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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
SAN RAFAEL**

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PICK-UP

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAN RAFAEL

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made this 14 day of December, 1992 by **SAN RAFAEL BUILDING CORPORATION**, a Florida corporation, hereinafter referred to as Declarant, joined by **SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC.**, a Florida not-for-profit corporation.

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## STATEMENT OF BACKGROUND

A. Definitions of defined terms are set forth in Article II.

B. Declarant intends, but is not obligated, to develop San Rafael, according to the Plat thereof recorded in the Public Records of Collier County, Florida on even date herewith, herein referred to as San Rafael, located within the Vineyards subdivision.

C. San Rafael is subject to the Master Declaration of the Vineyards, recorded in OR Book 1284, Page 1938, as amended and restated in OR Book 1763, Page 1228, Public Records of Collier County, Florida. The Master Declaration provides for its enforcement by the Master Association. Each owner of a unit or lot in the Vineyards is a member of the Master Association.

D. Declarant is the equitable owner of Lot 1 in San Rafael, hereinafter referred to as the Initial Property, and anticipates that it will improve said property and San Rafael Lots to be acquired by Declarant in the future with zero lot line homes.

E. In addition to the Master Declaration and Master Association, other covenants and restrictions and other associations may be imposed on a neighborhood by Declarant.

F. San Rafael will be encumbered by both the Master Declaration and this Declaration and will be governed by both the Master Association and the San Rafael Association.

## STATEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS:

Declarant declares that the Initial Property and any and all additional property which is hereinafter subjected to this Declaration shall be held, transferred, sold and conveyed subject to the following covenants, conditions, restrictions and easements set forth in this Declaration, which shall run with the property, be part of such property and inure to the benefit of, and be enforceable by, each Owner and their successors in title.

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## ARTICLE I INTENT OF DECLARATION

This Declaration shall be binding on the Property.

This Declaration is intended to provide for the preservation and enhancement of the value, desirability and attractiveness of the Properties by imposing mutually beneficial covenants, conditions, restrictions and easements on the Properties. This Declaration provides a reasonable and flexible procedure for the overall development of the Properties and establishes a method of administration, maintenance, preservation, use and enjoyment of the Properties.

The Properties will be developed in accordance with all applicable approvals granted by the P.U.D. Agreement for the Vineyards, the development orders and all permits and other approvals for the Properties and the Vineyards, as the same may exist from time to time.

## ARTICLE II DEFINITIONS

2.01 "Architectural Review Committee" or "Committee" shall mean the committee formed pursuant to Article XI hereof to maintain the quality and architectural harmony of improvements in San Rafael.

2.02 "Area of Common Responsibility" shall mean and refer to the Common Areas together with those areas which by the terms of this Declaration are the maintenance responsibility of the San Rafael Association, including without limitation maintenance of the exterior of Units. The Areas of Common Responsibility shall also include those areas, if any, which are to be maintained by the San Rafael Association pursuant to a contract entered into by the San Rafael Association and a third party.

2.03 "Articles" shall mean and refer to the Articles of Incorporation of San Rafael Homeowners' Association, Inc. which are filed with the Secretary of State of Florida, as same may be amended from time to time.

2.04 "Assessments" shall mean Base, Special and Individual Assessments, collectively.

2.05 "Base Assessment" shall mean and refer to the assessments levied in accordance with Section 9.02 of this Declaration.

2.06 "Board of Directors" or "Board" shall mean and refer to the governing body of the San Rafael Association.

2.07 "Common Areas" shall mean and refer to those areas of land shown on any plat of San Rafael which are dedicated to or owned by the San Rafael Association, or any other property which is dedicated, conveyed, leased or licensed to the Association, and

which are intended to be devoted to the common use and enjoyment of the Members of San Rafael. Common Area may be dedicated by Supplement. The term "Common Area" shall also include any personal property acquired by the San Rafael Association if said property is designated as Common Area in the bill of sale or instrument transferring same or subsequently declared by the Association or the Declarant to be Common Area. Any land or personal property leased by the Association shall lose its character as Common Area upon the expiration of such lease. Common Areas shall include but not be limited to streets, perimeter walls and entry features.

2.08 "Community Wide Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout the Vineyards. Such standards may be more specifically determined pursuant to the Master Community Documents.

2.09 "County" shall mean Collier County, Florida.

2.10 "Declarant" shall mean and refer to San Rafael Building Corporation, a Florida corporation, and its successors in interest. A person or entity other than the said San Rafael Building Corporation shall be deemed a successor in interest of the Declarant only if specifically so designated in a duly recorded supplemental Declaration, which supplemental Declaration shall specifically state that the rights of the said San Rafael Building Corporation under the aforementioned Agreement have expired, and shall be deemed a successor in interest of Declarant only as to the particular rights or interests specifically designated in the recorded Supplement.

2.11 "Declaration" or "San Rafael Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for San Rafael at the Vineyards.

2.12 "Director" shall mean a member of the Board of Directors elected or designated as such in the Articles or By-Laws.

2.13 "Eligible Holder" is defined in Section 13.2 hereof.

2.14 "Governing Documents" shall mean and refer to the Master Community Documents and the San Rafael Documents.

2.15 "Individual Assessment" shall mean an assessment levied in accordance with Section 9.06 of this Declaration.

2.16 "Institutional Mortgagee" shall mean (a) any generally recognized lending institution having a first mortgage lien upon a Unit in San Rafael including, but not limited to, any of the following institutions: 1. Federal or state savings and loan or building and loan association; a national, state or other bank or real estate investment trust; or mortgage banking company doing business in the State of Florida; or a life insurance company; or a subsidiary of a holding company owning any of the foregoing; or (b) any secondary mortgage market institution: including the Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Housing Administration (FHA) and Veterans Administration (VA) and such other secondary mortgage market institutions as the Board shall hereafter approve in writing which have acquired a first mortgage upon a Unit; or (c) any and

all investors or lenders, or the successors and assigns of such investors or lenders, which have loaned money to Declarant to acquire or to construct improvements upon, the property in San Rafael and who have a mortgage lien of any priority on all or a portion of the property in the San Rafael securing such loan; or (d) such other lenders as the Board shall hereafter approve in writing which have acquired a first mortgage lien upon a Unit; or (e) Declarant.

2.17 "Master Association" shall mean and refer to The Vineyards Community Association, Inc., a Florida not-for-profit corporation, or any successor thereof by whatever name, charged with the duties and obligations set forth in the Master Community Documents.

2.18 "Master Community Documents" shall mean any and all documents, instruments and agreements established by Declarant creating and governing the Vineyards, including, but not limited to, the Master Declaration, the articles of incorporation and by-laws of the Master Association, Design Standards and Guidelines, Community Wide Standards and any procedures, rules, regulations or policies adopted by the Master Association.

2.19 "Master Declaration" shall mean the Amended and Restated Declaration of Master Covenants, Conditions and Restrictions for the Vineyards, recorded in the public records of the County.

2.20 "Members" shall mean and refer to any person or entity holding memberships in the San Rafael Association. All Owners of Units shall be Members; provided, however, that there shall be no more than one (1) Membership for each Unit.

2.21. "Merchant Builder" shall mean and refer to builders who purchase vacant parcels of land to construct residences thereon and are a part of Declarant's organized builder program.

2.22 "Owners" shall mean and refer to the record Owner(s) of fee simple title in a Unit (including Declarant and any Merchant Builders, but specifically excluding any party holding an interest merely as a security for the performance of an obligation). If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, then the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is subject to a written lease with a term in excess of one year and the lease specifically so provides, then upon filing a copy of the lease with the Board of Directors, the lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the San Rafael Association.

2.23 "Property" or "Properties" shall mean and refer to the real property subject to this Declaration.

2.24 "San Rafael" shall mean and refer to the neighborhood constructed on the Property, including but not limited to the Units and the Common Area.



2.25 "San Rafael Association" shall mean and refer to San Rafael Homeowners' Association, Inc., a Florida not-for-profit corporation, its successors and assigns by whatever name, charged with the duties and obligations hereinafter set forth and in the Articles of Incorporation and the By-Laws, copies of which are attached hereto as Exhibits A and B, respectively.

2.26 "San Rafael Documents" shall mean, collectively, any and all documents, instruments and agreements governing San Rafael, including, but not limited to the San Rafael Declaration, the Articles of Incorporation, By-Laws, Design Standards and Guidelines, the San Rafael Standards and any procedures, rules, regulations or policies adopted thereunder by which the San Rafael Association administers San Rafael.

2.27 "San Rafael Expenses" shall mean and include those actual and estimated common expenses incurred or to be incurred by the San Rafael Association to benefit primarily the Owners of Units within San Rafael.

