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DECLARATION OF CONDOMINIUM  
OF

CHARDONNAY AT THE VINEYARDS, a Condominium

MADE this 3<sup>rd</sup> day of August, 1989, by CHARDONNAY JOINT VENTURE, a Florida general partnership, 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 or has a contractual interest in certain real property located in Collier County, Florida, as more particularly described on Page A-1 of Exhibit "A" (hereinafter the "Land"). Developer acquired fee simple title to a portion of the Land through Warranty Deed recorded June 7, 1988, and recorded in Official Record Book 1355, Page 1863, of the Public Records of Collier County, Florida.

2. SUBMISSION STATEMENT. The Developer hereby submits only those portions of the Land described on Pages A-2 of Exhibit "A" as Phase I, 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.

2.1 Covenants Run with Land. 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 shall be amended from time to time, and an agreement to be bound by its terms. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan of condominium ownership.

3. NAME. The name by which this Condominium shall be identified is "CHARDONNAY AT THE VINEYARDS, a Condominium", (the "Condominium"), and it is located at Chardonnay Lane, Naples, Florida 33999, in the Development known as the Vineyards of Naples.

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 "Apartment" has the same meaning as the term "unit" as defined in the Condominium Act.

4.2 "Apartment Owner", "Unit Owner" or "Owner" means any person who owns a record fee simple interest in a unit in this Condominium, except that for purposes of interpreting the use and occupancy restrictions related to units as set forth in Section 12 of this Declaration, in cases where a primary occupant is to be designated for a unit because of the nature of its ownership, these terms refer to the primary occupant and not the record owner.

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

4.4 "Association" means CHARDONNAY AT THE VINEYARDS, INC., a Florida corporation not for profit, the entity responsible for the operation of this Condominium.

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

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

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

4.8 "Family" or "Single Family" shall refer to any one of the following:

(A) One natural person.

(B) Two or more natural persons, 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.

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

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

4.11 "Institutional Mortgagee" means the mortgagee (or its assignee) of a first mortgage against a condominium parcel, which mortgagee is a bank, savings and loan association, private mortgage company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or any agency of the United States of America. The term also refers to any holder of a first mortgage against a condominium parcel, which mortgage is guaranteed or insured, as evidenced by a recorded instrument, by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America or by any other public or private corporation engaged in the business of guaranteeing or insuring residential first mortgage loans, and their successors and assigns.

4.12 "Lease" means the grant by a unit owner of a temporary right of use of the owner's unit for valuable consideration.

4.13 "Limited Common Elements" means and includes those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.14 "Master Association" means the Vineyards Community Association, Inc.

4.15 "Master Declaration" refers to the Declaration of Master Covenants, Conditions and Restrictions for the Vineyards.

4.16 "Occupant" or "Occupy", when used in connection with a unit, means any person who is physically present in a unit on two or more consecutive days, including staying overnight.

4.17 "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.

4.18 "Primary Occupant" means the natural person approved for occupancy when title to a unit is held in the name of more than two or more persons, or by a trustee or a corporation or other entity which is not a natural person.

4.19 "Recreation Area" means the area described on Pages A-5 and A-6 of Exhibit A.

4.20 "Recreation Association" means and refers to the Chardonay Recreation Association, Inc.

4.21 "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.

5. DESCRIPTION OF IMPROVEMENTS: SURVEY AND PLANS:

5.1 Survey and Plot Plans. Attached hereto as Exhibit "B", are surveys of the Land being submitted to condominium ownership, 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 that lies within the following boundaries:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries and as illustrated in Exhibit "B", extended to their planar intersections with the perimeter boundaries:
- (1) Upper Boundaries. In all units located on the floors below the top floor of a building, the upper boundary shall be the horizontal plane of the unfinished lower surface of the ceiling. In all units located on the top floor, the upper boundary shall follow the contour of the interior unfinished surface of the drywall attached to the underside of the roof trusses.
  - (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 walls bounding the unit as shown in Exhibit "B" hereto, extended to their planar 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 apartment shall be considered part of the boundary of a unit.
- (D) Apertures. Where there are apertures in any boundary, including, but not limited to, windows and doors, the perimeter boundaries shall extend to the interior unfinished surfaces of such apertures, and their frameworks thereof. Exterior surfaces made of glass or other transparent material and all framings, casings and hardware therefor, shall be excluded from the unit.

