FOREGOING.

26.10 Title Documents. Each Owner by acceptance of a deed to a Lot acknowledges that such Lot is subject to certain land use and title documents and all amendments thereto which include among other items, unrecorded land use documents and all title documents of record affecting title to Simonton Court (collectively, the "**Title Documents**"). Developer's plan of development for Simonton Court may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. DEVELOPER RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of Owners other than Developer, Developer, by any one of its duly authorized officers, may, as the agent and/or the attorney-in-fact for the Builders and Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Builders and Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Developer, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Builder and Owner agrees, by its acceptance of a deed to a Lot or any other portion of Simonton Court: (i) to execute or otherwise join in any documents required in connection with the amendment, modification, or termination of the Title Documents; and (ii) that such Builder and/or Owner has waived its right to object to or comment the form or substance of any amendment, modification, or termination of the Title Documents. Without limiting the foregoing, upon the Community Completion Date Association shall assume all of the obligations of Developer under the Title Documents unless otherwise provided by Developer by amendment to this Declaration recorded by Developer in the Public Records, from time to time, and in the sole discretion of Developer.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

26.10 Title Documents. Each Owner by acceptance of a deed to a Lot acknowledges that such Lot is subject to certain land use and title documents and all amendments thereto which include among other items, unrecorded land use documents and all title documents of record affecting title to Simonton Court (collectively, the "Title Documents"). Developer's plan of development for Simonton Court may necessitate from time to time the further amendment, modification and/or termination of the Title Documents. DEVELOPER RESERVES THE UNCONDITIONAL RIGHT TO SEEK AMENDMENTS AND MODIFICATIONS OF THE TITLE DOCUMENTS. It is possible that a governmental subdivision or agency may require the execution of one or more documents in connection with an amendment, modification, and/or termination of the Title Documents. To the extent that such documents require the joinder of Owners other than Developer, Developer, by any one of its duly authorized officers, may, as the agent and/or the attorney-in-fact for the Builders and Owners, execute, acknowledge and deliver any documents required by applicable governmental subdivision or agency; and the Builders and Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint Developer, through any one of its duly authorized officers, as their proper and legal attorney-in-fact for such purpose. This appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Section may recite that it is made pursuant to this Section. Notwithstanding the foregoing, each Builder and Owner agrees, by its acceptance of a deed to a Lot or any other portion of Simonton Court: (i) to execute or otherwise join in any documents required in connection with the amendment, modification, or termination of the Title Documents; and (ii) that such Builder and/or Owner has waived its right to object to or comment the form or substance of any amendment, modification, or termination of the Title Documents. Without limiting the foregoing, upon the Community Completion Date Association shall assume all of the obligations of Developer under the Title Documents unless otherwise provided by Developer by amendment to this Declaration recorded by Developer in the Public Records, from time to time, and in the sole discretion of Developer.

IN WITNESS WHEREOF, the undersigned, being Developer hereunder, has hereunto set its hand and seal this 29 day of September, 2014.

WITNESSES:

Michelle Becharacter  
Print Name: Michelle Becharacter

ACF 10-A SIMONTON L.L.C., a Delaware limited liability company

By: Acacia Credit Fund 10-A L.L.C., a Delaware limited liability company  
Its: Sole Member

Katharine Jensen  
Print Name: Katharine Jensen

By: Fund 10-A Management Company L.L.C., a Delaware limited liability company  
Its: Managing Member

By: Acacia Capital Corporation, a California corporation  
Its: Managing Member

By: [Signature]  
Print Name: Todd P. Darling  
Title: COO & Co-Secretary

STATE OF California )  
COUNTY OF San Mateo ) ss:

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of Sept, 2014, by Todd Darling as COO & Co-Secretary of ACACIA CAPITAL CORPORATION, a California corporation, on behalf of the corporation, as the Managing Member of FUND 10-A MANAGEMENT COMPANY L.L.C., on behalf of the limited liability company, as the Managing Member of ACACIA CREDIT FUND 10-A L.L.C., on behalf of the limited liability company, as the sole member of ACF 10-A SIMONTON L.L.C., on behalf of the limited liability company, who is personally known to me or produced N/A for identification.

[NOTARIAL SEAL]

Notary Public: Janet M. Sunga  
Print Name: JANET M. SUNGA  
My commission expires: 8/9/2017



JOINDER

SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.

SIMONTON COURT HOMEOWNERS ASSOCIATION, INC. ("Association") does hereby join in the Declaration for Simonton Court (the "Declaration") to which this Joinder is attached, and the terms thereof are and shall be binding upon the undersigned and its successors in title. Association acknowledges that this Joinder is for convenience purposes only and does not apply to the effectiveness of the Declaration, as Association has no right to approve the Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Joinder on this 30 day of September, 2014.

WITNESSES:

Carolyn F. House  
Print Name: Carolyn F. House  
Gloria J. Jarab  
Print Name: Gloria J. Jarab

SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.,  
a Florida not-for-profit corporation

By: Stephen A. McLaughlin  
Name: STEPHEN A. McLAUGHLIN  
Title: President

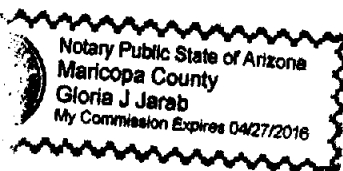
[SEAL]

STATE OF ARIZONA )  
COUNTY OF Maricopa ) SS.:

The foregoing instrument was acknowledged before me this 30th day of SEPT, 2014 by Stephen A. McLaughlin, as President of SIMONTON COURT HOMEOWNERS ASSOCIATION, INC., a Florida not-for-profit corporation, who is personally known to me or who produced as identification, on behalf of the corporation.

My commission expires:

Gloria J. Jarab  
NOTARY PUBLIC, State of Florida at Large  
Print Name Gloria J. Jarab



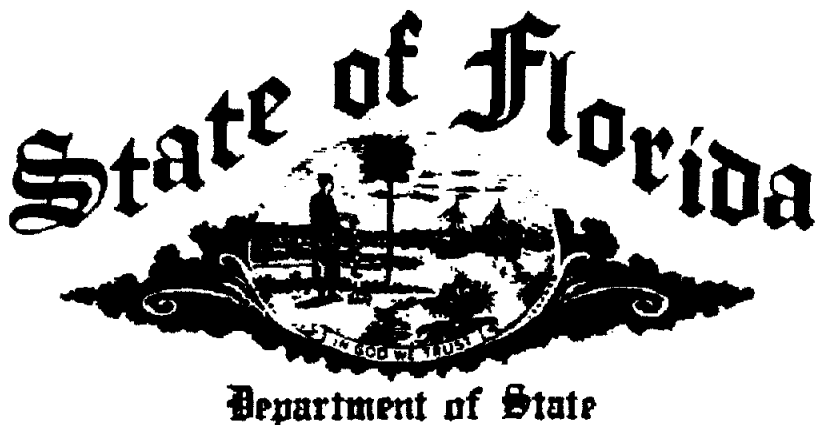
**EXHIBIT 1**

LEGAL DESCRIPTION

Parcel A of Simonton Court, according to the plat thereof recorded in Plat Book 176,  
Page 49 of the Public Records of Broward County, Florida.

**EXHIBIT 2**

ARTICLES OF INCORPORATION



I certify from the records of this office that SIMONTON COURT HOMEOWNERS ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on September 29, 2014.

The document number of this corporation is N1400009041.

I further certify that said corporation has paid all fees due this office through December 31, 2014, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 114A00020905-093014-N1400009041-1/1, noted below.

Authentication Code: 114A00020905-093014-N1400009041-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the  
Thirtieth day of September, 2014



*Ken Detzner*  
Ken Detzner  
Secretary of State



# State of Florida



## Department of State

I certify the attached is a true and correct copy of the Articles of Incorporation of SIMONTON COURT HOMEOWNERS ASSOCIATION, INC., a Florida corporation, filed on September 29, 2014, as shown by the records of this office.

I further certify the document was electronically received under FAX audit number H14000228037. This certificate is issued in accordance with section 15.16, Florida Statutes, and authenticated by the code noted below.

The document number of this corporation is N14000009041.

Authentication Code: 114A00020905-093014-N14000009041-1/1

Given under my hand and the  
Great Seal of the State of Florida,  
at Tallahassee, the Capital, this the



*Ken Detzner*  
Ken Detzner  
Secretary of State

**ARTICLES OF INCORPORATION  
OF  
SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.**

**TABLE OF CONTENTS**

1. Name..... 1

2. Principal Office..... 1

3. Registered Office - Registered Agent..... 1

4. Definitions ..... 1

5. Purpose ..... 1

6. Not-for-Profit..... 1

7. Powers and Duties ..... 1

8. Owners and Membership..... 3

    8.1. Membership ..... 3

    8.2. Assignment ..... 3

    8.3. Voting ..... 3

    8.4. Prior to Recordation of Declaration..... 3

9. Dissolution..... 3

10. Term of Existence..... 3

11. Directors..... 3

    11.1. Number and Qualification ..... 3

    11.2. Duties and Powers ..... 4

    11.3. Election; Removal ..... 4

    11.4. Current Directors ..... 4

12. Officers ..... 4

13. Original Incorporator ..... 5

14. Indemnification..... 5

    14.1. Indemnity ..... 5

    14.2. Limitations on Indemnification ..... 5

    14.3. Effect of Termination of Action ..... 5

    14.4. Expenses ..... 5

    14.5. Approval ..... 5

    14.6. Advances..... 6

    14.7. Miscellaneous ..... 6

15. By-Laws..... 6

16. Amendments .....6  
16.1. Notice.....6  
16.2. Proposal .....6  
16.3. Approval .....6  
16.4. Attendance Not Required .....6  
16.5. Limitation .....7  
16.6. Recording.....7  
16.7. Developer.....7

**ARTICLES OF INCORPORATION  
OF  
SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.**

In compliance with the requirements of the laws of the State of Florida, the following are the Articles of Incorporation for Simonton Court Homeowners Association, Inc.

1. Name. The name of the corporation shall be Simonton Court Homeowners Association, Inc. (the "Association").
2. Principal Office. The principal office of the Association is 22190 Fairmont Court, Estero, Florida 33928, or at such other location as may be subsequently designated, from time to time, by the Board of Directors..
3. Registered Office - Registered Agent. The street address of the Registered Office of the Association is HL Statutory Agent, Inc., 5811 Pelican Bay Boulevard, Suite 650, Naples, Florida 34108. The name of the Registered Agent of the Association is:

HL STATUTORY AGENT, INC.