2.28 "San Rafael Representative" shall mean the individual permitted to vote on behalf of and represent the Members on Master Association matters.

2.29 "San Rafael Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout San Rafael. Such standards may be more specifically determined by the Board of Directors of the San Rafael Association, but shall in no event be less restrictive than the Community Wide Standards.

2.30 "Special Assessments" shall mean an assessment levied in accordance with Section 9.05 of this Declaration.

2.31 "Streets" shall mean and refer to any roadway which is constructed by Declarant and dedicated to the San Rafael Association. Streets and all median landscaping and specially surface treatments such as, but not limited to, pavers or stamped concrete shall be Common Area.

2.32 "Supplement" shall mean a written amendment or supplement to this Declaration executed by or consented to by Declarant for the purpose of subjecting additional property to this Declaration; or for assigning or designating a portion of the property for a particular use or value; or for such other purpose or purposes permitted elsewhere in this Declaration; in order to modify these restrictions as they apply to a portion of San Rafael; or in order to impose, expressly or by reference, additional restrictions and obligations on all or any portion of San Rafael.

2.33 "Units" shall mean a portion of San Rafael, whether developed or undeveloped, intended for development, use, and occupancy as residential dwelling units and shall, unless otherwise specified, include within its meaning vacant land intended for development. The term shall include all portions of the lot owned as well as any structure thereon. Each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be

deemed to contain the number of Units designated for such parcel on the current site plan approved by the Architectural Control Committee of the Vineyards and the local governmental entity having jurisdiction of San Rafael, until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction, after which time the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above, and the number of Units on the remaining land, if any, shall continue to be determined in accordance with this Section.

2.34 "Vineyards" shall mean the real property which is subject to the Master Declaration pursuant to the terms thereof.

**ARTICLE III  
GENERAL PLAN FOR DEVELOPMENT;  
SAN RAFAEL PROPERTY; SUPPLEMENTS**

3.01 Plan for Development.

(a) General. Declarant presently plans to develop San Rafael as zero lot line single family homes. Declarant also has the right to develop a portion of San Rafael as Common Areas, which may include, without limitation, streets, entry signs, lighting and landscaping. Declarant makes no representation or warranties of any kind or nature that it will construct zero lot line homes or any Common Areas in San Rafael. Declarant reserves to itself the right, in its sole discretion, to develop San Rafael in any manner it desires, in accordance with the requirements of the Architectural Control Committee of the Vineyards and the local governmental entity having jurisdiction of San Rafael.

(b) Declaration, San Rafael Association. This Declaration is not a declaration of condominium. No portion of San Rafael is submitted by this Declaration to the condominium form of ownership. Declarant has caused the San Rafael Association to be formed to perform certain administrative and operational functions regarding San Rafael as set forth more fully in the San Rafael Documents. The San Rafael Association is not a condominium association and therefore shall not be governed by the provisions of Chapter 718, Florida Statutes. The expressed intent of the San Rafael Documents is that the substantive rights hereunder shall not be affected by legislation subsequent to the date of the execution of the San Rafael Documents.

3.02 Property. Declarant shall have the right by a Supplement to change the use of any portion of San Rafael subject only to the approval of the Owner of the property. Additionally, Declarant reserves the right by a Supplement to determine that any portion of San Rafael is no longer subject to this Declaration, subject only to the consent of the Architectural Control Committee of the Vineyards and the local governmental entity having jurisdiction of San Rafael; provided, however, that any such withdrawal is not unequivocally contrary to the overall, uniform scheme of development of San Rafael. In addition to the initial property subject to this Declaration, any property which Declarant shall acquire within San Rafael shall be automatically subject to this Declaration.

3.03 **Supplements.** Declarant shall have the right, alone and in its sole discretion, to execute and record in the Office of the Clerk of the Circuit Court of the County, a Supplement containing provisions which (a) assign a specific use to any portion of San Rafael; (b) modify the provisions of this Declaration as they apply to all or any portion of San Rafael; (c) create new provision to this Declaration as they apply to all or any portion of San Rafael; (d) withdraw the applicability of any of the provisions of this Declaration; and (e) do anything else permitted by this Declaration.

**ARTICLE IV  
LAND USE WITHIN SAN RAFAEL  
AND COMMON AREAS**

4.01 Land Use Within San Rafael.

(a) In general, Declarant may, in its sole and absolute discretion, establish any use for the property located in San Rafael which is consistent with the terms of this Declaration, the Master Declaration, the P.U.D. Agreement covering the Vineyards and applicable governmental orders, approvals, permits and regulations. The Property shall be subject to the use restrictions set forth in the Master Declaration and the design standards and guidelines adopted by the New Construction Committee (as defined in the Master Declaration) of the Master Association as the same may be supplemented by additional guidelines and standards adopted by the New Construction Committee (as defined in the Master Declaration) of the Master Association.

(b) Replacements, Repairs and Alterations. All replacements, repairs and other alterations to any of the Units within San Rafael must be consistent with the original design of the Unit, this Declaration and the Master Declaration.

4.02 Common Areas. The Common Areas shall be those areas specifically designated by Declarant as exclusively or primarily for use by Owners of Units. Declarant shall, at any time prior to the termination of its Class B Membership, convey and transfer (or cause to be conveyed or transferred) to the San Rafael Association, and the San Rafael Association shall accept, all of the Common Areas. Each owner acknowledges that certain portions of San Rafael may be conveyed to the Master Association as Common Area or Neighborhood Common Area (as those terms are defined in the Master Declaration).

THE SAN RAFAEL ASSOCIATION SHALL ACCEPT "WHERE IS, AS IS" THE CONVEYANCE OF SUCH COMMON AREA 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 OR FURNITURE WHICH HAS BEEN OR WILL BE USED IN SUCH COMMON AREAS, EXCEPT AS SET FORTH HEREIN. BY ACCEPTANCE OF AN INTEREST IN ANY

COMMON AREA OR THE DEED TO ANY UNIT, THE SAN RAFAEL ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT AND CLAIM SHALL BE MADE BY THE SAN RAFAEL ASSOCIATION OR ANY OWNER RELATING TO THE CONDITION, OR COMPLETENESS OF COMMON AREAS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING THEREFROM. All costs and expenses of any conveyance of any property by Declarant to the San Rafael Association shall be paid for by the San Rafael Association.

## ARTICLE V MEMBERSHIP AND VOTING RIGHTS

5.01 Membership. Every Owner, Merchant Builder and the Declarant, so long as they own Units, shall be members of the San Rafael Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit which is subject to Assessment by the San Rafael Association. Members' rights, powers, duties and privileges shall be as set forth in the Articles of Incorporation, By-Laws, this Declaration and any Supplement.

The San Rafael Association shall have two (2) classes of membership: (a) Class "A" Members, and (b) Class "B" Members as follows:

(a) Class "A". Class "A" Members shall be all Owners of Units within San Rafael other than the Class "B" Member.

(b) Class "B". The Class B Member shall be the Declarant. The Class "B" Membership shall terminate and be converted to Class "A" Membership on the earlier of (i) the date when the total votes associated with the Class A Membership exceed the total votes associated with the Class B Membership, (ii) December 31, 2002, or (iii) such earlier date as Declarant in its sole discretion establishes by Supplement.

### 5.02 Voting.

(a) Class "A" Members.

(i) Number of Votes. Class "A" Members shall be entitled to one (1) vote for each Unit owned by the respective Class "A" Member provided, however, there shall be only one (1) vote per Unit.

(b) Class "B" Member. The Class "B" Member shall be entitled to three (3) votes for each Unit owned by the Class B Member. After termination of the Class B Membership, the Declarant shall be a Class A Member entitled to one (1) vote for each Unit owned. So long as Declarant or a Merchant Builder owns one (1) or more Units, Declarant shall have a right to disapprove actions of the Board of Directors and any committee.

(c) Joint Ownership, Corporations. Voting rights may be exercised by a Member or the Member's spouse, subject to the provisions of this Declaration and the By-Laws. In any situation where more than one Person holds an interest in a Unit, the vote for the respective Unit shall be exercised by any such Person; provided, however, the Persons holding the interest in the Unit can

notify the secretary of the San Rafael Association, in writing, prior to or during any meeting of the manner in which the vote for the Unit is to be exercised, and in the absence of such notice, the Unit's vote shall be suspended if more than one Person seeks to exercise it. The voting rights of a Member that is a corporation, partnership or other entity shall be exercised by the individual designatee from time to time by the Owner in a written instrument provided to the secretary, subject to the laws of the State of Florida.

