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PAVESH LAW FIRM  
1833 HENDRY ST  
FT MYERS FL 33901

**DECLARATION OF CONDOMINIUM  
FOR  
TERRACE II AT HERITAGE BAY,  
A CONDOMINIUM**

MADE this 26<sup>th</sup> day of October, 2006, by U.S. Home Corporation, a Delaware corporation authorized to do business in the State of Florida, hereinafter called the "Developer," for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE LAND.** The Developer owns certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").
2. **SUBMISSION STATEMENT.** The Developer hereby submits the Land described in Exhibit "A" and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of any portion of the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms.
3. **NAME.** The name by which this Condominium shall be identified is Terrace II at Heritage Bay, a Condominium, (the "Condominium") and its address is 10245<sup>th</sup> Heritage Bay Blvd., Naples, FL 34114.
4. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.
  - 4.1 "Architectural Review Committee" or "ARC" means the Architectural Review Committee as established and empowered in Section 6 of the Club Declaration.

TERRACE II AT HERITAGE BAY – DECLARATION

EXHIBIT "1"

4.2 "**Assessment**" means a share of the funds required for the payment of common expenses which from time to time is assessed against each of the units.

4.3 "**Association**" means Terrace II at Heritage Bay Association, Inc., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

4.4 "**Association Property**" means all property, real or personal, owned or leased by the Association for the use and benefit of the unit owners.

4.5 "**Board of Directors**" or "**the Board**" means the representative body which is responsible for the administration of the Association's affairs, and is the same body sometimes referred to in the Condominium Act as the "board of administration".

4.6 "**Club**" or "**the Club**" means Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the Club Common Areas within Heritage Bay Golf & Country Club, as described in the Governing Documents.

4.7 "**Club Common Areas**" means the real property and all improvements thereon owned or to be owned by the Club for the use and benefit of the members of Heritage Bay Golf & Country Club.

4.8 "**Club Declaration**" means the Declaration of Covenants, Conditions and Restrictions for Heritage Bay Golf & Country Club, as recorded in the Official Records of Collier County, Florida, in Book 3989, at Pages 2218 et seq., as the same is amended from time to time.

4.9 "**Condominium Documents**" means this Declaration and all recorded exhibits hereto, as amended from time to time.

4.10 "**County.**" All references in the condominium documents to "a County" or "the County" or to a specific Florida County are intended to refer to Collier County, Florida, and shall be construed to do so.

4.11 "**Family**" or "**Single Family**" means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

4.12 "**Fixtures**" means items of tangible personal property which, by being physically annexed or constructively affixed to a unit, have become accessory to it and part and parcel of it, including but not limited to, interior partition walls, appliances which have been built in or permanently affixed, and plumbing fixtures in kitchens and bathrooms. Fixtures do not include floor, wall or ceiling coverings.

4.13 "**Guest**" means any person (other than the unit owner and his family) who is physically present in, or occupies an unit on a temporary basis at the invitation of the unit owner or other permitted occupant, without the payment of consideration.

4.14 **Institutional Mortgagee** means:

(A) a lending institution holding a first mortgage lien upon a unit, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of buying, selling, holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration) and which holds, guarantees or insures a first mortgage encumbering a unit; or

(C) the Developer, and any and all investors or lenders, or the successors and assigns of such investors or lenders which have loaned money to Developer to acquire, develop, or construct improvements in the Community, and who hold a lien on all or a portion of the Community securing such loan. An **Institutional Mortgage** is a mortgage held by an Institutional Mortgagee encumbering a unit.

4.15 **Lease** means the grant by a unit owner of a temporary right to reside in the owner's unit for valuable consideration.

4.16 **Limited Common Elements** means those common elements which are reserved for the use of a certain unit or units to the exclusion of the other units.

4.17 **Occupant**, when used in connection with a unit, means a person who uses a unit as his or her place of residence on two or more consecutive days. **Occupy** means the act of staying overnight in a unit.

4.18 **Primary Institutional Mortgagee** means that institutional mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other institutional mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.19 **Rules and Regulations** means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4.20 **Voting Group** means a group of members of the Club whose units or parcels are represented by one (1) or more Directors of the Club, as more particularly described in Section 11.7 of the Club Declaration, and in a Supplemental Declaration or amendment to the Club Declaration to be recorded as provided therein.