4. Definitions. A declaration titled Declaration for Simonton Court (the "Declaration") has been (or will be) recorded in the Public Records of Broward County, Florida, and shall govern all of the operations of the community to be known as Simonton Court (the "Community"). All initially capitalized terms not defined herein shall have the meanings set forth in the Declaration.
5. Purpose. Association is formed to: (a) provide for ownership, operation, maintenance and preservation of the Common Areas, and improvements thereon; (b) perform the duties delegated to it in the Declaration; (c) administer the interests of Association and the Owners; (d) promote the health, safety and welfare of the Owners.
6. Not-for-Profit. Association is a not-for-profit Florida corporation and does not contemplate pecuniary gain to, or profit for, its members.
7. Powers and Duties. The Association shall have all common law powers and statutory powers granted under Chapters 617 and 720, Florida Statutes, including, but not limited to the following:
  - 7.1. To perform all the duties and obligations of Association set forth in these Articles, the Declaration and By-Laws.
  - 7.2. To enforce, by legal action or otherwise, the provisions of these Articles, the Declaration and By-Laws and of all rules, regulations, covenants, restrictions and agreements governing or binding Association and Simonton Court.
  - 7.3. To fix, levy, collect and enforce payment, by any lawful means, of all Assessments pursuant to the terms of the Declaration, these Articles and By-Laws.

7.4. To pay all Operating Costs, including, but not limited to, all licenses, taxes or governmental charges levied or imposed against the property of Association.

7.5. To acquire (by gift, purchase or otherwise), annex, own, hold, improve, build upon, operate, maintain, convey, grant rights and easements, sell, dedicate, lease, transfer or otherwise dispose of real or personal property (including the Common Areas) in connection with the functions of Association except as limited by the Declaration.

7.6. To borrow money, and to mortgage, pledge or hypothecate any or all of its real or personal property as security for money or debts incurred.

7.7. To dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of Simonton Court to any public agency, entity, authority, utility or other person or entity for such purposes and subject to such conditions as it determines and as provided in the Declaration.

7.8. To participate in mergers and consolidations with other non-profit corporations organized for the same purposes.

7.9. To adopt, publish, promulgate or enforce rules, regulations, covenants, restrictions or agreements governing Association, Simonton Court, the Common Areas, Lots, Parcels and Homes as provided in the Declaration and to effectuate all of the purposes for which Association is organized.

7.10. To have and to exercise any and all powers, rights and privileges which a not-for-profit corporation organized under the laws of the State of Florida may now, or hereafter, have or exercise.

7.11. To employ personnel and retain independent contractors to contract for management of Association, Simonton Court, and the Common Areas as provided in the Declaration and to delegate in such contract all or any part of the powers and duties of Association.

7.12. To contract for services to be provided to, or for the benefit of, Association, Owners, the Common Areas, and Simonton Court as provided in the Declaration, such as, but not limited to, Telecommunications Services, maintenance, garbage pick-up, and utility services.

7.13. To establish committees and delegate certain of its functions to those committees.

7.14. To sue and be sued.

7.15. To contract with special taxing districts, if any, for any purpose.

7.16. The obligation to operate and maintain the Surface Water Management System within Simonton Court, to the extent not maintained by a special taxing district, if any, (including, without limitation, all waterbodies, retention areas, culverts and related appurtenances, if any) in a manner consistent with the applicable SFWMD Permit requirements

and applicable SFWMD rules, and to assist in the enforcement of the provisions contained in the Declaration which relate to the Surface Water Management System. The Association shall be responsible for assessing and collecting assessments for the operation, maintenance, and if necessary, repairs of the Surface Water Management System within Simonton Court.

8. Owners and Membership.

8.1. Membership. The Members of the Association shall consist of all of the record Owners of Lots in Simonton Court from time to time.

8.2. Assignment. The share of an Owner in the funds and assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Home for which that share is held. The funds and assets of the Association shall be expended, held or used only for the benefit of the Owners and for the purposes authorized herein, in the Declaration, and in the By-Laws.

8.3. Voting. On all matters upon which the Owners shall be entitled to vote, there shall be only one (1) vote for each Lot, which vote shall be exercised or cast in the manner provided by the By-Laws. Any person or entity owning more than one (1) Lot shall be entitled to one (1) vote for each Lot owned.

8.4. Prior to Recordation of Declaration. Until such time as the real property comprising Simonton Court, and the improvements now and/or to be constructed thereon, are submitted to the community form of ownership by recordation of the Declaration in the Public Records of Broward County, Florida, the membership of the Association (the "Membership") shall be comprised of the Directors of the Association, each of whom shall be entitled to cast a vote on all matters upon which the Membership would be entitled to vote.

9. Dissolution. In the event of the dissolution of Association other than incident to a merger or consolidation, any member may petition the Circuit Court having jurisdiction of the Judicial Circuit of the State of Florida for the appointment of a receiver to manage its affairs of the dissolved Association and to manage the Common Areas, in the place and stead of Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and its properties. In addition, if Association is dissolved, the Surface Water Management System shall be conveyed to an appropriate agency of local government. If a governmental agency will not accept the Surface Water Management System, then it must be dedicated to a similar non-profit corporation.

10. Term of Existence. The Association shall have perpetual existence.

11. Directors.

11.1. Number and Qualification. The property, business and affairs of the Association shall be managed by a Board of Directors (the "Board") consisting initially of three (3) directors, but subject to change as provided by the By-Laws. Directors appointed or designated by the

Developer need not be Owners of the Association or residents of Homes in the Community. All other directors must be Owners.

11.2. Duties and Powers. All of the duties and powers of the Association existing under the Declaration, these Articles, and the By-Laws shall be exercised exclusively by the Board, its agents, contractors and/or employees, subject only to approval by Owners when such approval is specifically required by the Declaration.

11.3. Election; Removal. Directors shall be appointed, elected, and removed as provided in the By-Laws.

11.4. Current Directors. The names and addresses of the members of the current Board who shall hold office until their successors are appointed and/or elected, are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Stephen A. McLaughlin	2400 First Street, Suite 300, Fort Myers, FL 33901
Brian F. Farrar	2400 First Street, Suite 300, Fort Myers, FL 33901
Teresa Baluja	2400 First Street, Suite 300, Fort Myers, FL 33901

12. Officers. The affairs of the Association shall be administered by the officers holding the offices designated in the By-Laws. The officers shall be elected by the Board and shall serve at the pleasure of the Board. The names and addresses of the current officers who shall serve until their successors are designated by the Board are as follows:

PRESIDENT:	Stephen A. McLaughlin
VICE PRESIDENT/TREASURER:	Brian F. Farrar
SECRETARY:	Teresa Baluja



13. Incorporator. The name and address of the Incorporator is as follows:

Carrie E. Lademan, Esq.  
Hahn Loeser & Parks LLP  
5811 Pelican Bay Boulevard, Suite 650  
Naples, FL 34108

14. Indemnification.

14.1. Indemnity. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or contemplated action, suit or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a director, employee, officer, or agent of the Association, against expenses (including reasonable attorneys' fees and paraprofessional fees at trial and upon appeal), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceedings, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful.

14.2. Limitations on Indemnification. Notwithstanding the foregoing, no indemnification shall be made with respect to any claim, issue or matter as to which such person shall have adjudged to be liable for gross negligence or intentional misconduct in the performance of his duties to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

14.3. Effect of Termination of Action. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

14.4. Expenses. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 14.1 above, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees and paraprofessional fees at trial and upon appeal) actually and reasonably incurred by him in connection therewith.

14.5. Approval. Any indemnification under Section 14.1 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper under the circumstances because he has met the applicable standard of conduct set forth in Section 14.1 above. Such determination shall be made (a) by the Board by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such

quorum is not obtainable, or, even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by a majority of the voting interests of the Owners.

14.6. Advances. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board in any specific case upon receipt of an undertaking by or on behalf of the affected director, officer, employee or agent to repay such amount until such time it shall ultimately be determined that he was not entitled to be indemnified by the Association as authorized in this Article 14.

14.7. Miscellaneous. The indemnification provided by this Article shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the By-Laws, agreement, vote of Owners or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs and personal representatives of such person.

15. By-Laws. The first By-Laws of the Association shall be adopted by the Board and may be altered, amended or rescinded by the Board, Owners, and/or the Developer as provided in the By-Laws.

16. Amendments. Amendments to these Articles shall be proposed and adopted in the following manner:

16.1. Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

16.2. Proposal. A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or Owners holding one-third (1/3) of the voting interests in the Association.

16.3. Approval. An amendment shall be approved once it is approved:

16.3.1. after the date on which Owners other than Developer control the Board, by Owners holding eighty percent (80%) of the voting interests in the Association present in person or by proxy at a Members meeting at which a quorum has been attained and by not less than sixty-six and two thirds percent (66-2/3%) of the entire Board; or

16.3.2. prior to the date on which Owners other than Developer control the Board, by not less than one hundred percent (100%) of the entire Board.

16.4. Attendance Not Required. Directors not present in person at the meeting considering the amendment may express their agreement or disagreement in writing, provided that the same is delivered to the Secretary at or prior to the meeting. Such agreement or disagreement may not be used as a vote for or against the action taken and may not be used as a vote for the purpose of creating a quorum.

16.5. Limitation. Notwithstanding the foregoing, no amendment shall be made that is in conflict with the Declaration, or the By-Laws, nor shall any amendment make any changes which would in any way affect any of the rights, privileges, powers, or options herein provided in favor of or reserved to the Developer herein or in the Declaration unless the Developer shall join in the execution of the amendment.

16.6. Recording. A copy of each amendment shall be filed with the Secretary of State pursuant to the provisions of applicable Florida law, and a copy certified by the Secretary of State shall be recorded in the Public Records of Broward County, Florida.

16.7. Developer. Notwithstanding anything herein to the contrary, prior to the Turnover Date, the Developer may amend these Articles without the consent or joinder of any party whatsoever. This paragraph may not be amended.

IN WITNESS WHEREOF, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, being the Incorporator of this Association, has executed these Articles of Incorporation as of this 29th day of September, 2014.

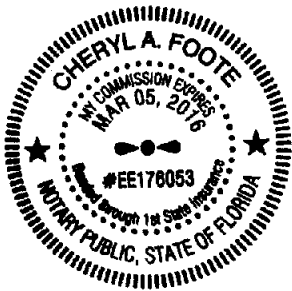
C. Lademan  
Carrie E. Lademan, Esq., Incorporator

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 29th day of September, 2014 by Carrie E. Lademan, Esq. who is personally known to me.

My commission expires:

Cheryl A. Foote  
NOTARY PUBLIC,  
State of Florida at Large  
Print name: Cheryl A. Foote



**ACCEPTANCE BY REGISTERED AGENT**

The undersigned, having been named to accept service of process for the above-stated corporation at the place designated in this certificate, hereby agrees to act in this capacity, and is familiar with, and accepts, the obligations of this position and further agrees to comply with the provisions of all statutes relative to the proper and complete performance of its duties.

Dated this 29th day of September, 2014.

HL STATUTORY AGENT, INC.