5.03 Declarant Director and Veto Rights.

(a) Declarant Director. So long as Declarant or any Merchant Builder owns one (1) or more Units or any portion of San Rafael for development or for sale in the ordinary course of business, the Declarant shall be entitled to appoint one (1) additional director to the Board of Directors.

(b) Veto Power. So long as the Declarant is entitled to appoint at least one (1) member to the Board, the Declarant shall have a right to disapprove actions of the Board and any committees, as is more fully provided in this Section. This right shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument, or who become a successor Declarant pursuant to a recorded assignment or court order. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until ten (10) days following the meeting held pursuant to the terms and provisions hereof. At any time prior to the expiration of such ten (10) day period, the Declarant may exercise its right to disapprove actions of the Board and any committees and the San Rafael Association shall not take any action or implement any policy, program or rule or regulation previously approved by the San Rafael Association.

This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the San Rafael Association. The Declarant shall not use its right to disapprove to reduce the level of services which the San Rafael Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

This Section may not be amended without the express, written consent of the Declarant.

5.04 Neighborhood Representative. As provided in the Master Declaration, voting on Master Association matters will be conducted through the San Rafael Association, and Members will have no power to vote on Master Association matters other than through their San Rafael Association. The San Rafael Representative shall, on behalf of Members, cast the votes of Members on Master Association matters. The San Rafael Representative shall be the senior officer of the San Rafael Association, and in his absence the next most senior officer may fulfill the functions of the San Rafael Representative. The San Rafael Representative shall cast the votes which such representative represents (votes of non-Declarant Members) in such manner as such representative may, in such representative's sole and reasonable discretion, deem

appropriate, acting on behalf of all of the Members; provided, however, that in the event that at least fifty-one percent (51%) of the voting power in attendance at any duly constituted meeting of the Members shall instruct the San Rafael Representative as to the manner in which such representative is to vote on any issue, then such representative shall cast all of the voting power of the Members in the same proportion, as nearly as possible without counting fractional votes, as the Members shall have, in person or by proxy, cast their voting power in favor of or in opposition to such issues. The San Rafael Representative shall not be entitled to vote on behalf of Units owned by the Declarant. The Declarant, so long as it owns one (1) or more Units, shall be entitled to directly cast votes on behalf of Units which it owns on Master Association matters. The San Rafael Representative shall have the authority, but not the obligation, in the San Rafael Representative's sole discretion, to call a special meeting of the Members in the manner provided in the By-laws for the purpose of obtaining instructions as to the manner in which such representative is to vote on any issue to be voted on by the Members of the Master Association. It shall be conclusively presumed for all purposes of Master Association business that the San Rafael Representative in casting votes for the Members has acted within the authority and consent of the Members.

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## ARTICLE VI MAINTENANCE

### 6.01 San Rafael Association Responsibility

(a) General Maintenance. The San Rafael Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Areas of Common Responsibility and keep the Areas of Common Responsibility in good repair and in accordance with the San Rafael Standards, Community Wide Standard and the Governing Documents. This obligation shall include, without limitation, maintenance, repair and replacement of streets, landscaping and entry features which are Common Area, exterior maintenance and repair of all lawns and landscaping on the Unit, drainage and irrigation facilities, common lighting mechanisms and painting and cleaning of the exterior surfaces of residential units and their roofs.

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

6.03 Entry Rights and Liability. The San Rafael Association, and the Master Association in the event that the San Rafael Association fails to do so, shall have the right, but not the obligation, for itself, its designee, or any agent or employee, to enter upon any property within San Rafael to carry out the provisions of this Declaration and same shall not constitute a trespass. Neither the San Rafael Association, nor the Master Association, shall be liable for any action taken under this Section and each Owner of a Unit agrees for itself and its family members to hold harmless the San Rafael Association, the Master Association, and their officers, directors, agents and employees from any action undertaken pursuant to this Section.

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6.04 Owner's Responsibility. Each Owner of a Unit shall maintain his or her Unit in good repair and in a neat and attractive condition in accordance with the San Rafael Standards, the Community Wide Standards and the Governing Documents. No Owner shall take any action which (a) increases the maintenance responsibility of the San Rafael Association, (b) causes the San Rafael Association's insurance premiums to increase, or (c) interferes with the San Rafael Association's maintenance or operational responsibilities. If any Owner fails to perform his or her maintenance responsibility in accordance with this Section, the San Rafael Association may perform it and assess all costs incurred against the Unit and the Owner thereof as an Individual Assessment. Prior to entry, the San Rafael Association shall afford the Owner reasonable notice and an opportunity to remedy the situation, except when entry is required due to an emergency. THE SAN RAFAEL ASSOCIATION SHALL NOT BE RESPONSIBLE FOR STRUCTURAL REPAIRS TO ANY UNIT.

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

6.06 Implied Rights. The San Rafael Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

**ARTICLE VII  
EASEMENTS AND OTHER RIGHTS**

7.01 Easements to Use Common Area. All Owners shall have a non-exclusive easement to use and enjoy the Common Areas, subject to the terms of the Governing Documents, including parking and traffic regulations adopted by the Master Association or the San Rafael Association, payment of use or access fees or other charges reasonably imposed by the San Rafael Association and subject to any restrictions or limitations contained in any instrument conveying such property to the San Rafael Association. Any Owner may delegate his or her right of enjoyment to the members of his or her family, lessees and social invitees, as applicable, subject to the Governing Documents. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the lessee of the Unit.

7.02 Easements for Utilities, Etc. There is hereby reserved unto Declarant so long as the Declarant owns any property within the Vineyards, the Master Association, the San Rafael Association, and the designees of each (which may include, without limitation, Collier County, Florida, and any utility company), blanket easements upon, over, across, and under all of San Rafael for ingress and egress; dispensing pesticides; installation, replacing, repairing, relocating and maintaining roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including but not limited to water, sewer, meter boxes, telephones, gas, electricity and irrigation; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit.

7.03 Easement for Encroachment and Overhang. There shall be a reciprocal appurtenant easement for encroachment and overhang between adjacent Units. Such easement shall be for roof overhangs, and other improvements which were unintentionally placed or have settled or shifted. The easement shall be for a distance of not more than five (5) feet, as measured from any point on the common boundary between the adjacent Units, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment of anything other than an overhang exist if such encroachment occurred due to willful conduct on the part of an Owner or Merchant Builder.

7.04 Additional Easements. The Declarant and the Board of Directors shall have the right to execute, without further authorization, such grants of easement or other instruments as may from time to time be desirable for the development of San Rafael or the Vineyards in general, subject to limitations as to the then existing buildings or other permanent structures or facilities constructed within San Rafael.

**ARTICLE VIII  
INSURANCE AND CASUALTY LOSSES**

8.01 Insurance. The Board of Directors, or its duly authorized agent, shall obtain blanket all-risk casualty insurance, if reasonably available, for all insurable improvements on the



Common Areas. If blanket all-risk coverage is not reasonably available, then at a minimum an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

Insurance obtained by the San Rafael Association shall at a minimum comply with the applicable provisions of Section 11.01 of the Master Declaration, including the provisions applicable to policy provisions, loss adjustment, and all other subjects to which such Article applies. All such policies shall provide for a certificate of insurance to be furnished to the Master Association.

The Board shall also obtain a public liability policy covering the Common Areas, the San Rafael Association and its Members for all damage or injury caused by the negligence of the San Rafael Association or any of its Members or agents. The public liability policy shall have the liability limits established by the Board from time to time.

The Board may also obtain such other insurance policies as it deems appropriate, including, without limitation, Directors and Officers liability insurance and fidelity coverage.

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

8.03 Duty to Maintain Officers' and Directors' Personal Liability Insurance. To the extent obtainable at reasonable cost, in the sole and absolute discretion of the Board, appropriate officers' and directors' personal liability insurance shall be obtained by the San Rafael Association to protect the officers, directors and the Committee members and all other committee members from personal liability in relation to their duties and responsibilities on behalf of the San Rafael Association.

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

8.05 Other Insurance. The San Rafael Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the San Rafael Association's responsibilities and duties.

8.06 Individual Insurance. By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the San Rafael Association that each Owner shall carry blanket all-risk casualty insurance on the Unit(s) and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage resulting in less than total destruction of structures comprising his Unit, the Owner shall remove all debris within sixty (60) days and complete repair or reconstruction of the damaged structure within one (1) year in a manner consistent with the original construction. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds. In the event that the structure is totally destroyed, the Owner may decide not to rebuild or not to reconstruct, in which case the Owner shall clear the Unit of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the San Rafael Association shall continue to maintain the Unit in a neat and attractive condition.