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 5.2(D) above shall control over the survey.

6. CONDOMINIUM PARCELS: APPURTENANCES AND USE:

6.1 Unit Identification. The identification of each unit shall be by number, as indicated in Exhibit "B".

6.2 Appurtenances to Each Unit: Shares of Ownership The owner of each unit shall have certain rights and own a certain interest in the condominium property, including without limitation the following:

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as follows: Each unit owner shall own a one-twenty fourth (1/24th) interest in and to the common elements and common surplus. Provided, however, that when and if Phase II and III are added, each unit owner's proportional share of ownership in the common elements (including the common elements comprising Phase II and Phase III) and common surplus shall be one sixtieth (1/60th) after adding Phase II, and one one hundred twentieth (1/120th) after adding Phase III.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and By-Laws of the Association, attached hereto as Exhibits "C" and "D" respectively.
- (C) The exclusive right to use the limited common elements reserved for the unit, and the right to use the common elements.
- (D) 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.
- (E) Other appurtenances as may be provided in this Declaration and its exhibits.

Each unit, together with 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 Association property 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 nor may any fractional portion of a unit be sold, leased or otherwise transferred. The use of the units, common elements, limited common elements and Association property shall be governed by the condominium documents and (where appropriate) by rules and regulations adopted by the Board of Directors.

7. COMMON ELEMENTS: EASEMENTS.

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

- (A) All portions of the Land which have been submitted to condominium ownership by this Declaration or an amendment hereto.
- (B) All portions of the buildings and other improvements 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 which contributes to the support of a building.
- (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. 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 including future owners in Phase II and Phase III if added to this Condominium, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths. A non-exclusive easement shall exist in favor of each unit owner and occupant including future owners in Phase II and Phase III if added to this Condominium, their respective guests and invitees for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved and used 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 including the construction of Phases 2 and 3, or any part thereof, or any improvements or units located thereon, and for repair, replacement and maintenance purposes where the Association fails to do so, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the unit owners of the condominium property.
- (E) Sales Activity For as long as it holds any unit for sale in the ordinary course of business in Phase I, II or III, the Developer and its designees shall have the right to use, without charge,

any units owned by it, and the common elements and Association property (including, but not limited to, all recreational facilities) in order to establish, modify, maintain and utilize, as it and they deem appropriate, model apartments and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model apartments of 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 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 shall pass with the title to the unit, whether or not separately described. No action shall lie for partition of the common elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the units.

## 8. LIMITED COMMON ELEMENTS:

8.1 Description of Limited Common Elements. Certain common elements have been 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 use has been designated are as described in this Declaration and as further identified on the attached survey and plot plan. The following common elements are hereby designated as limited common elements:

- (A) Covered Parking - There have been designated in Exhibit "B" certain numbered covered parking spaces or carports as limited common elements. These spaces are assigned to the exclusive use of specific units as shown in Exhibit B. Each unit shall always have the exclusive use of one assigned parking space. The cost of maintenance of all covered parking spaces shall be a common expense.
- (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, shall be limited common elements, and shall be maintained, repaired and replaced solely at the expense of the owner of the unit.
- (C) Terraces - The airspace as shown in Exhibit "B" comprising the area directly in front of each unit (hereinafter the terrace) shall be identified as a limited common element. Each unit shall always have the exclusive use of the terrace located directly in front of that unit and shall be responsible for the day to day cleaning and care of such airspace.
- (D) Balconies. The airspace comprising the screened balcony (sometimes referred to as a "lanai") attached to and serving exclusively each unit, shall be a limited common element. The unit owner shall be responsible for day-to-day cleaning and care and replacement of screens. All exterior painting shall be the responsibility of the Association and shall be a common expense. No porch may be carpeted, covered or enclosed in any way other than as it is enclosed or covered upon the initial purchase from the Developer, nor may storm shutters of any kind be installed, without the prior written approval of the Board of Directors. The maintenance, repair or replacement and insurance

of such approved carpeting, covering, shutters or enclosure shall be the responsibility of the unit owner.