By: Jeanne L. Seewald  
Jeanne L. Seewald, Vice President

**EXHIBIT 3**

**BY-LAWS**

**BY-LAWS**  
**OF**  
**SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.**

**TABLE OF CONTENTS**

	<b>Page</b>
1. Name and Location.....	1
2. Definitions .....	1
3. Members.....	1
3.1 Voting Interests.....	1
3.1.1 Lot Owned By Husband and Wife.....	1
3.1.2 Trusts .....	2
3.1.3 Corporations .....	2
3.1.4 Partnerships.....	2
3.1.5 Multiple Individuals.....	2
3.1.6 Liability of Association .....	2
3.2 Annual Meetings.....	2
3.3 Special Meetings of the Members .....	2
3.4 Notice of Members Meetings .....	2
3.5 Quorum of Members.....	3
3.6 Adjournment of Members Meetings.....	3
3.7 Action of Members .....	3
3.8 Proxies .....	3
4. Board of Directors.....	3
4.1 Number .....	3
4.2 Term of Office .....	3
4.3 Removal.....	3
4.4 Compensation .....	3
4.5 Action Taken Without a Meeting .....	3
4.6 Appointment and Election of Directors.....	4
4.7 Election .....	4
5. Meeting of Directors.....	4
5.1 Regular Meetings.....	4
5.2 Special Meetings.....	4
5.3 Emergencies.....	4
5.4 Quorum .....	4
5.5 Open Meetings.....	4
5.6 Voting .....	4
5.7 Notice of Board Meetings.....	4
6. Powers and Duties of the Board.....	4
6.1 Powers.....	4
6.1.1 General.....	4
6.1.2 Rules and Regulations .....	5
6.1.3 Enforcement.....	5
6.1.4 Declare Vacancies .....	<b>Error! Bookmark not defined.</b>
6.1.5 Hire Employees .....	5
6.1.6 Common Areas .....	5
6.1.7 Granting of Interest.....	5
6.1.8 Financial Reports.....	5
6.2 Vote.....	5
6.3 Limitations.....	5
7. Obligations of Association .....	5
7.1 Official Records.....	5
7.2 Supervision .....	5
7.3 Assessments and Fines .....	5
7.4 Enforcement.....	5

8. Officers and Their Duties .....6  
 8.1 Officers .....6  
 8.2 Election of Officers.....6  
 8.3 Term.....6  
 8.4 Special Appointment .....6  
 8.5 Resignation and Removal .....6  
 8.6 Vacancies.....6  
 8.7 Multiple Offices.....6  
 8.8 Duties.....6  
     8.8.1 President .....6  
     8.8.2 Vice President.....6  
     8.8.3 Secretary .....6  
     8.8.4 Treasurer.....6

9. Committees.....6  
 9.1 General.....6  
 9.2 ACC.....6

10. Records .....7

11. Corporate Seal .....7

12. Amendments.....7  
 12.1 General Restrictions on Amendments .....7  
 12.2 Amendments Prior to and Including the Turnover Date .....7  
 12.3 Amendments After the Turnover Date .....7

13. Conflict.....7

14. Fiscal Year .....7

15. Miscellaneous .....7  
 15.1 Florida Statutes .....7  
 15.2 Severability .....7



**BY-LAWS  
OF  
SIMONTON COURT HOMEOWNERS ASSOCIATION, INC.**

1. **Name and Location.** The name of the corporation is Simonton Court Homeowners Association, Inc. ("**Association**"). The principal office of the corporation shall be located at 22190 Fairmont Court, Estero, Florida 33928, or at such other location determined by the Board of Directors (the "**Board**") from time to time.

2. **Definitions.** The definitions contained in the Declaration for Simonton Court (the "**Declaration**") relating to the residential community known as Simonton Court, recorded, or to be recorded, in the Public Records of Broward County, Florida, are incorporated herein by reference and made a part hereof. In addition to the terms defined in the Declaration, the following terms shall have the meanings set forth below:

"**Annual Members Meeting**" shall have the meaning assigned to such term in Section 3.2 of these By-Laws.

"**Articles**" shall mean the Articles of Incorporation for Association, as amended from time to time.

"**By-Laws**" shall mean these By-Laws, together with all amendments and modifications thereof.

"**Declaration**" shall mean the Declaration as modified from time to time.

"**Developer**" shall mean ACF 10-A Simonton L.L.C., and any of its designees, successors and assigns who receive a written assignment of all or some of the rights of Developer hereunder. Such assignment need not be recorded in the Public Records in order to be effective. Any such assignment may be made on a non-exclusive basis.

"**Director**" shall mean a director elected or appointed to the Board

"**Member**" shall mean a member of Association.

"**Minutes**" shall mean the minutes of all Member and Board meetings, which shall be in the form required by the Florida Statutes. In the absence of governing Florida Statutes, the Board shall determine the form of the minutes.

"**Official Records**" shall mean all records required to be maintained by Association pursuant to Section 720.303(4) of the Florida Statutes, as amended from time to time.

"**Special Members Meeting**" shall have the meaning assigned to such term in Section 3.3 of these By-Laws.

"**Turnover Date**" shall have the meaning set forth in the Declaration.

"**Voting Interests**" shall mean the voting rights held by the Members.

3. **Members.**

3.1 **Voting Interests.** Each Owner and Developer shall be a Member of Association. No person who holds an interest in a Lot only as security for the performance of an obligation shall be a Member of Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. There shall be one vote appurtenant to each Lot. For the purposes of determining who may exercise the Voting Interest associated with each Lot, the following rules shall govern:

3.1.1 **Lot Owned By Husband and Wife.** Either the husband or wife (but not both) may exercise the Voting Interest with respect to a Lot. In the event the husband and wife cannot agree, neither may exercise the Voting Interest.

3.1.2 Trusts. In the event that any trust owns a Lot, Association shall have no obligation to review the trust agreement with respect to such trust. If the Lot is owned by Robert Smith, as Trustee, Robert Smith shall be deemed the Owner of the Lot for all Association purposes. If the Lot is owned by Robert Smith as Trustee for the Laura Jones Trust, then Robert Smith shall be deemed the Member with respect to the Lot for all Association purposes. If the Lot is owned by the Laura Jones Trust, and the deed does not reference a trustee, then Laura Jones shall be deemed the Member with respect to the Lot for all Association purposes. If the Lot is owned by the Jones Family Trust, the Jones Family Trust may not exercise its Voting Interest unless it presents to Association, in the form of an attorney opinion letter or affidavit reasonably acceptable to Association, the identification of the person who should be treated as the Member with respect to the Lot for all Association purposes. If Robert Smith and Laura Jones, as Trustees, hold title to a Lot, either trustee may exercise the Voting Interest associated with such Lot. In the event of a conflict between trustees, the Voting Interest for the Lot in question cannot be exercised. In the event that any other form of trust ownership is presented to Association, the decision of the Board as to who may exercise the Voting Interest with respect to any Lot shall be final. Association shall have no obligation to obtain an attorney opinion letter in making its decision, which may be made on any reasonable basis whatsoever.

3.1.3 Corporations or Limited Liability Companies. If a Lot is owned by a corporation or limited liability company, the corporation or limited liability company shall designate a person, an officer, employee, or agent who shall be treated as the Member who can exercise the Voting Interest associated with such Lot.

3.1.4 Partnerships. If a Lot is owned by a limited partnership, any one of the general partners may exercise the Voting Interest associated with such Lot. By way of example, if the general partner of a limited partnership is a corporation, then the provisions hereof governing corporations shall govern which person can act on behalf of the corporation as general partner of such limited partnership. If a Lot is owned by a general partnership, any one of the general partners may exercise the Voting Interest associated with such Lot. In the event of a conflict among general partners entitled to exercise a Voting Interest, the Voting Interest for such Lot cannot be exercised.

3.1.5 Multiple Individuals. If a Lot is owned by more than one individual, any one of such individuals may exercise the Voting Interest with respect to such Lot. In the event that there is a conflict among such individuals, the Voting Interest for such Lot cannot be exercised.

3.1.6 Liability of Association. Association may act in reliance upon any writing or instrument or signature, whether original or facsimile, which Association, in good faith, believes to be genuine, may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. So long as Association acts in good faith, Association shall have no liability or obligation with respect to the exercise of Voting Interests, and no election shall be invalidated (in the absence of fraud) on the basis that Association permitted or denied any person the right to exercise a Voting Interest. In addition, the Board may impose additional requirements respecting the exercise of Voting Interests (e.g., the execution of a Voting Certificate).

3.2 Annual Meetings. The annual meeting of the members (the "**Annual Members Meeting**") shall be held at least once each calendar year on a date, at a time, and at a place to be determined by the Board.

3.3 Special Meetings of the Members. Special meetings of the members (a "**Special Members Meeting**") may be called by the President, a majority of the Board, or upon written request of ten percent (10%) of the Voting Interests of the members. The business to be conducted at a Special Members Meeting shall be limited to the extent required by Florida Statutes.

3.4 Notice of Members Meetings. Written notice of each members meeting shall be given by, or at the direction of, any officer of the Board or any management company retained by Association. A copy of the notice shall be mailed to each Member entitled to vote, postage

prepaid, not less than ten (10) days before the meeting (provided, however, in the case of an emergency, two (2) days' notice will be deemed sufficient). The notice shall be addressed to the member's address last appearing on the books of Association. The notice shall specify the place, day, and hour of the meeting and, in the case of a Special Members Meeting, the purpose of the meeting. Alternatively, and to the extent not prohibited by the Florida Statutes, the Board may adopt from time to time, other procedures for giving notice to the members of the Annual Members Meeting or a Special Members Meeting. By way of example, and not of limitation, such notice may be included in a newsletter sent to each Member.

3.5 Quorum of Members. Until and including the Turnover Date, a quorum shall be established by Developer's presence, in person or by proxy, at any meeting. After the Turnover Date, a quorum shall be established by the presence, in person or by proxy, of the members entitled to cast twenty percent (20%) of the Voting Interests, except as otherwise provided in the Articles, the Declaration, or these By-Laws. Notwithstanding any provision herein to the contrary, in the event that technology permits members to participate in members meetings and vote on matters electronically, then the Board shall have authority, without the joinder of any other party, to revise this provision to establish appropriate quorum requirements.

3.6 Adjournment of Members Meetings. If, however, a quorum shall not be present at any members meeting, the meeting may be adjourned as provided in the Florida Statutes. In the absence of a provision in the Florida Statutes, the members present shall have power to adjourn the meeting and reschedule it on another date.

3.7 Action of Members. Decisions that require a vote of the members must be made by a concurrence of a majority of the Voting Interests present in person or by proxy, represented at a meeting at which a quorum has been obtained unless provided otherwise in the Declaration, the Articles, or these By-Laws.

3.8 Proxies. At all meetings, members may vote their Voting Interests in person or by proxy. All proxies shall comply with the provisions of Section 720.306(6) of the Florida Statutes, as amended from time to time, be in writing, and be filed with the Secretary at, or prior to, the meeting. Every proxy shall be revocable prior to the meeting for which it is given.

#### 4. Board of Directors.

4.1 Number. The affairs of Association shall be managed by a Board comprised of an odd number of directors which shall be no less than three (3) persons and no more than nine (9) persons. The initial Board shall consist of three (3) directors. Following the Turnover Date, the Board shall consist of five (5) directors unless otherwise determined by a majority of the Board from time to time. Board members appointed by Developer need not be Members of Association or Owners. Board members elected by the other Members must be Owners.