All policies of insurance required by the terms of this Section shall name the San Rafael Association as an additional insured and shall require that the San Rafael Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

8.07 Damage and Destruction.

(a) Filing Claims. Immediately after damage or destruction by fire or other casualty to all or any part of San Rafael covered by insurance written in the name of the San Rafael Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

(b) Repair and Reconstruction. Any damage or destruction to the Common Areas shall be repaired or reconstructed unless (i) the Class B Member (so long as it exists); and (ii) at least seventy-five percent (75%) of the total votes eligible to be cast by the Class A Members shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the San Rafael Association within said period, then the period shall be extended until such funds or information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No Institutional Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed. In the event that it should be determined in the manner described above that the damage or destruction to the Common

Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of San Rafael shall be restored to their natural state and maintained by the San Rafael Association in a neat and attractive condition.

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

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

## ARTICLE IX ASSESSMENTS

9.01 Affirmative Covenant to Pay Assessments. There is hereby imposed upon each Owner and his or her Unit, the affirmative covenant and obligation to pay to the San Rafael Association all Base, Special and Individual Assessments, together with any Assessments imposed by the Master Association. Each Owner, by acceptance of a deed or other instrument of conveyance conveying a Unit, whether or not it is so expressed in such deed or instrument, shall be obligated and agrees to pay all Assessments provided for in this Declaration.

9.02 Creation of Base Assessments. There are hereby created Base Assessments for San Rafael Expenses as the Board of Directors of the San Rafael Association may authorize from time to time.

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

9.04 Computation of Base Assessments. It shall be the duty of the Board of Directors of the San Rafael Association annually to prepare a budget covering the estimated San Rafael Expenses to be incurred by the San Rafael Association. This budget may include a capital contribution establishing a reserve fund for repair and

replacement of capital items within San Rafael, as appropriate. San Rafael Expenses shall be allocated equally among all Units within San Rafael. The Board of Directors shall cause a copy of such budget and notice of the amount of the Base Assessment to be levied on each Unit for the coming year to be delivered at least fifteen (15) days prior to the beginning of the fiscal year to each Owner of a Unit. Such budget and Assessment shall become effective unless disapproved by a majority vote of the total votes eligible to be cast by Members. There shall be no obligation to call a meeting for the purpose of considering the budget except upon a petition of Owners representing at least thirty percent (30%) of the total votes in the San Rafael Association. In the event the proposed budget is disapproved, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

The Base Assessment to be levied for the coming year against each Unit subject to assessment shall be computed by dividing the budgeted San Rafael Expenses by the total number of Units then subject to Assessment and reasonably anticipated to become subject to Assessment during the fiscal year.

9.05 Special Assessments. In addition to the Base Assessments, the Board of Directors may levy, in any Assessment year, without the requirement of a Member vote, a Special Assessment, for the purpose of defraying, in whole or in part, the cost of any unanticipated construction or reconstruction, repair or replacement of any property owned by the San Rafael Association or any other unbudgeted expenses of the San Rafael Association. Notice in writing of the amount of any Special Assessment and the time for payment thereof shall be given promptly to the Owners. Special Assessments pursuant to this Section shall be payable by Owners in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the Assessment year in which the Special Assessment is approved, if the Board so determines.

9.06 Individual Assessments. All monetary fines assessed against an Owner pursuant to the San Rafael Documents, or any expense of the San Rafael Association which is the obligation of an Owner or which is incurred by the San Rafael Association on behalf of the Owner pursuant to the San Rafael Documents, shall be an Individual Assessment and shall become a lien against such Owner's Unit which may be foreclosed or otherwise collected as provided herein. Notice of the amount and due date of such Individual Assessments shall be sent to the Owner subject to such Assessment.

9.07 Declarant's Obligation for Assessments. Beginning on the date of the recordation hereof, and continuing until termination of the Class B Membership, Declarant may, in its sole discretion, elect not to pay Base Assessments on Units it owns, but pay the difference, if any, between the amount of Base Assessments payable by Owners other than Declarant and the actual San Rafael Expenses. If Declarant determines not to pay the difference between the amount of Base Assessments payable by Owners other than Declarant and the actual San Rafael Expenses, then Declarant shall pay Base Assessments as any other Owner pays for Units. Unless

Declarant otherwise notifies the Board, in writing, at least sixty (60) days prior to the end of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as the preceding fiscal year. Declarant's obligations hereunder may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of these.

9.08 Establishment of Lien. Any and all Assessments, together with interest at a rate not to exceed the lesser of (a) the highest rate allowed by applicable usury law, or (b) eighteen percent (18%) per annum, as computed from the date the delinquency first occurs, and such late charges and fines as may be established by the Board of Directors and costs and reasonable attorneys' fees, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which such Assessment is made. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment arose, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no Institutional Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid Assessments prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which by law would be superior thereto, and (2) the lien or charge of any first mortgage of record (meaning any recorded Mortgage with first priority over other mortgages) made in good faith and for value with an Institutional Mortgagee. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure. The San Rafael Association, acting on behalf of its Members, shall have the power to bid for the Unit, as applicable, at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. During the period in which a Unit is owned by the San Rafael Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessments shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessments that would have been charged such Unit had it not been acquired by the San Rafael Association as a result of foreclosure. Suit to recover a money judgment for unpaid Assessments and attorneys' fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.09 Reserve Budget and Capital Contribution. The Board of Directors may annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital contribution in an amount sufficient to permit meeting the projected needs of the San Rafael Association, as shown on the budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required, if any, may be fixed by the Board and included within and distributed with the budget.

9.10 Date of Commencement of Assessments. The obligation to pay the Assessments provided for herein shall commence as to each Unit on the first day of the first month following the date of conveyance of such Unit by the Declarant. The first year's Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Unit.

9.11 Statement of Status of Assessments. Upon ten (10) days' written notice to the Treasurer of the San Rafael Association or the manager and payment of a processing fee set by the San Rafael Association from time to time, not to exceed fifty dollars (\$50), any Owner or Institutional Mortgagee of a Unit may request confirmation from the San Rafael Association setting forth:

(a) The amount of any unpaid Assessments (whether Base, Special, or Individual), interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Unit;

(b) The amount of the current periodic installments of the Base Assessment and the date through which they are paid; and

(c) Any other information deemed proper by the San Rafael Association.

The information contained in such statement, when signed by an officer of the San Rafael Association, shall be conclusive upon the San Rafael Association as to the person or persons to whom such statement is issued and who rely on it in good faith.

Prior to the issuance of such a statement, the San Rafael Association may request the name of any proposed transferee of the Unit and the scheduled closing date. This will permit the records of the San Rafael Association to accurately identify Members.

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

(a) Common Areas; and

(b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets and public parks, if any.

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

**ARTICLE X  
SAN RAFAEL AREA USE RESTRICTIONS**

All Units shall be used only for single family residence purposes as permitted by applicable law, and in accordance with the Master Community Documents and the San Rafael Documents. The San Rafael Association may add to, delete or modify these use restrictions pursuant to an amendment to this Declaration, or any rules and regulations.

10.01 Partition Units. No part of a Unit may be partitioned or separated from any other part thereof except as provided herein. Whether partitioned, combined, or unchanged, each Unit shall be conveyed, transferred, gifted, devised, bequeathed, encumbered, or otherwise disposed of, as the case may be, with all appurtenant rights, obligations and interests created by law or by this Declaration, including the Owner's membership in the San Rafael Association, and the liability for all Assessments. No Unit may be subdivided into two (2) or more Units and no Unit may be combined with one (1) or more additional Unit to form one (1) or more Unit without the written consent of the Board of Directors and after full compliance with all zoning and subdivision regulations.

10.02 Compliance With Insurance Requirements. It shall be the responsibility of the individual Owners, and at their expense, to make arrangements in regard to hazard insurance on the improvements, personal property and furnishings located on their Units, and for public liability insurance covering their Unit. In addition, each Owner may obtain such other and additional insurance coverage on and in relation to his Unit as such Owner concludes to be desirable.

10.03 Damage or Destruction on Units. In the event of damage or destruction to the improvements located on any Unit, the Owner thereof shall promptly repair and restore the damaged improvements to their condition prior to such damage or destruction or, in the event of total destruction to substantially all of the structures on a Unit, the Owner may elect to remove all structures on that Unit and landscape the Unit in accordance with a plan approved by the Committee. If such repair and restoration or removal is not commenced within sixty (60) days from the date of such damage or destruction, then the San Rafael Association may, after notice and hearing as provided in the By-laws, impose a fine of not more than fifty dollars (\$50) per day on the Owner of the Unit until repair and reconstruction or removal is commenced. Each Owner shall diligently and continuously proceed with all repair and reconstruction or removal unless the Owner can prove to the satisfaction of the San Rafael Association that such failure is due to circumstances beyond the Owner's control, the San Rafael Association may, after notice and hearing as provided in the By-laws, impose a fine of not more than fifty dollars (\$50) per day on the Owner of such Unit until repair and reconstruction or removal is recommenced. Such fine shall be an Individual Assessment.