4.21 **Voting Interests** refers to the arrangement established in the condominium documents by which the owners of each unit collectively are entitled to one vote in Association matters. There are sixty (60) units, so the total number of voting interests is sixty (60) votes.

4.22 **"Voting Representative"** means the representative selected by the Members of this Condominium to be responsible for casting all votes of the unit owners in all Club matters other than the election of Directors.

## 5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 **Survey and Plot Plans.** Attached to this Declaration as part of Exhibit "B" and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and limited common elements.

Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and limited common elements, and their relative locations and dimensions.

5.2 **Unit Boundaries.** Each unit shall include that part of the building in which the unit is located that lies within the following boundaries:

(A) **Upper and lower boundaries.** The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:

(1) **Upper boundaries.** The horizontal plane or planes of the unfinished lower surface of the ceiling of the unit.

(2) **Lower boundaries.** The horizontal plane of the unfinished upper surface of the concrete floor of the unit.

(B) **Perimeter boundaries.** The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard walls bounding the unit as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.

(C) **Interior walls.** No part of the non-structural interior partition walls within an unit shall be considered part of the boundary of a unit, but shall be considered part of the unit.

(D) **Apertures.** Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and the frames thereof. Therefore, windows, doors, screens and all frames, casings and hardware therefor, are excluded from the unit.

(E) **Utilities.** The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except the provisions of Section 5.2(D) above shall control over Exhibit "B".

## 6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

**6.1 Shares of Ownership.** The Condominium contains sixty (60) units. The owner of each unit also owns a one sixtieth (1/60th) undivided share in the common elements and the common surplus.

**6.2 Appurtenances to Each Unit.** The owner of each unit has certain rights and owns a certain interest in the condominium property, including without limitation the following:

- (A) An undivided ownership share in the Land and other common elements of the Condominium and the common surplus of the Association, as specifically set forth in Section 6.1 above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "C" and "D" respectively.
- (C) Membership in the Club with all rights and obligations provided in the Club Declaration.
- (D) Non-voting membership in the Heritage Bay Umbrella Association, Inc., with all rights and obligations provided in the Umbrella Declaration.
- (E) The exclusive right to use the limited common elements reserved for the unit, and the non-exclusive right to use the common elements. These use rights are subject to the use restrictions set forth in the governing documents, and to the rules of the Association.
- (F) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (G) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "condominium parcel."

**6.3 Use and Possession.** A unit owner is entitled to exclusive use and possession of his unit. He is entitled to use the common elements and common areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other unit owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and limited common elements shall be governed by the condominium documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

## 7. COMMON ELEMENTS; EASEMENTS.

**7.1 Definition.** The term "common elements" means all of the condominium property that is not included within the units, and includes without limitation the following:

- (A) The Land.
- (B) All portions of the buildings and other improvements on the Land not included within the

units, including limited common elements.

(C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.

(D) An easement of support in every portion of the condominium property that contributes to the support of a building or structure.

(E) The property and installations required for furnishing utilities and other services to more than one unit or to the common elements.

**7.2 Easements.** Each of the following easements and easement rights is reserved through the condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this Section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of unit owners with respect to such easements.

(A) Utility and other easements. The Association has the power, without the joinder of any unit owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. This power also includes a limited power to convey easements, as provided for in Chapter 73, Florida Statutes. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.

(B) Encroachments. If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the unit owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

(C) Ingress and egress. A non-exclusive easement shall exist in favor of each unit owner and occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.

(D) Construction; maintenance. The Developer (including its designees and contractors) shall have the right to enter the condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the condominium property by the unit owners.

(E) Sales activity. For as long as it holds any unit in the Condominium for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements in order to establish modify, maintain and utilize, as it and they deem appropriate, model units and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model units or the common elements to prospective purchasers or tenants, erect on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the Condominium.

(F) The easements and rights described in (D) and (E) above shall terminate upon the sale of all units in the Condominium to purchasers other than a successor Developer.

**7.3 Restraint Upon Separation and Partition.** The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and passes with the title to the unit, whether separately described or not. No owner may maintain an action for partition of the common elements. A unit owner's interest in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to his unit.

## 8. LIMITED COMMON ELEMENTS.

**8.1 Description of Limited Common Elements.** Certain common elements have been or may be designated as limited common elements, reserved for the use of a particular unit or units, to the exclusion of the other units. The limited common elements and the units to which their exclusive use is appurtenant are as described in this Declaration, and as further shown on the attached survey and plot plan.