4.2 Term of Office. The election of Directors shall take place after Developer no longer has the authority to appoint the Board and shall take place on the Turnover Date. Directors shall be elected for a term ending upon the election of new Directors at the following Annual Members Meeting (except that the term of the Board appointed by the Developer shall extend until the date designated by Developer, or until the Turnover Date).

4.3 Removal. Any vacancy created by the resignation or removal of a Board member appointed by Developer may be replaced by Developer. Developer may replace or remove any Board member appointed by Developer in Developer's sole and absolute discretion. In the event of death or resignation of a Director elected by the members, the remaining Directors may fill such vacancy. Directors may be removed with or without cause by the vote or agreement in writing of members holding a majority of the Voting Interests.

4.4 Compensation. No Director shall receive compensation for any service rendered as a Director to Association; provided, however, any Director may be reimbursed for actual expenses incurred as a Director.

4.5 Action Taken Without a Meeting. Except to the extent prohibited by law, the Board shall have the right to take any action without a meeting by obtaining the written approval

of the required number of Directors. Any action so approved shall have the same effect as though taken at a meeting of Directors.

4.6 Appointment and Election of Directors. Until the Turnover Date, the Developer shall have the unrestricted power to appoint all Directors of Association. From and after the Turnover Date, or such earlier date determined by Developer in its sole and absolute discretion, the members shall elect all Directors of Association at or in conjunction with the Annual Members Meeting of the members.

4.7 Election. Election to the Board shall be by secret written ballot, unless unanimously waived by all members present. The persons receiving the largest numbers of votes shall be elected. Cumulative voting is not permitted.

## 5. Meeting of Directors.

5.1 Regular Meetings. Regular meetings of the Board shall be held on a schedule adopted by the Board from time to time. Meetings shall be held at such place and hour as may be fixed, from time to time, by resolution of the Board.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President, or by any two (2) Directors. Each Director shall be given not less than two (2) days' notice except in the event of an emergency. Notice may be waived. Attendance shall be a waiver of notice. Telephone conference meetings are permitted.

5.3 Emergencies. In the event of an emergency involving immediate danger of injury or death to any person or damage to property, if a meeting of the Board cannot be immediately convened to determine a course of action, the President or, in his absence, any other officer or director, shall be authorized to take such action on behalf of Association as shall be reasonably required to appropriately respond to the emergency situation, including the expenditure of Association funds in the minimum amount as may be reasonably required under the circumstances. The authority of officers to act in accordance herewith shall remain in effect until the first to occur of the resolution of the emergency situation or a meeting of the Board convened to act in response thereto.

5.4 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting, at which a quorum is present, or in writing in lieu thereof, shall be action of the Board.

5.5 Open Meetings. Meetings of the Board shall be open to all members.

5.6 Voting. Board members shall cast votes in the manner provided in the Florida Statutes. In the absence of a statutory provision, the Board shall establish the manner in which votes shall be cast.

5.7 Notice of Board Meetings. Notices of meetings of the Board shall be posted in a conspicuous place on the Common Areas at least 48 hours in advance, except in an event of an emergency. Alternatively, notice may be given to members in any other manner provided by Florida Statute. By way of example, and not of limitation, notice may be given in any newsletter distributed to the members. Notices of any meetings of the Board at which Assessments against Lots are to be established shall specifically contain a statement that Assessments shall be considered and a statement of the nature of such Assessments.

## 6. Powers and Duties of the Board.

6.1 Powers. The Board shall, subject to the limitations and reservations set forth in the Declaration and Articles, have the powers reasonably necessary to manage, operate, maintain and discharge the duties of Association, including, but not limited to, the power to cause Association to do the following:

6.1.1 General. Exercise all powers, duties and authority vested in or delegated to Association by law and in these By-Laws, the Articles, and the Declaration, including, without

limitation, adopt budgets, levy Assessments, enter into contracts with Telecommunications Providers for Telecommunications Services.

6.1.2 Rules and Regulations. Adopt, publish, promulgate and enforce rules and regulations governing the use of Simonton Court by the members, tenants and their guests and invitees, and to establish penalties and/or fines for the infraction thereof subject only to the requirements of the Florida Statutes, if any.

6.1.3 Enforcement. Suspend the right of use of the Common Areas (other than for vehicular and pedestrian ingress and egress and for utilities) of a Member during any period in which such Member shall be in default in the payment of any Assessment or charge levied, or collected, by Association.

6.1.4 Hire Employees. Employ, on behalf of Association, managers, independent contractors, or such other employees as it deems necessary, to prescribe their duties and delegate to such manager, contractor, etc., any or all of the duties and functions of Association and/or its officers.

6.1.5 Common Areas. Dedicate, grant, license, lease, concession, create easements upon, sell or transfer all or any part of, the Common Areas to any public agency, entity, authority, utility or other person or entity for such purposes as subject to such conditions as it determines and as provided in the declaration; and acquire, sell, operate, lease, manage and otherwise trade and deal with property, real and personal, including the Common Areas, as provided in the Declaration, and with any other matters involving Association or its Members, on behalf of Association or the discharge of its duties, as may be necessary or convenient for the operation and management of Association and in accomplishing the purposes set forth in the Declaration.

6.1.6 Granting of Interest. Grant licenses, easements, permits, leases, or privileges to any individual or entity, which affect Common Areas and to alter, add to, relocate or improve the Common Areas as provided in the Declaration.

6.1.7 Financial Reports. Prepare all financial reports required by the Florida Statutes.

6.2 Vote. The Board shall exercise all powers so granted except where the Declaration, Articles or these By-Laws specifically require a vote of the members.

6.3 Limitations. Until the Turnover Date, Developer shall have and is hereby granted a right to disapprove or veto any such action, policy, or program proposed or authorized by Association, the Board, the ACC, any committee of Association, or the vote of the members. This right may be exercised by Developer at any time within ten (10) days following a meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to veto proposed actions but shall not extend to the requiring of any action or counteraction on behalf of Association, the Board, the ACC or any committee of Association.

7. Obligations of Association. Association, subject to the provisions of the Declaration, Articles, and these By-Laws, shall discharge such duties as may be necessary in order to operate Association pursuant to the Declaration, including, but not limited to, the following:

7.1 Official Records. Maintain and make available all Official Records.

7.2 Supervision. Supervise all officers, agents and employees of Association, and to see that their duties are properly performed.

7.3 Assessments and Fines. Fix and collect the amount of the Assessments and fines; take all necessary legal action; and pay, or cause to be paid, all obligations of Association or where Association has agreed to do so, of the members.

7.4 Enforcement. Enforce the provisions of the Declaration, Articles, these By-Laws, and Rules and Regulations.

## 8. Officers and Their Duties.

8.1 Officers. The officers of this Association shall be a President, a Vice President, a Secretary, and a Treasurer.

8.2 Election of Officers. Except as set forth below, the election of officers shall be by the Board and shall take place at the first meeting of the Board following each Annual Members Meeting.

8.3 Term. The officers named in the Articles shall serve until their replacement by the Board. The officers of Association shall hold office until their successors are appointed or elected unless such officer shall sooner resign, be removed, or otherwise disqualified to serve.

8.4 Special Appointment. The Board may elect such other officers as the affairs of Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein. Acceptance of such resignation shall not be necessary to make it effective.

8.6 Vacancies. A vacancy in any office shall be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the replaced officer.

8.7 Multiple Offices. The office of President and Vice-President shall not be held by the same person. All other offices may be held by the same person.

8.8 Duties. The duties of the officers are as follows:

8.8.1 President. The President shall preside at all meetings of Association and Board, sign all leases, mortgages, deeds and other written instruments and perform such other duties as may be required by the Board. The President shall be a member of the Board.

8.8.2 Vice President. The Vice President shall act in the place and stead of the President in the event of the absence, inability or refusal to act of the President, and perform such other duties as may be required by the Board.

8.8.3 Secretary. The Secretary shall record the votes and keep the Minutes of all meetings and proceedings of Association and the Board; keep the corporate seal of Association and affix it on all papers required to be sealed; serve notice of meetings of the Board and of Association; keep appropriate current records showing the names of the members of Association together with their addresses; and perform such other duties as required by the Board.

8.8.4 Treasurer. The Treasurer shall cause to be received and deposited in appropriate bank accounts all monies of Association and shall disburse such funds as directed by the Board; sign, or cause to be signed, all checks, and promissory notes of Association; cause to be kept proper books of account and accounting records required pursuant to the provisions of Section 720.303 of the Florida Statutes cause to be prepared in accordance with generally accepted accounting principles all financial reports required by the Florida Statutes; and perform such other duties as required by the Board.

## 9. Committees.

9.1 General. The Board may appoint such committees as deemed appropriate. The Board may fill any vacancies on all committees.

9.2 ACC. Developer shall have the sole right to appoint the members of the ACC until the Turnover Date. Upon expiration of the right of Developer to appoint members of the ACC, the Board shall appoint the members of the ACC. As provided under the Declaration,

Association shall have the authority and standing to seek enforcement in courts of competent jurisdiction any decisions of the ACC.

10. Records. The official records of Association shall be available for inspection by any Member at the principal office of Association. Copies may be purchased, by a Member, at a reasonable cost.

11. Corporate Seal. Association shall have an impression seal in circular form.

12. Amendments.

12.1 General Restrictions on Amendments. Notwithstanding any other provision herein to the contrary, no amendment to these By-Laws shall affect the rights of Developer unless such amendment receives the prior written consent of Developer which may be withheld for any reason whatsoever. If the prior written approval of any governmental entity or agency having jurisdiction is required by applicable law or governmental regulation for any amendment to these By-Laws, then the prior written consent of such entity or agency must also be obtained. No amendment shall be effective until it is recorded in the Public Records.

12.2 Amendments Prior to and Including the Turnover Date. Prior to and including the Turnover Date, Developer shall have the right to amend these By-Laws as it deems appropriate, without the joinder or consent of any person or entity whatsoever. Developer's right to amend under this provision is to be construed as broadly as possible. In the event that Association shall desire to amend these By-Laws prior to and including the Turnover Date, Association must first obtain Developer's prior written consent to any proposed amendment. Thereafter, an amendment identical to that approved by Developer may be adopted by Association pursuant to the requirements for amendments after the Turnover Date. Thereafter, Developer shall join in such identical amendment so that its consent to the same will be reflected in the Public Records.

12.3 Amendments After the Turnover Date. After the Turnover Date, but subject to the general restrictions on amendments set forth above, these By-Laws may be amended with the approval of (i) sixty-six and two-thirds percent (66 2/3%) of the Board; and (ii) seventy-five percent (75%) of the votes present (in person or by proxy) at a duly noticed meeting of the members of Association at which there is a quorum. Notwithstanding the foregoing, these By-Laws may be amended after the Turnover Date by sixty-six and two-thirds percent (66 2/3%) of the Board acting alone to change the number of directors on the Board. Such change shall not require the approval of the Members. Any change in the number of directors shall not take effect until the next Annual Members Meeting.

13. Conflict. In the case of any conflict between the Articles and these By-Laws, the Articles shall control. In the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

14. Fiscal Year. The first fiscal year shall begin on the date of incorporation and end on December 31 of that year. Thereafter, the fiscal year of Association shall begin on the first day of January and end on the 31st day of December of every year.