10.04 Abandoned, Inoperable, Commercial or Oversized Vehicles. Abandoned or inoperable automobiles or oversized vehicles of any kind shall not be stored or parked on any portion of the Units. "Abandoned or inoperable vehicle" shall be defined as any vehicle which has not been driven under its own propulsion

for a period of three (3) weeks or longer; provided, however, this shall not include vehicles parked in an enclosed garage or operable vehicles left on the Unit by Owners while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting removal thereof may be personally served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within seventy two (72) hours thereafter, the San Rafael Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner. "Oversized" vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage.

No commercial vehicles, or campers, mobile homes, motorhomes, house trailers or trailers of every other description, recreational vehicles, boats, boat trailers, house trailer or vans shall be permitted to be parked or to be stored on any Unit. For the purposes of this Section, "commercial vehicles" shall mean those which are not designed and used for customary, personal/family purposes. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. The prohibitions on parking contained above in this Section shall not apply to temporary parking of commercial vehicles such as for construction use or providing pick-up and delivery and other commercial services. No parking on lawns shall be permitted.

Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations may be towed by the San Rafael Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The San Rafael Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty or any criminal act, by reason or such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind.

10.05 Trash. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbances.

10.06 Construction Regulations of the San Rafael Standards. All Owners and their contractors shall comply with the construction regulations of the San Rafael Standards, if any, and with any construction regulations adopted, from time to time, by Declarant, the Committee or the Board. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; permissible times of access and construction; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors, Owners and their representatives in San Rafael at any time; the conservation of landscape materials; and fire protection.

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



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

10.09 Pools. No above-ground pools shall be erected, constructed or installed on any Unit.

10.10 Fences. No dog runs, animal pen or fences of any kind will be permitted on any Unit except as approved by the Committee.

Any Unit adjacent to the golf course within the Vineyards shall only be permitted to have opaque fences approved pursuant to the architectural review approval process under both the Master Community Documents and the San Rafael Documents. Illustrations of appropriate fencing material, style and height shall be described in the Design Standards and Guidelines of the NCC as set forth in the Master Community Documents (as those terms are defined in the Master Declaration). The intent of this restriction is to permit open views to the golf course and lakes from roadways within the Vineyards.

10.11 Playground and Basketball Equipment. No jungle gyms, swing sets, or other playground equipment including, but not limited to, basketball hoops and backboards shall be permitted on any Unit.

10.12 Window Coverings. All windows in any building shall have window coverings which have a white or off white backing or blend with the exterior color of the dwelling, as determined in the sole discretion of the Committee. Reflective window coverings are prohibited.

10.13 Nuisance. No obnoxious or offensive activity or nuisance shall be carried on or be permitted to exist within San Rafael nor shall anything be done or permitted which is or may become offensive or detrimental or cause a disturbance or annoyance to any other Unit or its occupants.

10.14 Leasing. The Owner of a Unit shall have the right to lease such Unit subject to the following conditions and the terms of the San Rafael rules and regulations:

(a) All leases shall be in writing and no more than two (2) leases shall be permitted in a fiscal year;

(b) The lease shall be specifically subject to the San Rafael Documents and any failure of the tenant to comply with the San Rafael Documents shall be a default under the lease; and

(c) The Owner shall be liable for any violation of the San Rafael Documents committed by such Owner's tenant, without prejudice to such Owner's right to collect any sums paid from the tenant.

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

10.16 Signs. No sign or advertisement of any kind, including, without limitation, those of realtors, contractors and subcontractors, shall be erected on any Unit unless the same complies with the standards and guidelines established pursuant to the Master Community Documents and has been approved by the Master Association, except as may be required by legal proceedings. The Master Association reserves the right to restrict the size, color, lettering, height, material and location of signs. The San Rafael Association shall have the right to remove signs which fail to comply with standards set by the Master Association and upon prior approval of the Master Association may set more stringent sign requirements for the Units.

## ARTICLE XI ARCHITECTURAL REVIEW COMMITTEE

11.01 Membership. There is hereby established an Architectural Review Committee which shall be responsible for the administration of the San Rafael Standards. The Committee shall be composed of a minimum of three (3) persons, who need not be Members. All of the members of the Committee shall be appointed, removed, and replaced by the Board of Directors.

11.02 Purpose. The Committee shall review and study proposed improvements and review, study and either approve or reject proposed alterations to improvements on the Units, all in compliance with this Declaration and as further set forth in any rules and regulations and the San Rafael Standards as shall be adopted and established and may be amended from time to time by the Board of Directors. Notwithstanding any provision herein, the Committee shall have the power only to review and comment on improvements initially constructed on vacant Units. Sole jurisdiction for approval of such initial construction shall be within the purview of the New Construction Committee described in the Master Community Documents. Said comments shall be provided to the appropriate committee pursuant to its architectural review powers under the Master Community Documents. The Committee shall exercise its best judgment to see that all improvements conform and harmonize with any existing buildings as to external design, quality and type of constructions, materials, color, plat plan, height, grade and finished ground elevation, and all aesthetic considerations herein set forth. The actions of the Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

**11.03 Organization and Operation of Committee.**

(a) The term of office of each member of the Committee, subject to Section 11.1, shall be one (1) year, commencing January 1 of each year, and continuing until his successor shall have been appointed. Should a Committee member die, retire, become incapacitated, or in the event of a temporary absence of a member, a successor may be appointed as provided in Section 11.1.

(b) The chairman shall be appointed by the Board of Directors.

(c) The chairman shall take charge of and conduct all meetings and shall provide for reasonable notice to each member of the Committee prior to any meeting.

(d) The affirmative vote of a majority of the members of the Committee present at a meeting at which a quorum is present shall govern its actions and may be the act of the Committee. A quorum shall consist of a majority of the members.

(e) The Committee may avail itself of technical and professional advice and consultants as it deems appropriate.

**11.04 Expenses.** Except as hereinafter provided, all expenses of the Committee shall be paid by the San Rafael Association. The Committee shall have the right to charge a reasonable filing fee for each application submitted to it for review, in an amount established by the Committee from time to time, which amount is designed to cover the costs of the Committee. The filing fees shall be collected by the Committee and remitted to the San Rafael Association to help defray the expenses of the Committee's operation. The Committee shall not be entitled to charge a filing fee for construction of improvements on vacant Units.

**11.05 Variances.** The Committee may authorize variances from compliance with any of the San Rafael Standards and their procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

**11.06 Limitation of Liability.** The Committee shall use reasonable judgment in approving or disapproving all plans and specifications submitted to it. Neither the Committee, nor any individual member thereof, shall be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Committee or any individual member thereof acted with malice or wrongful intent. Approval by the Committee does not necessarily assure approval by

the appropriate governmental board or commission. Notwithstanding that the Committee has approved plans and specifications, neither the Committee nor any of its members shall be responsible or liable to any Owner, Merchant Builder or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval or failure to approve. Neither the Board, the Architectural Review Committee or any agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of the San Rafael Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Committee shall be defended and indemnified by the San Rafael Association in any such suit or proceeding.

11.07 Approval Required. Any reconstruction, or the refinishing or alteration of any part of the exterior of any building or other improvement on the Units is absolutely prohibited until and unless the Owner or Merchant Builder first obtains approval thereof from the Architectural Review Committee and otherwise complies with the provisions hereof. All improvements shall be constructed only in accordance with the approved plans.

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

11.09 Compliance. Any contractor, subcontractor, agent, employee or other invitee of any Owner who fails to comply with the terms and provisions of the San Rafael Standards and their procedures promulgated by the Committee may be excluded by the Board from the Unit without liability to any person, subject to the notice and hearing procedures contained in the By-laws.

## ARTICLE XII GENERAL PROVISIONS

12.01 Term. The covenants and restrictions of this Declaration shall run with and bind the property subjected to this Declaration, and shall inure to the benefit of and shall be enforceable by Declarant, the Master Association, the San Rafael Association or the Owner of any portion of the property subjected to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by the majority of the then current Owners in San Rafael, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

12.02 Amendment. Until the termination of the Class B Membership, Declarant may unilaterally amend this Declaration. After such termination, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is (a) necessary to bring any provision hereof into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an Institutional Mortgagee to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner thereof shall consent thereto in writing. So long as it still owns any of the property for development or sale in San Rafael, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner. Thereafter or otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the San Rafael Association, including sixty-seven percent (67%) of the votes held by the Class A Members and the Class B Member so long as such membership exists; provided, however, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of the County.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

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

12.04 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of John F. Kennedy.