(A) Covered Parking Spaces. There are shown in Exhibit "B" certain covered parking spaces as limited common elements. The exclusive right to use each covered parking space is assigned as an appurtenance to the unit bearing the same number.

(B) Air Conditioning and heating equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, are limited common elements.

(D) Lanai. The airspace comprising a lanai attached to and serving exclusively a unit is a limited common element.

(E) Storage Areas. Certain storage areas are shown on the survey and plot plan as limited common elements. Each unit has been assigned to the exclusive use of a certain storage area as identified on the survey and plot plan. No unit may be assigned or acquire the use of more than one storage area.

(F) Others. Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the unit owner, shall be deemed a limited common element, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware, locks and frames therefor.

**8.2 Exclusive Use.** The exclusive right to use a limited common element is an appurtenance to the unit or units to which that right is designated or assigned. The use right passes with the unit, whether separately described or not, and cannot be separated from it.

**9. ASSOCIATION.** The operation of the Condominium is by Terrace II at Heritage Bay Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

**9.1 Articles of Incorporation.** A copy of the Articles of Incorporation of the Association is attached as Exhibit "C".

**9.2 Bylaws.** The Bylaws of the Association shall be the Bylaws attached as Exhibit "D," as they are amended from time to time.

**9.3 Delegation of Management.** The Board of Directors may contract for the management and maintenance of the condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

**9.4 Membership.** The members of the Association are the owners of record legal title to the units, as further provided in the Bylaws.

**9.5 Acts of the Association.** Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the Condominium Act or the condominium documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

**9.6 Powers and Duties.** The powers and duties of the Association include those set forth in the Condominium Act and in the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the condominium property and association property. The Association may impose reasonable fees for use of common elements or association property. The Association has the power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the unit owners.

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

**9.8 Purchase of Units.** The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.



**9.9 Acquisition of Property.** The Association has the power to acquire property, real or personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in 9.8 above, the power to acquire interests in real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

**9.10 Disposition of Property.** Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the Board of Directors, without need for authorization by the unit owners.

**9.11 Roster.** The Association shall maintain a current roster of names and mailing addresses of unit owners. A copy of the roster shall be made available to any member upon request.

**9.12 Approval of Certain Litigation.** Notwithstanding any other provisions of the governing documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the voting interests of the Association prior to paying or incurring any obligation to pay any legal fees to any person engaged by the Association for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) the collection of assessments;
- (B) the collection of other charges which members are obligated to pay;
- (C) the enforcement of the condominium documents;
- (D) the enforcement of the rules and regulations of the Association;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Association or its members; or
- (F) the filing of a compulsory counterclaim.

**10. ASSESSMENTS AND LIENS.** The Association has the power to levy and collect assessments against each unit and unit owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

**10.1 Common Expenses.** Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and association property, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted to fund reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors enters into a contract for pest control or cable television services in bulk for all units, the cost of such services shall be a common expense.

**10.2 Share of Common Expenses.** The owner of each unit is liable for a share of the common expenses of the Association equal to his share of ownership of the common elements and the common surplus, as set forth in Section 6.1 above.

**10.3 Ownership.** Assessments collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner has the right to withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

**10.4 Liability for Assessments.** The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 20.3 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all monies owed by the transferor, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee.

**10.5 No Waiver or Excuse from Payment.** The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit for which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as provided below as to certain mortgagees.

**10.6 Application of Payments; Failure to Pay; Interest.** Assessments and installments thereon paid on or before ten (10) days after the due date shall not bear interest, but all sums not paid by the tenth (10th) day shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for the assessments or installments, on the date established in the Bylaws or otherwise set by the Association for payment. The Association may impose a late payment fee, in addition to interest, as allowed by law. All payments on account shall be applied first to interest, then to late payment fees and attorney's fees and costs, and finally to unpaid assessments as required by law. No payment by check is deemed received until the check has cleared.

**10.7 Acceleration.** If any special assessment or quarterly installment of regular assessments as to a unit becomes more than thirty (30) days past due and a Claim of Lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment and all special assessments for the current fiscal year as if the balance had originally been due on the date the Claim of Lien was recorded. The Association's Claim of Lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, attorneys' fees and costs as provided by law; and said Claim of Lien shall not be satisfied or released until all sums secured by it have been paid. The right to accelerate is exercised by sending to the delinquent owner a notice of the exercise, which notice shall be sent by certified or registered mail to the owner's last known address, and shall be deemed given upon mailing of the notice, postpaid. The notice may be given as part of the notice of intent to foreclose required by Section 718.116 of the Condominium Act, or may be sent separately.