15. Miscellaneous.

15.1 Florida Statutes. Whenever these By-Laws refers to the Florida Statutes, it shall be deemed to refer to the Florida Statutes as they exist on the date these By-Laws are recorded except to the extent provided otherwise as to any particular provision of the Florida Statutes.

15.2 Severability. Invalidation of any of the provisions of these By-Laws by judgment or court order shall in no way affect any other provision, and the remainder of these By-Laws shall remain in full force and effect.

**EXHIBIT 4**

PERMIT





ENVIRONMENTAL PROTECTION DEPARTMENT - Water Resources Division  
Mailing Address: 115 South Andrews Avenue, Room A-240 • Fort Lauderdale, Florida 33301 954-519-1270  
• FAX 954-519-1496

February 08, 2006

Simonton PDC, L.C.  
Attention: Mr. Scott Porten, President  
666 South Military Trail  
Deerfield Beach, FL 33442

RE: Simonton  
City of Coconut Creek, S/T/R (05-48-42)

This is to notify you of the Environmental Protection Department's (EPD) action concerning your application received 07/07/2005. The application has been reviewed for compliance with the following requirements:

**Broward County Surface Water Management Review - GRANTED**

EPD has reviewed the project for compliance with the Surface Water Management requirements of Chapter 27, Article V Sec. 27-191 through 27-202 of the Broward County Code.

Based on the information submitted, Surface Water Management License No. SWM2006-008-0 was issued on 02/08/2006. The above named licensee is hereby authorized to perform the work or operate the facility shown on the approved drawing(s), plans, documents and specifications, as submitted by licensee, and made a part hereof.

Please be advised that no Certificate of Occupancy can be issued on this project until released, in writing, by all EPD divisions as required. Such release will be pending approval of any engineering certifications required by specific condition No. 15.

**MSSW Review - GRANTED**

EPD has the authority to review the project for compliance with Rule 40E-1.606 and Chapter 40E-40 of the Florida Administrative Code pursuant to an agreement between EPD, DEP and the SFWMD. The agreement is outlined in a document entitled "DELEGATION AGREEMENT AMONG THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, AND BROWARD COUNTY."

Based on the information submitted, Surface Water General Permit No. 06-00551-S-88 was issued on 02/08/2006.

The above referenced approvals will remain in effect subject to the following:

1. Not receiving a filed request for a Chapter 120, Florida Statutes administrative hearing;
2. the attached SFWMD Standard Limiting Conditions;
3. the attached SFWMD Special Conditions;
4. the attached Broward County General Conditions;
5. the attached Broward County Specific Conditions;
6. the attached g exhibits.

Should you object to these conditions, please refer to the attached "Notice of Rights" which addresses the procedures to be followed if you desire a public hearing or other review of the proposed action. Please contact this office if you have any questions concerning this matter. If we do not hear from you in accordance with the attached "Notice of Rights", we will assume you concur with the action taken by EPD.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a "Notice of Rights" has been mailed to the Permittee (and the persons listed in the attached distribution list) no later than 5:00 p.m. on 02/08/2006, in accordance with Section 120.60 (3), Florida Statutes.

By:   
John M. Crouse, P.E.  
Surface Water Management Licensing Section

Enclosed are the following:

- executed staff report;
- set(s) of stamped and approved plans;
- application fee receipts;
- "Notice of Rights"; and
- Inspection Guidelines Brochure.

**WHAT TO EXPECT WHEN WE ARE INSPECTING SURFACE WATER MANAGEMENT SYSTEMS**

The Broward County Environmental Protection Department Water Resources Division's Surfacewater Management Licensing program is responsible for reviewing surface water system record/as-built drawings and inspecting the system to ensure compliance with regulations. Presented below are guidelines for engineers, contractors, and licensees of surface water management systems to help guide them through this process.

**WHAT TO INCLUDE IN THE CERTIFICATION PACKET**

Please note that a certification package must be submitted at least two (2) weeks prior to the anticipated date of occupancy. A complete submittal of the required items listed below will prevent unwanted delays in the Certificate of Occupancy release.

1. Dated, signed, and sealed final record/as-build drawings from a Florida registered professional surveyor, including but not limited to:
  - a. lake/canal slope(s)
  - b. proposed grades
  - c. finished floor elevations
  - d. control structure(s)
  - e. overflow structure(s)

ALSO LAST DATE OF FIELD WORK  
(FOR SURVEY DATA COLLECTION)

(Please include 2 hard copies and AutoCAD/electronic format of the as-builts)

2. Dated, signed, and sealed letter from a Florida Registered Professional Engineer certifying that all components of the surface water management system were constructed in substantial conformance with the EPD approved plans and satisfy the water quality and water quantity requirements of the Broward County Code.
3. A \$75.00 certification fee.



ENVIRONMENTAL PROTECTION DEPARTMENT  
Water Resources Division  
115 S. Andrews Ave, Room A-240 • Fort Lauderdale, FL 33301  
PHONE 954-519-1270 • FAX 954-519-1496

### WHAT WE LOOK FOR DURING THE RECORD/AS-BUILT DRAWING REVIEW

1. The dated, signed, and sealed engineer's letter must contain the appropriate certification language. The suggested wording is located in the Broward County Code and in the specific conditions of the license. It is imperative that the engineer of the record **describe any minor modifications made to the system during the construction phase** of the project. However, substantial modifications must have received prior approval by EPD. Please be advised that substantial differences between certified as-built drawings and actual field conditions may result in enforcement action against the licensee and/or engineer.
2. In addition to rim, manhole, and pipe invert elevations, the plans should contain a substantial amount of survey information to show that the **site grades and perimeter grades** were constructed in substantial conformance with the EPD approved plans.
3. If part of the approved system, lake and canal slope as-built plans should contain a **substantial number of cross sections (a minimum of one (1) section per fifty (50) linear feet is preferred)**. Surface area calculations for lakes at the control elevation must also be submitted.
4. **Control structure or overflow structure information** must show all as-built dimensions and elevations.

### WHAT WE LOOK FOR DURING THE INSPECTION

1. **Catch basins and manholes must:**
  - a. have appropriate mud work to prevent seepage that could lead to structure/asphalt failures and subsequent turbidity violations.
  - b. be relatively free of sediment and debris and accessible to staff. Prior to inspection, fabric materials for sediment control purposes must be removed.
2. **Lake, canal, swale, dry detention/retention area slopes must:**
  - a. be stabilized through appropriate measures. (i.e. no evidence of erosion should be encountered during the inspection and it is preferred that sodding or seeding of the area be complete before inspection)
3. **All baffle mechanisms must:**
  - a. be watertight at all contact surfaces of basin walls by a durable gasket device.



ENVIRONMENTAL PROTECTION DEPARTMENT  
Water Resources Division  
115 S. Andrews Ave, Room A-240 • Fort Lauderdale, FL 33301  
PHONE 954-519-1270 • FAX 954-519-1496

## SURFACE WATER MANAGEMEN

## CHAPTER 40E-4 (4/94)

## 40E-4.321 Duration of Permits

(1) Unless revoked or otherwise modified pursuant to Rules 40E-4.331 and 40E-4.441, F.A.C., the duration of a surface water management permit issued under this chapter is as follows:

(a) Two years from the date of issuance for Conceptual Approval, unless within that period an application for a construction and operation permit is filed for any portion of the project. If an application for a construction and operation permit is filed for any portion of the project. If an application for a construction and operation permit is filed, then the Conceptual Approval remains valid until final action is taken on the application. If the application is granted, then the Conceptual Approval is valid for an additional two years from the date of issuance of the construction and operation permit. Conceptual Approvals which have no applications for construction and operation filed for a period of two years will expire automatically.

(b) Five years from the date of issuance for a construction permit.

(c) Perpetual for an operation permit.

(2) The Governing Board shall issue permit extensions provided that a permittee files a written request with the District showing good cause. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(3) For a Conceptual Approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive amendment, the duration of the Conceptual Approval shall be two years from whichever one of the following occurs at the latest date:

(a) the effective date of the local government's comprehensive plan amendment,

(b) the effective date of the local government development order, or

(c) the date on which the district issues the Conceptual Approval, or

(d) the latest date of the resolution of any Chapter 120 or other legal appeals.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Modifications to construction permits issued pursuant to a formal permit application extend the duration of the permit for three years from the date of issuance of the modification. Construction permit modifications do not extend the duration of a Conceptual Approval.

(6) Permit modifications issued pursuant to subsection 40E-4.331 (2)(b), F.A.C. (Letter modifications) do not extend the duration of a permit.

### NOTICE OF RIGHTS

Section 120.569(1), Fla. Stat. (2000), requires that "each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review, and shall state the time limits which apply." Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

#### **Petition for Administrative Proceedings**

1. A person whose substantial interests are affected by the South Florida Water Management District's (SFWMD) action has the right to request an administrative hearing on that action. The affected person may request either a formal or an informal hearing, as set forth below. A point of entry into administrative proceedings is governed by Rules 28-106.111 and 40E-1.511, Fla. Admin. Code, (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109), as set forth below. Petitions are deemed filed upon receipt of the original documents by the SFWMD Clerk.

(a) **Formal Administrative Hearing:** If a genuine issue(s) of material fact is in dispute, the affected person seeking a formal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(1), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.201(2), Fla. Admin. Code, a copy of which is attached to this Notice of Rights.

(b) **Informal Administrative Hearing:** If there are no issues of material fact in dispute, the affected person seeking an informal hearing on a SFWMD decision which does or may determine their substantial interests shall file a petition for hearing pursuant to Sections 120.569 and 120.57(2), Fla. Stat. or for mediation pursuant to Section 120.573, Fla. Stat. within 21 days, except as provided in subsections c. and d. below, of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-106.301(2), Fla. Admin. Code, a copy of which is attached to this Notice of Rights.

(c) **Administrative Complaint and Order:** If a Respondent objects to a SFWMD Administrative Complaint and Order, pursuant to Section 373.119, Fla. Stat. (1997), the person named in the Administrative Complaint and Order may file a petition for a hearing no later than 14 days after the date such order is served. Petitions must substantially comply with the requirements of either subsection a. or b. above.

(d) **State Lands Environmental Resource Permit:** Pursuant to Section 373.427, Fla. Stat., and Rule 40E-1.511(3), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), a petition objecting to the SFWMD's agency action regarding consolidated applications for Environmental Resource Permits and Use of Sovereign Submerged Lands (SLERPs), must be filed within 14 days of the notice of consolidated intent to grant or deny the SLERP. Petitions must substantially comply with the requirements of either subsection a. or b. above.

(e) **Emergency Authorization and Order:** A person whose substantial interests are affected by a SFWMD Emergency Authorization and Order, has a right to file a petition under Sections 120.569, 120.57(1), and 120.57(2), Fla. Stat., as provided in subsections a. and b. above. However, the person, or the agent of the person responsible for using or contributing to the emergency conditions shall take whatever action necessary to cause immediate compliance with the terms of the Emergency Authorization and Order.