12.05 Independent Builders. San Rafael is a planned neighborhood within the Vineyards and is being developed by the Declarant. The individual residential units constructed within San Rafael may be constructed by the Declarant, Merchant Builders or by independent contractors. If the residential unit is constructed by a person or entity other than the Declarant, the Declarant shall have no liability whatsoever for the builder's activities, whether direct or indirect, including, without limitation, marketing or construction of the unit or actions of any principal, officer, director, partner, agent or subcontractor.

12.06 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the San Rafael Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Members of the San Rafael Association. This Section shall not apply, however, to: (a) actions brought by the San Rafael Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the San Rafael Association in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against Declarant, then the San Rafael Association shall assess all Members of the San Rafael Association, other than the Declarant, for the costs of claim or litigation, including without limitation attorneys' fees incurred, and funds from any Assessments shall not be used for any such claim or litigation. The prevailing party shall be entitled to recover as part of the award all such advanced costs and reasonable attorneys' fees and related costs, fees or expenses of such claim or litigation. In the event the Declarant is the prevailing party, the San Rafael Association shall levy a Special Assessment against all Owners of Units in San Rafael, other than the Declarant, for the Declarant's cost for any such claim or litigation. This provision shall not be amended unless such amendment is made by the Declarant or is approved by the percentage of votes and pursuant to the same procedures necessary to institute proceedings as provided above.

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### ARTICLE XIII MORTGAGEE RIGHTS

13.01 General. The following provisions are for the benefit of holders, insurers or guarantors of first mortgages on Units. To the extent applicable, necessary or proper, the provisions of this Article apply to this Declaration, the Articles and the By-Laws.

13.02 Notices of Action. A holder, insurer or guarantor of a first mortgage, who provides written request to the San Rafael Association (such request to state the name and address of such holder, insurer or guarantor and identification of the Unit), shall be an "eligible holder" (hereinafter "Eligible Holder") and shall be entitled to timely written notice of:

(a) An Owner's default in performance of any obligation under the San Rafael Documents, including any delinquency in the payment of Assessments or charges owed by an Owner of a Unit subject to a first mortgage held, insured or guaranteed by such Eligible Holder (or any Institutional Mortgagee) which continues for a period of sixty (60) days;

(b) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the San Rafael Association; or

(c) Any proposed action which would require the approval of a specified percentage of Eligible Holders, as required in Sections 13.03 and 13.04.

**13.03 Eligible Holders' Approval of Amendments to Documents.** To the extent permitted by Florida law, the following approvals shall be required:

(a) The approval of sixty-seven percent (67%) of the Eligible Holders of mortgages on Units subject to Eligible Holder mortgages shall be required to terminate the legal status of the San Rafael Association; and

(b) The approval of at least fifty-one percent (51%) of the Eligible Holders of mortgages on Units subject to Eligible Holder mortgages shall be required to add to or amend any material provisions of the San Rafael Documents which establish, provide for, govern or regulate any of the following (an addition or amendment shall not be deemed material if it is for the purpose of correcting technical errors or for clarification):

- (a) Voting;
- (b) Assessments, Assessment liens, subordination of such liens;
- (c) Insurance or fidelity bonds;
- (d) Any provisions which are for the express benefit of mortgagees;
- (e) Boundaries of any Unit; or
- (f) Leasing of Units.

**13.04 Other Approval Requirements.** Unless at least sixty-seven percent (67%) of the Institutional Mortgagees (based on one (1) vote for each first mortgage owned) have given their prior written approval, the San Rafael Association shall not be entitled to:

(a) Change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;

(b) By act or omission, change, waive or abandon any scheme of regulations or enforcement thereof, pertaining to the architectural design or the exterior appearance of improvements on Units, provided, however, the issuance and amendment of the San Rafael Standards by the Committee or the issuance and amendment of architectural standards, procedures, rules and regulations or use restrictions shall not constitute a change, waiver or abandonment within the meaning of this provision;

**13.05 Approval Deemed Given.** If approval of an Eligible Holder or Institutional Mortgagee is requested in writing pursuant to this Article and a negative response is not received by the San Rafael Association within thirty (30) days after such Eligible Holder's or Institutional Mortgagee's receipt thereof, then such Eligible Holder or Institutional Mortgagee shall be deemed to have given its approval.

**ARTICLE XIV  
SHARED AREAS AND FACILITIES**

14.01 General. The Plat of San Rafael comprehends a subdivision of lands situated between Silver Oaks Drive and The Vineyards Country Club, consisting of twenty-five residential building sites, hereinafter referred to as the Lots, on either side of a private road designated as San Rafael Lane, hereinafter referred to as the Roadway. Declarant expects, but shall not be obligated, to install entrance features, walls and/or fences, lighting components, landscape plantings and irrigation systems along portions of Silver Oaks Drive, the Roadway, and the perimeter of San Rafael other than the boundary which abuts The Vineyards Country Club.

14.02 Easements. The Plat reflects that the following Easements are dedicated for Utilities and/or Drainage:

- (a) Easement 10 feet in width along Silver Oaks Drive;
- (b) Easement 10 feet in width along each side of the Roadway;
- (c) Easement 5 feet in width along the Westerly boundary of Lots 16 and 17; and
- (d) Easement 5 feet in width along the Easterly boundary of Lots 1 and 2.

It is hereby declared that each of the above Easements are further dedicated, granted and reserved in favor of the San Rafael Association for the erection, maintenance, repair, replacement and reconstruction of all entrance features, walls and/or fences, lighting components, landscape plantings and irrigation systems constructed by Declarant, and any other common facilities which the San Rafael Association may later elect to install if such common facilities shall be approved by the members; provided, however, that no wall, fence, lighting component or landscaping shall be installed by the San Rafael Association along the boundary of San Rafael which abuts The Vineyards Country Club unless the owners of Lots 2 through 16, inclusive, shall agree thereto in writing.

14.03 Expenses. The costs of operating, maintaining, repairing, replacing and reconstructing the Roadway and all walls and/or fences, lighting components, landscape plantings, irrigation systems and other common facilities located within the Roadway and/or the Easements shall be a common expense under this Declaration.

14.04 Side Lot Walls and/or Fences. An Easement within five feet of each side Lot boundary which adjoins another Lot is hereby dedicated, granted and reserved in favor of the San Rafael Association and the Owner of the adjoining Lot for the maintenance, repair, replacement and reconstruction of any wall or fence, including any portion thereof which forms a part of any structure. Such wall or fence shall be maintained, repaired, replaced and reconstructed by the Owner of the Lot on which it is situated in accordance with the standards established in this Declaration. In



the event that the improvements on a Lot shall be destroyed or demolished, the Owner of such Lot shall be obligated to retain or rebuild such wall or fence in substantial conformity with the wall or fence originally constructed by Declarant, or in accordance with such plans as the San Rafael Association shall approve in writing, notwithstanding any decision by such Owner that the remaining improvements on said Lot will not be reconstructed. The provisions of this Section 14.05 are for the benefit of each Lot which adjoins a wall or fence and may be specifically enforced by the Owner of such adjoining Lot.

IN WITNESS WHEREOF, the said SAN RAFAEL BUILDING CORPORATION, a Florida corporation, has executed this Declaration of Covenants, Conditions and Restrictions for San Rafael on this 14 day of December, 1992.

Signed, sealed and delivered in the presence of:

SAN RAFAEL BUILDING CORPORATION

By: [Signature]  
Paul Jacobson, President  
5051 Castelle Drive, Suite 210  
Naples, Florida 33940

SIGN: [Signature]

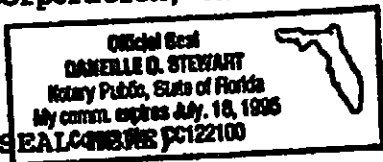
Richard M. Jones  
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: [Signature]

Tom Grogan  
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

STATE OF FLORIDA  
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 14 day of December, 1992, by Paul Jacobson, who is personally known to me or who has produced a current driver's license as identification and who did take an oath, as President of SAN RAFAEL BUILDING CORPORATION, a Florida corporation, on behalf of said corporation.



SIGN: [Signature]  
NOTARY PUBLIC

PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires:

JOINDER

FURTHER, the said SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, hereby joins in this Declaration of Covenants, Conditions and Restrictions for San Rafael on this 14 day of December, 1992.