**10.8 Liens.** The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and reasonable attorney's fees and costs incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner,

the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

**10.9 Priority of Lien.** Except as otherwise provided by law, the Association's lien for unpaid assessments is subordinate and inferior to the lien of any recorded first mortgage, unless the Association's Claim of Lien was recorded before the mortgage. The Association's lien is superior to, and takes priority over, any other mortgage or lien regardless of when the mortgage or claim of lien was recorded. Any lease of a unit is subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

**10.10 Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

**10.11 Certificate as to Assessments.** Within fifteen (15) days after request by a unit owner, unit purchaser or mortgagee, the Association shall provide a certificate stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

**10.12 Statutory Assessment Guarantee; Liability of Developer for Common Expenses.** The Developer guarantees that from the recording of this Declaration, until December 31, 2006, or such earlier date as unit owners other than the Developer first elect a majority of the Directors of the Condominium Association (the "turnover date"), assessments against unit owners for common expenses will not exceed \$585.00 per quarter. If the turnover date has not occurred by December 31, 2006, the Developer further guarantees that from January 1, 2007, until the first to occur of December 31, 2007, or the turnover date, assessments for common expenses against each unit will not exceed \$672.75 per quarter. If the turnover date has not occurred by December 31, 2008, the Developer further guarantees that from January 1, 2008, until the turnover date, assessments for common expenses against each unit will not exceed \$773.66 per quarter. During this guarantee period, the Developer and units owned by the Developer shall be exempt from the payment of assessments for common expenses. The Developer shall, however, be obligated to fund any deficit caused by the failure of assessments at the guaranteed level receivable from other unit owners to meet the common expenses incurred by the Association.

**11. MAINTENANCE; LIMITATIONS UPON ALTERATIONS AND IMPROVEMENTS.** Responsibility for the protection, maintenance, repair and replacement of the condominium property, and restrictions on its alteration and improvement shall be as follows:

**11.1 Association Maintenance.** The Association is responsible for the protection, maintenance, repair and replacement of all common elements and association property (other than the limited common elements that are required elsewhere herein to be maintained by the unit owner). The cost is a common expense. The Association's responsibilities include, without limitation:

- (A) Electrical wiring up to the circuit breaker panel in each unit.
- (B) Water lines, up to the individual unit cut-off valve.

- (C) Cable television lines up to the wall outlet.
- (D) Main air conditioning condensation drain lines, up to the point where the individual unit drain line cuts off.
- (E) Air-conditioning coolant lines.
- (F) Sewer lines, up to the point where they enter the individual unit.
- (G) The exterior surfaces of the main entrance door to each unit.
- (H) All exterior building walls, including painting, waterproofing, and caulking.
- (I) All building roofs, and skylights (if any).
- (J) Dryer and bath fan vents up to the point where they enter the unit.

The Association's responsibility does not include interior wall switches or receptacles, plumbing fixtures, or other electrical, plumbing or mechanical installations located within a unit and serving only that unit. All incidental damage caused to a unit or limited common elements by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association, which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be a common expense unless the need for the work was caused by the unit owner. Regardless of the foregoing, the Association shall not be responsible for incidental damage to any alteration or addition to the common elements made by a unit owner or his predecessor in title.

**11.2 Unit Owner Maintenance.** Each unit owner is responsible, at his own expense, for all maintenance, repairs, and replacements of his own unit and of certain limited common elements. The owner's responsibilities include, without limitation:

- (A) All screens, windows, window glass, and related hardware and frames.
- (B) The entrance door to the unit and its interior surface.
- (C) All other doors within or affording access to the unit.
- (D) The electrical, mechanical and plumbing fixtures, switches, valves, drains and outlets (including connections) located partially or entirely within the unit and serving only the unit.
- (E) The circuit breaker panel and all electrical wiring going into the unit from the panel.
- (F) Appliances, built-in cabinets, water heaters, smoke alarms and vent fans.
- (G) All air conditioning, and heating equipment, thermostats, ducts and related installations serving the unit exclusively, regardless of where located, except the concrete pad on which air conditioning compressors are located, and all coolant lines located outside the units which are common elements.
- (H) Carpeting and other floor coverings.