(f) **Order for Emergency Action:** A person whose substantial interests are affected by a SFWMD Order for Emergency Action has a right to file a petition pursuant to Rules 28-107.005 and 40E-1.611, Fla. Admin. Code, copies of which are attached to this Notice of Rights, and Section 373.119(3), Fla. Stat., for a hearing on the Order. Any subsequent agency action or proposed agency action to initiate a formal revocation proceeding shall be separately noticed pursuant to section (g) below.

(g) **Permit Suspension, Revocation, Annulment, and Withdrawal:** If the SFWMD issues an administrative complaint to suspend, revoke, annul, or withdraw a permit, the permittee may request a hearing to be conducted in accordance with Sections 120.569 and 120.57, Fla. Stat., within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Petitions must substantially comply with the requirements of Rule 28-107.004(3), Fla. Admin. Code, a copy of which is attached to this Notice of Rights.

2. Because the administrative filing process is designed to formulate final agency action, the filing of a petition means that the SFWMD's final action may be different from the position taken by it previously. Persons whose substantial interests may be affected by any such final decision of the SFWMD shall have, pursuant to Rule 40E-1.511(2), Fla. Admin. Code (also published as an exception to the Uniform Rules of Procedure as Rule 40E-0.109(2)(c)), an additional 21 days from the date of receipt of notice of said decision to request an administrative hearing. However, the scope of the administrative hearing shall be limited to the substantial deviation.

3. Pursuant to Rule 40E-1.511(4), Fla. Admin. Code, substantially affected persons entitled to a hearing pursuant to Section 120.57(1), Fla. Stat., may waive their right to such a hearing and request an informal hearing before the Governing Board pursuant to Section 120.57(2), Fla. Stat., which may be granted at the option of the Governing Board.

4. Pursuant to Rule 28-106.111(3), Fla. Admin. Code, persons may file with the SFWMD a request for extension of time for filing a petition. The SFWMD, for good cause shown, may grant the extension. The request for extension must contain a certificate that the petitioner has consulted with all other parties, if any, concerning the extension and that the SFWMD and all other parties agree to the extension.

#### **CIRCUIT COURT**

5. Pursuant to Section 373.617, Fla. Stat., any substantially affected person who claims that final agency action of the SFWMD relating to permit decisions constitutes an unconstitutional taking of property without just compensation may seek judicial review of the action in circuit court by filing a civil action in the circuit court in the judicial circuit in which the affected property is located within 90 days of the rendering of the SFWMD's final agency action.

6. Pursuant to Section 403.412, Fla. Stat., any citizen of Florida may bring an action for injunctive relief against the SFWMD to compel the SFWMD to enforce the laws of Chapter 373, Fla. Stat., and Title 40E, Fla. Admin. Code. The complaining party must file with the SFWMD Clerk a verified complaint setting forth the facts upon which the complaint is based and the manner in which the complaining party is affected. If the SFWMD does not take appropriate action on the complaint within 30 days of receipt, the complaining party may then file a civil suit for injunctive relief in the 15th Judicial Circuit in and for Palm Beach County or circuit court in the county where the cause of action allegedly occurred.

7. Pursuant to Section 373.433, Fla. Stat., a private citizen of Florida may file suit in circuit court to require the abatement of any stormwater management system, dam, impoundment, reservoir, appurtenant work or works that violate the provisions of Chapter 373, Fla. Stat.

#### **DISTRICT COURT OF APPEAL**

8. Pursuant to Section 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

#### **LAND AND WATER ADJUDICATORY COMMISSION**

9. A party to a "proceeding below" may seek review by the Land and Water Adjudicatory Commission (FLAWAC) of SFWMD's final agency action to determine if such action is consistent with the provisions and purposes of Chapter 373, Fla. Stat. Pursuant to Section 373.114, Fla. Stat., and Rules 42-2.013 and 42-2.0132, Fla. Admin. Code, a request for review of (a) an order or rule of the SFWMD must be filed with FLAWAC within 20 days after rendition of the order or adoption of the rule sought to be reviewed; (b) an order of the Department of Environmental Protection (DEP) requiring amendment or repeal of a SFWMD rule must be filed with FLAWAC within 30 days of rendition of the DEP's order, and (c) a SFWMD order entered pursuant to a formal administrative hearing under Section 120.57(1), Fla. Stat., must be filed no later than 20 days after rendition of the SFWMD's final order. Simultaneous with filing, a copy of the request for review must be served on the DEP Secretary, any person named in the SFWMD or DEP final order, and all parties to the proceeding below. A copy of Rule 42-2.013, Fla. Admin. Code is attached to this Notice of Rights.

#### **PRIVATE PROPERTY RIGHTS PROTECTION ACT**

10. A property owner who alleges a specific action of the SFWMD has inordinately burdened an existing use of the real property, or a vested right to a specific use of the real property, may file a claim in the circuit court where the real property is located within 1 year of the SFWMD action pursuant to the procedures set forth in Subsection 70.001(4)(a), Fla. Stat.

**LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION**

11. A property owner who alleges that a SFWMD development order (as that term is defined in Section 70.51(2)(a), Fla. Stat. to include permits) or SFWMD enforcement action is unreasonable, or unfairly burdens the use of the real property, may file a request for relief with the SFWMD within 30 days of receipt of the SFWMD's order or notice of agency action pursuant to the procedures set forth in Subsections 70.51(4) and (6), Fla. Stat.

**MEDIATION**

12. A person whose substantial interests are, or may be, affected by the SFWMD's action may choose mediation as an alternative remedy under Section 120.573, Fla. Statute. Pursuant to Rule 28-106.111(2), Fla. Admin. Code, the petition for mediation shall be filed within 21 days of either written notice through mail or posting or publication of notice that the SFWMD has or intends to take final agency action. Choosing mediation will not affect the right to an administrative hearing if mediation does not result in settlement.

Pursuant to Rule 28-106.402, Fla. Admin. Code, the contents of the petition for mediation shall contain the following information:

- (1) the name, address, and telephone number of the person requesting mediation and that person's representative, if any;
- (2) a statement of the preliminary agency action;
- (3) an explanation of how the person's substantial interests will be affected by the agency determination; and
- (4) a statement of relief sought.

As provided in Section 120.573, Fla. Stat. (1997), the timely agreement of all the parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Fla. Stat., for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within 60 days of the execution of the agreement. If mediation results in settlement of the dispute, the SFWMD must enter a final order incorporating the agreement of the parties. Persons whose substantial interest will be affected by such a modified agency decision have a right to petition for hearing within 21 days of receipt of the final order in accordance with the requirements of Sections 120.569 and 120.57, Fla. Stat., and SFWMD Rule 28-106.201(2), Fla. Admin. Code. If mediation terminates without settlement of the dispute, the SFWMD shall notify all parties in writing that the administrative hearing process under Sections 120.569 and 120.57, Fla. Stat., remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action.

**VARIANCES AND WAIVERS**

13. A person who is subject to regulation pursuant to a SFWMD rule and believes the application of that rule will create a substantial hardship or will violate principles of fairness (as those terms are defined in Subsection 120.542(2), Fla. Stat.) and can demonstrate that the purpose of the underlying statute will be or has been achieved by other means, may file a petition with the SFWMD Clerk requesting a variance from or waiver of the SFWMD rule. Applying for a variance or waiver does not substitute or extend the time for filing a petition for an administrative hearing or exercising any other right that a person may have concerning the SFWMD's action. Pursuant to Rule 28-104.002(2), Fla. Admin. Code, the petition must include the following information:

- (a) the caption shall read: Petition for (Variance from) or (Waiver of) Rule (Citation)
- (b) the name, address, telephone number and any facsimile number of the petitioner;
- (c) the name, address, telephone number and any facsimile number of the attorney or qualified representative of the petitioner, (if any);
- (d) the applicable rule or portion of the rule;
- (e) the citation to the statute the rule is implementing;
- (f) the type of action requested;
- (g) the specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner;
- (h) the reason why the variance or the waiver requested would serve the purposes of the underlying statute; a
- (i) a statement of whether the variance or waiver is permanent or temporary. If the variance or waiver is temporary, the petition shall include the dates indicating the duration of the requested variance or waiver.



A person requesting an emergency variance from or waiver of a SFWMD rule must clearly so state in the caption of the petition. In addition to the requirements of Section 120.542(5), Fla. Stat. pursuant to Rule 28-104.004(2), Fla. Admin. Code, the petition must also include:

- (a) the specific facts that make the situation an emergency; and
- (b) the specific facts to show that the petitioner will suffer immediate adverse effect unless the variance or waiver is issued by the SFWMD more expeditiously than the applicable timeframes set forth in Section 120.542, Fla. Stat.

#### **WAIVER OF RIGHTS**

- 14. Failure to observe the relevant time frames prescribed above will constitute a waiver of such right.

#### **28-106.201 INITIATION OF PROCEEDINGS (INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

- (2) All petitions filed under these rules shall contain:
  - (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
  - (e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief, and
  - (f) A demand for relief.

#### **28-106.301 INITIATION OF PROCEEDINGS (NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT)**

- (2) All petitions filed under these rules shall contain:
  - (a) The name and address of each agency affected and each agency's file or identification number, if known;
  - (b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding, and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
  - (c) A statement of when and how the petitioner received notice of the agency decision;
  - (d) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief, and
  - (e) A demand for relief.

#### **28-107.004 SUSPENSION, REVOCATION, ANNULMENT, OR WITHDRAWAL**

- (3) Requests for hearing filed in accordance with this rule shall include:
  - (a) The name and address of the party making the request, for purposes of service;
  - (b) A statement that the party is requesting a hearing involving disputed issues of material fact, or a hearing not involving disputed issues of material fact; and
  - (c) A reference to the notice, order to show cause, administrative complaint, or other communication that the party has received from the agency.

**42-2.013 REQUEST FOR REVIEW PURSUANT TO SECTION 373.114 OR 373.217**

(1) In any proceeding arising under Chapter 373, F.S., review by the Florida Land and Water Adjudicatory Commission may be initiated by the Department or a party by filing a request for such review with the Secretary of the Commission and serving a copy on any person named in the rule or order, and on all parties to the proceeding which resulted in the order sought to be reviewed. A certificate of service showing completion of service as required by this subsection shall be a requirement for a determination of sufficiency under Rule 42-2.0132. Failure to file the request with the Commission within the time period provided in Rule 42-2.0132 shall result in dismissal of the request for review.