Signed, sealed and delivered in the presence of:

SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC.

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By: [Signature]  
Paul Jacobson, President  
5051 Castello Drive, Suite 210  
Naples, Florida 33940

SIGN: [Signature]

Richard M. Jones  
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: [Signature]

TOM GIBSON  
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

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STATE OF FLORIDA  
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 14 day of December, 1992, by Paul Jacobson, who is personally known to me or who has produced a current driver's license as identification and who did take an oath, as President of SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation.

(NOTARY SEAL) [Seal]  
Official Seal  
DORIS STEWART  
Notary Public, State of Florida  
My comm. expires July 18, 1995  
Comm. No. CC122100

SIGN: [Signature]  
NOTARY PUBLIC

PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires:

**EXHIBIT A**

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**ARTICLES OF INCORPORATION  
OF  
SAN RAFAEL HOMEOWNERS'  
ASSOCIATION, INC.**

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Prepared By:  
Marc I. Spencer, Esq.  
Hillier & Wanless, P.A.  
1645 Palm Beach Lakes Boulevard, Suite 1100  
West Palm Beach, Florida 33401

**ARTICLES OF INCORPORATION  
OF  
SAN RAFAEL HOMEOWNERS'  
ASSOCIATION, INC.  
(A corporation not-for-profit)**

**THE UNDERSIGNED** hereby executes these Articles of Incorporation for the purpose of forming a corporation not-for-profit under Chapter 617 Florida Statutes (1991) and certifies as follows:

**ARTICLE I  
NAME**

The name of the corporation shall be **SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC.** (hereinafter referred to as the "San Rafael Association"), having its principal office at 5051 Castello Drive, Suite 210, Naples, Florida 33940, and its duration shall be perpetual, commencing on the date of execution of these Articles by the Incorporator.

**ARTICLE II  
PURPOSE**

The purpose for which the San Rafael Association is organized is to engage as a non-profit organization to further the interests of Members, including without limitation maintenance of Areas of Common Responsibility and the protection of the property of the Members; to exercise all the powers and privileges and to perform all of the duties and obligations of the San Rafael Association under the Governing Documents, including without limitation the establishment and enforcement of the payment of Assessments and fines as provided in the San Rafael Declaration, and to engage in such other lawful activities as may be to the mutual benefit of the Members and their property. All terms used herein which are defined in the San Rafael Declaration shall have the same meaning herein as therein.

**ARTICLE III  
POWERS**

The powers of the San Rafael Association shall include and be governed by the following provisions:

Section 1. Common Law and Statutory Powers. The San Rafael Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles and the San Rafael Declaration.

**Section 2. Necessary Powers.** Subject to any limitations contained in the Master Declaration, the San Rafael Association shall have all of the powers reasonably necessary to exercise its rights and powers and implement its purpose, including, without limitation, the following:

A. The power to fix, levy and collect Assessments against Units and Members, as provided for in the San Rafael Declaration.

B. The power to expend monies collected for the purpose of paying the expenses of the San Rafael Association.

C. The power to own, manage, control, operate, maintain, repair and improve the Common Areas.

D. The power to maintain the Areas of Common Responsibility.

E. The power to purchase supplies, materials and lease equipment required for the maintenance, repair, replacement, operation and management of the Areas of Common Responsibility.

F. The power to insure and keep insured the improvements within the Common Areas as provided in the San Rafael Declaration.

G. The power to employ the personnel required for the operation of the San Rafael Association and operating and maintaining of the Areas of Common Responsibility.

H. The power to pay utility bills for utilities serving the Common Areas as provided in the San Rafael Declaration.

I. The power to pay all taxes and assessments which are liens against the Common Areas as provided in the San Rafael Declaration.

J. The power to establish and maintain a reserve fund for capital improvements, repairs and replacements.

K. The power to improve the Common Areas as provided in the Declaration, subject to the limitations set forth in the San Rafael Declaration.

L. The power to control and regulate the use of the Common Areas as provided in the San Rafael Declaration.

M. The power to make reasonable rules and regulations and to amend the same from time to time.

N. The power to enforce by any legal means the provisions of the San Rafael Documents.

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O. The power to borrow money and the power to select depositories for the San Rafael Association's funds, and to determine the manner of receiving, depositing, and disbursing those funds and the form of check and the person or persons by whom the same shall be signed, when not signed as otherwise provided by the By-Laws.

P. The power to enter into a long term contract with any person, firm, corporation or management agent of any nature or kind, to provide for the maintenance, operation, repair and upkeep of the Areas of Common Responsibility. The contract may provide that the total operation of the managing agent, firm or corporation shall be at the cost of the San Rafael Association. The contract may further provide that the managing agent shall be paid from time to time a reasonable fee.

Q. The power to contract for the management of the San Rafael Association and to delegate to the manager all of the powers and duties of the San Rafael Association, except with respect to those matters which must be approved by Members.

R. The power to establish additional officers and/or directors of the San Rafael Association and to appoint all officers except as otherwise provided in the By-Laws.

S. The power to appoint committees as the Board of Directors may deem appropriate.

T. The power to collect delinquent Assessments by suit or otherwise, to abate nuisances and to fine, enjoin or seek damages from Members for violation of the provisions of San Rafael Documents.

U. The power to bring suit and to litigate on behalf of the San Rafael Association as may be desirable or necessary for the proper management of the San Rafael Association.

V. The power to adopt, alter and amend or repeal the By-Laws of the San Rafael Association as may be desirable or necessary for the proper management of the San Rafael Association.

W. The power to engage in any other activities which will foster, promote and advance the common interests of all Members.

X. The power to possess, employ and exercise all powers necessary to implement, enforce and carry into effect the powers above described.

Y. The power to require all Owners of Units in San Rafael to become Members of the San Rafael Association.

Z. The power to take any other action necessary for the purposes for which the San Rafael Association is formed.

AA. The foregoing enumeration of powers shall not limit or restrict the exercise of other and further powers which are contained in the Governing Documents or which may now or hereafter be permitted by law.

Section 3. Funds and Title to the Properties. All funds and title to all properties acquired by the San Rafael Association and the proceeds thereof shall be held for the benefit of the Members in accordance with the provisions of the San Rafael Declaration and the By-Laws. No part of the income, if any, of the San Rafael Association shall be distributed to the Members, directors, or officers of the San Rafael Association.

Section 4. Limitations. The powers of the San Rafael Association shall be subject to and be exercised in accordance with the provisions of the San Rafael Declaration and the Master Declaration.

#### ARTICLE IV MEMBERSHIP

Qualification for, and admission to, membership in the San Rafael Association shall be regulated by the San Rafael Declaration.

#### ARTICLE V BOARD OF DIRECTORS

The affairs of the San Rafael Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than nine (9) directors. The following persons shall constitute the initial Board of Directors:

<u>Name</u>	<u>Address</u>
Paul Jacobson	5051 Castello Drive, Suite 210 Naples, Florida 33940
Richard M. Jones	531 Third Street South Naples, Florida 33940
Judith Hancock	5051 Castello Drive, Suite 210 Naples, Florida 33940

The method of election and terms of office, removal and filling of vacancies shall be as set forth in the By-Laws of the San Rafael Association.

**ARTICLE VI  
INDEMNIFICATION OF OFFICERS  
DIRECTORS AND COMMITTEE MEMBERS**

The San Rafael Association shall indemnify its directors, officers and committee members and may indemnify its employees and agents, to the fullest extent permitted by the provisions of the Florida Not-For-Profit Corporation Act, as amended from time to time, from and against any and all of the expenses or liabilities incurred in defending a civil or criminal proceeding, or other matters referred to in or covered by said provisions, including advancement of expenses prior to the final disposition of such proceedings and amounts paid in settlement of such proceedings, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any by-law, agreement, vote of the Members or disinterested directors, officers or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, committee member, employee or agent, and shall inure to the benefit of the heirs, executors and administrator of such a person and an adjudication of liability shall not affect the right to indemnification for those indemnified. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer, director or committee member of the San Rafael Association may be entitled.

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**ARTICLE VII  
INCORPORATOR**

The name and address of the incorporator of the San Rafael Association is:

<u>Name</u>	<u>Address</u>
Paul Jacobson	5051 Castello Drive, Suite 210 Naples, Florida 33940

**ARTICLE VII  
BY-LAWS**

The By-Laws of the San Rafael Association may be adopted, amended, altered or rescinded as provided therein; provided, however, that at no time shall the By-Laws conflict with these Articles or the San Rafael Declaration.