- (E) Others - Any part of the common elements connected to or exclusively serving a single unit, and 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 appurtenant to that unit, whether specifically described above or not. This paragraph includes windows, screens and doors, including all hardware and framings therefor.

8.2 Exclusive Use: Transfer of Use Rights The exclusive use of a limited common element is appurtenant to the unit or units to which it is designated or assigned. The right to such use passes with the unit, whether or not separately described, and cannot be separated from it; except that the use rights to a particular carport or covered parking space may be exchanged or assigned between units by the following procedure:

- (A) The unit owners desiring to exchange such use rights shall submit a written request to the Board of Directors who shall then execute a Certificate of Transfer which shall include the recording data identifying this Declaration and be executed in the form required for the execution of a deed.
- (B) The transfer of rights shall be complete and effective when the certificate is recorded in the Public Records of Collier County, Florida. The cost of recording shall be borne by the unit owners desiring the exchange or transfer.

Unit owners shall also have the right to transfer the use of their assigned carport or covered parking space by renting such space to another unit owner. All such leases shall be in writing and a copy of each lease must be provided to the Condominium Association. The lessee under any such lease shall bear the same responsibilities for the parking garage as unit owners using their own designated space.

9. ASSOCIATION: The operation of the Condominium is by CHARDONNAY AT THE VINEYARDS, INC., a Florida corporation not for profit, which shall perform its function 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 By-Laws The By-Laws of the Association shall be the By-Laws attached as Exhibit "D", as they shall be amended from time to time.

9.3 Delegation of Management The Association may contract for the management and maintenance of the condominium property and authorize a management agent 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, repair and replacement of the common elements and Association property with funds made available by the Association for such purposes. The Association and its officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership The membership of the Association shall be comprised of owners of the units, as further provided in the By-Laws.

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 the condominium documents. The Association may contract, sue, or be sued with respect to the exercise or nonexercise 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 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.

9.9 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.

9.10 Limitation on Liability. Notwithstanding its duty to maintain and repair condominium or association property, the Association shall not be liable to unit owners for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or unit owners or other persons.

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. The power of the Association to levy and collect assessments includes 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 Association's By-Laws. Assessments shall be levied and payment enforced as provided in Section 6 of the By-Laws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair or replacement of the common elements and Association property as well as assessments levied on the Association by the Recreation Association, if any, the expenses of operating the Association and any other expenses properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. The cost of water and sewer service to the units shall be a common expense. If the Board of Directors so determines, the cost of basic cable or satellite television programming to the units shall be a common expense.

10.2 Share of Common Expenses. The common expenses of the Condominium shall be shared by the unit owners in the same proportion as they share ownership of the common elements, as set forth in Section 6.2 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.



10.4 Who is Liable 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 10.11 below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against 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 or Association property, 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 mortgagees and the Developer.

10.6 Application of Payments: Failure to Pay: Interest: Acceleration. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, until paid. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date set by the Association for payment. All payments on account shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, and regular or special assessments, in such manner and amounts as the Board of Directors may determine. No partial payment which bears a restrictive endorsement shall be accepted. No payment by check is deemed received until the check has cleared. In any action under Section 718.116(4)(a) of the Condominium Act the Association shall have the right to accelerate the due date of the entire unpaid balance of the unit's annual assessment for the fiscal year in which the action is brought as if said balance had originally been due on the date suit is brought. 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. Before exercising the right to accelerate the Association shall send to the delinquent owner a notice of intent to do so, 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 as required by Section 718.116 of the Condominium Act, or may be sent separately.

10.7 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 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, including all sums due because of the Association's exercise of the right to accelerate, as provided above. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

10.8 Priority of Lien. Except as otherwise provided by law, the Association's lien for unpaid assessments shall be subordinate and inferior to any recorded first mortgage and any mortgage of which the Developer is the mortgagee, unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when the mortgage was recorded. The Association's lien shall be inferior to any lien of the Master Association. Any lease of a unit shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed.