(2) The request for review shall identify the rule or order requested to be reviewed, the proceeding in which the rule or order was entered and the nature of the rule or order. A copy of the rule or order sought to be reviewed shall be attached. The request for review shall state with particularity:

(a) How the order or rule conflicts with the requirements, provisions and purposes of Chapter 373, F.S., or rules duly adopted thereunder;

(b) How the rule or order sought to be reviewed affects the interests of the party seeking review;

(c) The oral or written statement, sworn or unsworn, which was submitted to the agency concerning the matter to be reviewed and the date and location of the statement, if the individual or entity requesting the review has not participated in a proceeding previously instituted pursuant to Chapter 120, F.S., on the order for which review is sought;

(d) If review of an order is being sought, whether and how the activity authorized by the order would substantially affect natural resources of statewide or regional significance, or whether the order raises issues of policy, statutory interpretation, or rule interpretation that have regional or statewide significance from a standpoint of agency precedent, and all factual bases in the record which the petitioner claims support such determination(s); and

(e) The action requested to be taken by the Commission is as a result of the review, whether to rescind or modify the order, or remand the proceeding to the water management district for further action, or to require the water management district to initiate rulemaking to adopt, amend or repeal a rule.

**28-107.005 EMERGENCY ACTION**

(1) If the agency finds that immediate serious danger to the public health, safety, or welfare required emergency action, the agency shall summarily suspend, limit, or restrict a license.

(2) The 14-day notice requirement of Section 120.569(2)(b), F.S., does not apply and shall not be construed to prevent a hearing at the earliest time practicable upon request of an aggrieved party.

(3) Unless otherwise provided by law, within 20 days after emergency action taken pursuant to paragraph (1) of this rule, the agency shall initiate a formal suspension or revocation proceeding in compliance with Sections 120.569, 120.57, and 120.60, F.S.

**40E-1.611 EMERGENCY ACTION**

(1) An emergency exists when immediate action is necessary to protect public health, safety or welfare; the health of animals, fish or aquatic life; the works of the District; a public water supply, or recreational, commercial, industrial, agricultural or other reasonable uses of land and water resources.

(2) The Executive Director may employ the resources of the District to take whatever remedial action necessary to alleviate the emergency condition without issuance of an emergency order, or in the event an emergency order has been issued, after the expiration of the requisite time for compliance with that order.

### Standard Limiting Conditions

1. The permittee shall implement the work authorized in a manner so as to minimize any adverse impact of the works on fish, wildlife, natural environmental values, and water quality. The permittee shall institute necessary measures during the construction period, including full compaction of any fill material placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters.
2. Water quality data for the water discharged from the permittee's property or into surface waters of the State will be submitted to the District as required by Section 5.9, 'Basis of Review For Surface Water Management Permit Applications Within South Florida Water Management District - March, 1994.' Parameters to be monitored may include those listed in Chapter 62-302, F.A.C.. If water quality data is required, the permittee shall provide data on volumes of water discharged, including total volume discharged during the days of sampling and total monthly discharges from the property or into surface waters of the State.
3. This permit shall not relieve the permittee of any obligation to obtain necessary federal, state, local or special district approvals.
4. The operation phase of this permit will not become effective until the District's acceptance of certification of the completed surface water management system. The permittee shall request transfer of the permit to the responsible operational entity accepted by the District, if different from the construction certification.
5. All road elevations shall be set in accordance with the criteria set forth in Section 6.5, 'Basis of Review For Surface Water Management Permit Applications Within South Florida Water Management District - March, 1994.'
6. All building floor elevations shall be set in accordance with the criteria set forth in Section 6.4, 'Basis of Review For Surface Water Management Permit Applications Within South Florida Water Management District - March, 1994.'
7. Off-site discharges during construction and development will be made only through the facilities authorized by this permit.
8. A permit transfer to the operation phase shall not occur until a responsible entity meeting the requirement in Section 9.0, 'Basis of Review For Surface Water Management Permit Applications Within South Florida Water Management District - March, 1994,' has been established with sufficient ownership or legal interest so that it has control over all water management facilities authorized herein.
9. The permit does not convey to the permittee any property right nor any rights or privileges other than those specified in the permit and Chapter 40E-4, F.A.C..
10. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may rise by reason of the construction, operation, maintenance or use of any facility authorized by the permit.
11. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
12. Within 30 days of issuance of this permit, the permittee or authorized agent shall submit construction status reports on an annual basis (via the supplied Annual Status Report or equivalent) of the actual or anticipated construction start date and the expected completion date.
13. When the duration of construction exceeds one year, the permittee or authorized agent shall submit construction status reports on an annual basis (via the supplied Annual Status Report or equivalent) beginning one year after the initial commencement of construction.

14. Within 30 days after completion of construction of the surface water management system, the permittee or authorized agent shall file a written statement of completion and certification by a Florida Registered Professional Engineer. These statements must specify the actual date of construction completion and must certify that all facilities have been constructed in substantial conformance with the plans and specifications approved by the District (via the supplied Construction Completion/Construction Certification or equivalent). The Construction Completion Certification must include, at a minimum, existing elevations, locations and dimensions of the components of the water management facilities. Additionally, if deviations from the approved drawing are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted.

15. Within 30 days of any sale, conveyance or other transfer of any of the land which is proposed for development under the authorization of this permit, the permittee shall notify the District of such transfer in writing via either Form 0483, Request For Permit Transfer, or Form 0920, Request For Transfer Of Surface Water Management Construction Phase To Operation Phase (to be completed and submitted by the operating entity), in accordance with Sections 40E-1.6105 and 40E-4.351, F.A.C..

16. A prorated share of surface water management retention/detention areas, sufficient to provide the required flood protection and water quality treatment, must be provided prior to occupancy of any building or residence.

17. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or within the certification report.

18. It is the responsibility of the permittee to insure that adverse off-site water resource related impacts do not occur during construction.

19. The permittee must obtain a water use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(4), F.A.C..

### SFWMD Special Conditions

1. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
2. Measures shall be taken during construction to insure that sedimentation and/or turbidity problems are not created in the receiving water.
3. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
4. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
5. The conditions outlined in the Broward County Specific Conditions section, except where language specifically relates to Broward County Code, are incorporated into these SFWMD Special Conditions.
6. Operation of the surface water management system shall be the responsibility of permittee.
7. All special conditions, exhibits and other materials previously stipulated by permit number 06-00551-S remain in effect unless otherwise revised and shall apply to this modification.

### **Broward County General Conditions**

1. The terms, conditions, requirements, limitations and restrictions set forth herein are accepted by the licensee and must be completed by the licensee and are enforceable by the Environmental Protection Department (EPD) pursuant to Chapter 27 of the Broward County Code of Ordinances. The EPD will review this license periodically and may revoke or suspend the license, and initiate administrative and/or judicial action for any violation of the conditions by the licensee, its agents, employees, servants or representatives.
2. This license is valid only for the specific uses set forth in the license application and any deviation from the approved uses may constitute grounds for revocation, suspension, and/or enforcement action by the EPD.
3. In the event the licensee is temporarily unable to comply with any of the conditions of the license or with this chapter, the licensee shall notify the EPD within eight (8) hours or as stated in the specific section of this chapter. Within three (3) working days of the event, the licensee shall submit a written report to the EPD that describes the incident, its cause, the measures being taken to correct the problem and prevent its reoccurrence, the owner's intention regarding the repair, replacement and reconstruction of destroyed facilities and a schedule of events leading toward operation with the license condition.
4. The issuance of this license does not convey any vested rights or exclusive privileges, nor does it authorize any injury to public or private property or any invasion of personal rights, or any violations of federal, state or local laws or regulations.
5. This license must be available for inspection on licensee's premises during the entire life of the license.
6. By accepting this license, the licensee understands and agrees that all records, notes, monitoring data and other information relating to the construction or operation of this licensed facility or activity, that are submitted to the EPD, may be used by the EPD as evidence in any enforcement proceeding arising under Chapter 27 of the Broward County Code of Ordinances, except where such use is prohibited by Section 403.111, Florida Statutes.
7. The licensee agrees to comply with Chapter 27 of the Broward County Code of Ordinances, and shall comply with all provisions of the most current version of this chapter, as amended.
8. Any new owner or operator of a licensed facility shall apply by letter for a transfer of license within thirty (30) days after sale or legal transfer. The transferor shall remain liable for performance in accordance with the license until the transferee applies for and is granted a transfer of license. The transferee shall be liable for any violation of Chapter 27 that results from the transferee's activities. The transferee shall comply with the transferor's original license conditions when the transferee has failed to obtain its own license.
9. The licensee, by acceptance of this license, specifically agrees to allow access and shall allow access to the licensed source, activity or facility at times by EPD personnel for the purposes of inspection and testing to determine compliance with this license and Chapter 27 of the Broward County Code of Ordinances.
10. This license does not constitute a waiver or approval of any other license, approval, or regulatory requirement by this or any other governmental agency that may be required.
11. Enforcement of the terms and provisions of this license shall be at the reasonable discretion of EPD, and any forbearance on behalf of EPD to exercise its rights hereunder in the event of any breach by the licensee, shall not be deemed or construed to be a waiver of EPD's rights hereunder.

### Broward County Specific Conditions

1. The licensee shall allow authorized personnel of the EPD, municipality or local water control district to conduct such inspections at reasonable hours, as are necessary to determine compliance with the requirements of the license and the approved plans and specifications.
2. The responsible entity shall agree to maintain the operating efficiency of the water management works. Except in cases where the responsible entity is a governmental agency, the agreement shall further require that if the water management works is not adequately maintained, the County may undertake the required work and bill all associated costs to the responsible entity. If the payment for such obligations is not satisfied within 30 days, said obligation shall become a lien against the property associated with the water management works. Where ownership of the water management works is separate from property ownership, the EPD shall require these agreements to be recorded.
3. The licensee shall prosecute the work authorized in a manner so as to minimize any adverse impact of the works on fish, wildlife, natural environmental values, and water quality. The licensee shall institute necessary measures during the construction period, including fill compaction of any fill material placed around newly installed structures, to reduce erosion, turbidity, nutrient loading and sedimentation in the receiving waters. Any erosion, shoaling or deleterious discharges due to permitted actions will be corrected promptly at no expense to the County.
4. The licensee shall comply with all applicable local land use and subdivision regulations and other local requirements. In addition, the licensee shall obtain all necessary Federal, State, local and special district authorizations prior to the start of any construction alteration of works authorized by this license.
5. Offsite discharges during construction and development shall be made only through the facilities authorized by this license. Water discharged from the project shall be through structures having a mechanism for regulating upstream water stages. Stages may be subject to operating schedules satisfactory to the appropriate regulatory agency.
6. The licensee shall hold and save the County harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, operation, maintenance or use of any facility authorized by the license.
7. The license does not convey property rights nor any rights or privileges other than those specified therein.
8. No construction authorized by the license shall commence until a responsible entity acceptable to the EPD has been established and has agreed to operate and maintain the efficiency of the system. The entity must be provided with sufficient ownership so that it has control over all water management facilities authorized therein. Upon receipt of written evidence of the satisfaction of this condition, the EPD will issue authorization to commence the construction.
9. No beautification, or erection of any structure that will prohibit or limit access of maintenance equipment or vehicles in the right-of-way or easements will be allowed.
10. Any license which grants any entity the permission to place a structure on property which is owned by Broward County or upon which Broward County has an easement shall be construed to create a revocable license for that structure to remain on the property. Broward County may require removal of such a structure at no cost to the County.
11. The area under license will be maintained in a safe and operating condition at all times. Equipment will be promptly removed from the right-of-way or easement and the right-of-way or easement will be restored to its original or better condition within a reasonable time on termination of the authorized use.
12. The EPD will be notified, as required in the license or as indicated on the approved plans, to coordinate and schedule inspections.
13. The operation or construction will be in accordance with the approved details and plans submitted with the application. Any modification must be submitted to the EPD in writing and receive prior approval.
14. Monitoring may be required for sites with high pollutant generating potential, such as industrial sites, Class I and II solid waste disposal sites, and projects discharging to areas identified in Section 27-200 (b) (1) (o). Such monitoring will be under the cognizance of the EPD.

15. Upon completion of the construction of a surface water management system or phase thereof licensed by the Water Resources Division, it is a requirement of the issuance of the license, and hence transfer of operation and maintenance responsibility, that a Florida Registered Professional Engineer certify that the surface water management system was indeed constructed as licensed. Certified record drawings shall accompany the certification. Suggested wording for this is as follows:

I HEREBY CERTIFY TO THE CONSTRUCTION COMPLETION OF ALL THE COMPONENTS OF THE SURFACE WATER MANAGEMENT FACILITIES FOR THE ABOVE REFERENCES PROJECT AND THAT THEY HAVE BEEN CONSTRUCTED IN SUBSTANTIAL CONFORMANCE WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE BROWARD COUNTY WATER RESOURCES DIVISION, AND HEREBY AFFIX MY SEAL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(SEAL)

16. Water management areas shall be legally reserved to the operation entity and for that purpose by dedication on the plat, deed restrictions, easements, etc., so that subsequent owners or others may not remove such areas from their intended use. Management areas, including maintenance easements, shall be connected to a public road or other location from which operation and maintenance access is legally and physically available.

17. The licensee shall notify the Water Resources Division in writing within twenty-four (24) hours of the start, finish, suspension, and/or abandonment of any construction or alteration of works authorized by this license.

18. A prorated share of surface water management retention/detention areas, sufficient to provide the required flood protection and water quality treatment, must be provided prior to occupancy of any building or residence.

19. The operation license shall be valid for a specific period of time not to exceed five (5) years from the date the license is transferred to the operation phase. The operation license shall be renewed in accordance with Section 27 - 198 (d) (2) of the Article.

20. The Water Resources Division reserves the right to require additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.

21. This permit does not constitute the approval required by Section 27-353(i), Broward County Code, to conduct dewatering operations at or within one-quarter mile radius of a contaminated site. Please contact the Pollution Prevention and Remediation Division at (954) 519-1260 for further information.

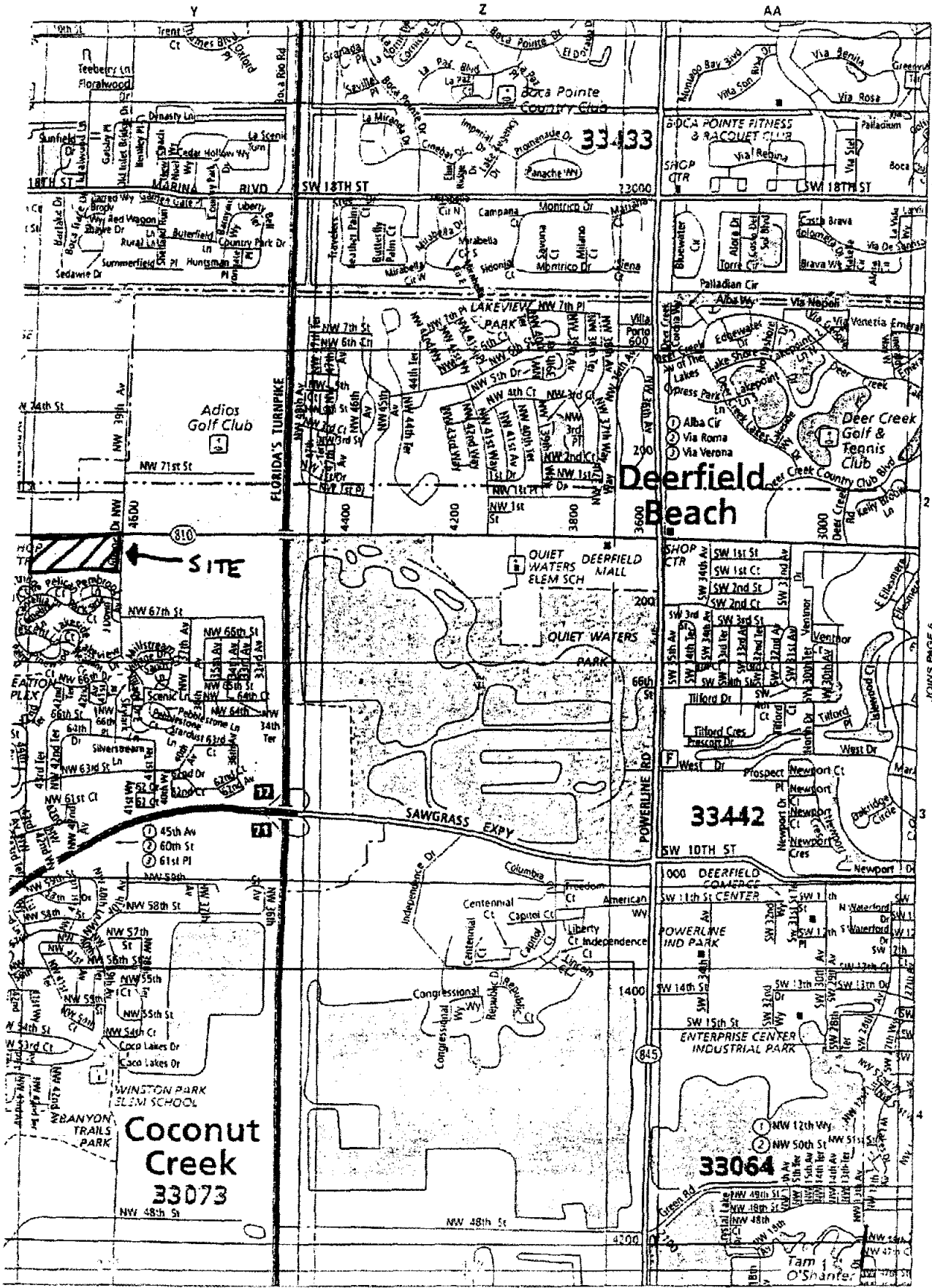
22. The licensee shall keep a log of the operation and maintenance schedule for all components of the surface water management system.

23. The surface water management system must be inspected by the Water Resources Division to verify compliance with Specific Condition No. 15 of the license. In accordance with the Broward County Natural Resource Protection Code, Article I, Sec. 27-66 (f), the County agency or municipal agency charged with issuing a certificate of occupancy (CO) shall not issue a CO until notified of the EPD approval. Partial certifications will be handled in accordance with Specific Condition No. 18.

24. The licensee is advised that he/she is required to submit a Storm Water Notice of Intent (NOI) application at least 48 hours prior to the commencement of construction to the Florida Department of Environmental Protection, NPDES Stormwater Notices Center, MS #2510 at 2600 Blair Stone Road - Tallahassee, Florida 32399-2400.



NORTH BOUNDARY



**STAFF REPORT**

**Project Name:** Simonton  
**Permit Number:** 06-00551-S-88      **License Number:** SWM2006-008-0  
**Application Number:** 050707-19      **Concurrent Application:** L2005-182  
**Application Type:** BC Surface Water Management License  
**Location:** Broward County      **Section-Township-Range:** 05-48-42  
**Permittee's Name:** Simonton PDC, L.C.

**Project Area:** 13.92 acres      **Drainage Area:** 13.92 acres  
**Project Land Use:** Residential  
**Drainage Basin:** Hillsboro  
**Receiving Body:** Hillsboro Canal

**Purpose:**

The modification of SFWMD Permit # 0600551-S for the construction and operation of a surface water management system to serve a proposed 13.92 acre residential development known as Simonton Condominiums.

**Project Evaluation:**

**Project Site Description:**

The site is presently undeveloped and is located at the SW intersection of Hillsboro Blvd and NW 39 Avenue.

**Proposed Project Design:**

The proposed construction will include 3.38 acres of building area, 3.82 acres of paved area and the proposed drainage system. A system of swales, inlets and culverts will direct the storm runoff to 1.20 acres of wet detention for water quality treatment and storm runoff attenuation. One acre of wet detention was purchased from the Coco Lakes HOA. The discharge will be directed through a 968 LF of 24" RCP. Site discharge is per Cocomar WCD criteria.

**Control Elevation:**

<u>Basin Name</u>	<u>Area</u>	<u>Ctrl Elevation</u>	<u>WSWT Ctrl Elevation</u>	<u>Method of Determination</u>
Simonton	13.92 acres	11 ft, NGVD	11 ft, NVGD	Master System

**Finished Floors:**

The finished floor elevations have been designed to be above the computed 100-yr, 3-day zero discharge stage and the Broward County 100-yr, 3-day flood map elevation

<u>Frequency</u>	<u>Rainfall</u>	<u>Basin Name</u>	<u>Peak Stage</u>	<u>Prop. Min. Fin. Floors</u>	<u>BC 100-yr Map Elev.</u>
100YR-3DAY	21 inches	Simonton	15.86' NGVD	16' NGVD	15.5' NGVD

2A

**Water Quality Design:**

Water quality treatment will be provided in constructed lake for the first inch times the acreage for the entire site.

<u>Basin Name</u>	<u>Treatment Type</u>	<u>Treatment Method</u>	<u>Volume Required</u>	<u>Volume Provided</u>
Simonton	Treatment	Wet Detention	1.16 ac-ft	1.16 ac-ft
			Total: 1.16 ac-ft	

**Environmental Summary:**

No wetland areas were identified within the project area and no wetland impacts are anticipated from the development of this parcel. Therefore, no wetland mitigation requirements have been included in the permit for this project.

**Special Concerns:**

**Operating Entity:** Simonton PDC, L.C.  
Attention: Mr. Scott Porten, President  
666 South Military Trail  
Deerfield Beach, FL 33442

**Waste Water System/Supplier:** BCUD #4

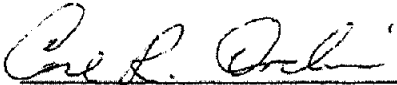
4

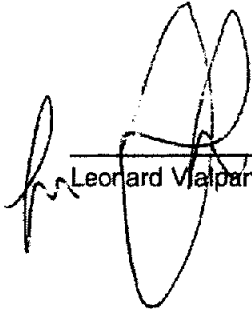
**STAFF RECOMMENDATION:**

South Florida Water Management District and Broward County rules have been adhered to and a General Permit should be granted.


**SWM2006-008-0, STAFF REVIEW:**


**Water Resources Division:**

  
\_\_\_\_\_  
Carl Archie

  
\_\_\_\_\_  
Leonard Valpando, PE

**Biological Resources Division:**

  
\_\_\_\_\_  
for Julie Krawczyk

  
\_\_\_\_\_  
for Kent Edwards, Manager

2D