**ARTICLE IX  
AMENDMENT**

These Articles may be amended only upon the affirmative vote of seventy five percent (75%) or more of the votes of Members at a duly called meeting of the Members.




**ARTICLE X  
CONSTRUCTION**

These Articles and the By-Laws of the San Rafael Association shall be construed, in case of any ambiguity or lack of clarity, to be consistent with the provisions of the Master Declaration and the San Rafael Declaration. In the event of any conflict between the terms of the Master Declaration, the San Rafael Declaration, the Articles of Incorporation or the By-Laws, the following order of priority shall apply: the Master Declaration, the San Rafael Declaration, the Articles and the By-Laws.

**ARTICLE XI  
REGISTERED AGENT AND REGISTERED OFFICE**

The name of the initial registered agent shall be Paul Jacobson, and the street address of the registered office of the Association shall be 5051 Castello Drive, Suite 210, Naples, Florida 33940.

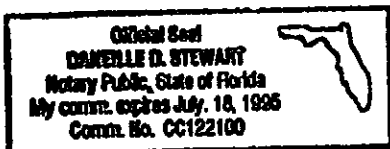
IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation this 14 day of December, 1992.

  
\_\_\_\_\_  
Paul Jacobson

STATE OF FLORIDA  
COUNTY OF COLLIER

THE FOREGOING Articles of Incorporation were acknowledged before me by Paul Jacobson, the incorporator named therein. He is personally known to me or produced a current driver's license as identification and did take an oath.

IN WITNESS WHEREOF, I have hereunder set my hand and affixed my seal under the law of the State of Florida, this 14 day of December, 1992.



(NOTARY SEAL)

  
\_\_\_\_\_  
Printed Name: \_\_\_\_\_

State of Florida at Large

My Commission Expires: \_\_\_\_\_

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**CERTIFICATE DESIGNATION PLACE OF BUSINESS  
OR DOMICILE FOR THE SERVICE OF PROCESS  
WITHIN FLORIDA, NAMING AGENT UPON WHOM  
PROCESS MAY BE SERVED**

IN COMPLIANCE WITH SECTION 48.091, FLORIDA STATUTES, THE  
FOLLOWING IS SUBMITTED

FIRST--THAT SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC.,  
DESIRING TO ORGANIZE OR QUALIFY UNDER THE LAWS OF THE STATE OF  
FLORIDA, DESIGNATES ITS PRINCIPAL PLACE OF BUSINESS AS 5051  
CASTELLO DRIVE, SUITE 210, NAPLES, FLORIDA 33940.

SECOND--THAT SAN RAFAEL HOMEOWNERS' ASSOCIATION, INC.,  
DESIRING TO ORGANIZE OR QUALIFY UNDER THE LAWS OF THE STATE OF  
FLORIDA, DESIGNATES PAUL JACOBSON LOCATED AT 5051 CASTELLO DRIVE,  
SUITE 210, NAPLES, FLORIDA 33940 AS ITS AGENT TO ACCEPT SERVICE  
OF PROCESS WITHIN FLORIDA.

SAN RAFAEL HOMEOWNERS'  
ASSOCIATION, INC.

SIGNATURE:   
BY PAUL JACOBSON, PRESIDENT

DATE: December 14, 1992

HAVING BEEN NAMED TO ACCEPT SERVICE OF PROCESS FOR THE ABOVE  
STATE CORPORATION, AT THE PLACE DESIGNATED IN THIS CERTIFICATE, I  
HEREBY AGREE TO ACT IN THIS CAPACITY AND I FURTHER AGREE TO  
COMPLY WITH PROVISIONS OF ALL STATUTES RELATIVE TO THE PROPER AND  
COMPLETE PERFORMANCE OF MY DUTIES.

SIGNATURE:   
PAUL JACOBSON

DATE: December 14, 1992

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**EXHIBIT B**

**BY-LAWS  
OF  
SAN RAFAEL HOMEOWNERS'  
ASSOCIATION, INC.**

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Prepared by:  
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# BY-LAWS OF SAN RAFAEL HOMEOWNER'S ASSOCIATION, INC.

## Article I Identity

Section 1. Name. The name of this corporation shall be San Rafael Homeowners' Association, Inc. (the "San Rafael Association").

Section 2. Principal Office. The initial principal office of the San Rafael Association is 5051 Castello Drive, Suite 210, Naples, Florida 33940.

Section 3. Seal. The seal of the San Rafael Association shall bear the name of the San Rafael Association, the word "Florida", the words "Not-For-Profit Corporation", and the year of the incorporation.

Section 4. Emblem. The emblem of the San Rafael Association shall be of a style and design approved by the Board of Directors.

Section 5. Adoption. These By-Laws have been adopted as the By-Laws of the San Rafael Association.

Section 6. Definitions. Terms used in these By-Laws which are defined in the San Rafael Declaration shall have the same meaning in these By-Laws as in the San Rafael Declaration, unless the context requires otherwise.

## Article II Powers and Duties of the San Rafael Association and the Exercise Thereof

The San Rafael Association shall have all powers granted to it by common law, the laws of the State of Florida, the San Rafael Declaration, the Articles of Incorporation, these By-Laws and the Master Community Documents, all of which shall be exercised by its Board of Directors unless the exercise thereof is otherwise restricted in the San Rafael Declaration, the Articles of Incorporation, these By-Laws or by law.

### Article III Membership

The San Rafael Association shall have the following two (2) classes of membership: (a) Class "A" Members and (b) Class "B" Members, as described in the San Rafael Declaration. The terms of membership described in the San Rafael Declaration, including, without limitation, voting rights and rights to use the Common Areas, are set forth in the Declaration.

### Article IV Members' Meeting

Section 1. Date and Place of Meetings. Meetings of Members shall be held on the date and at the place designated by the Board of Directors in Collier County, Florida.

Section 2. Annual Meetings. Annual meetings shall be held in November or December for the purpose of receiving reports of officers, committees and others, to elect directors and such other business as may properly be brought before the meeting.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the San Rafael Association if so directed by resolution of a majority of the members of the Board of Directors or, if after the termination of the Class B Membership, upon a petition signed by Members representing at least ten percent (10%) of the total votes of the San Rafael Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally or by mail, to each of such Members entitled to vote at such meeting not less than ten (10), nor more than fifty (50), days before the date of such meeting by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears in the records of the San Rafael Association.

Section 5. Quorum. Except as otherwise provided in these By-Laws or in the San Rafael Declaration, the presence in person or by proxy of a majority of the votes eligible to be cast by Members shall constitute a quorum at all meetings of the San Rafael Association.

**Section 6. Adjournment of Meetings.** If any meeting of the San Rafael Association cannot be held because a quorum is not present, a majority of the votes of the Members who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

**Section 7. Vote Required.** When a quorum is present at any meeting, the vote of the majority of the votes eligible to be cast by the Members present, in person or by proxy, shall decide any question brought before the meeting, unless the San Rafael Declaration, the Articles of Incorporation, these By-Laws or applicable law provides otherwise. In the case of a Member which is a corporation or partnership, the person designated, in writing, to the Secretary of the San Rafael Association as the representative of such entity shall be entitled to exercise the Member's vote.

**Section 8. Conduct of Meetings.** The President shall preside over all meetings of the San Rafael Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 9. Action Without a Meeting.** Any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by a majority of the votes eligible to be cast by the Members entitled to vote with respect to the subject matter thereof.

## **ARTICLE V**

### **Election of Board of Directors**

**Section 1. Number of Directors.** The government and administration of the affairs of the San Rafael Association shall be vested in a Board of Directors each of whom shall have one (1) vote. The number of directors in the San Rafael Association shall be not less than three (3), nor more than nine (9). The initial directors named in the Articles of Incorporation shall serve until their replacements are elected as provided in these By-Laws. The number of directors shall be established by the Board of Directors from time to time.

**Section 2. Election.** The Members shall elect all of the members of the Board of Directors. Prior to termination of the Class B Membership, directors shall be elected annually. Class B Members shall be entitled to three (3) votes for each Unit owned, and Class A Members shall be entitled to one (1) vote for each Unit owned. Upon termination of the Class B Membership, it shall be converted to a Class A Membership.



At the annual meeting first occurring after termination of the Class B Membership, the Board of Directors shall remain at three (3) members, unless said number shall be increased by vote of the Members. At this meeting one (1) director shall be elected for a term of three (3) years, one (1) director shall be elected for a term of two (2) years and one (1) director shall be elected for a term of one (1) year. At the expiration of the initial term of office of each elected member of the Board of Directors after such meeting, and at each annual meeting thereafter, successors shall be elected to serve for term of three (3) years.

Section 3. Cumulative Voting. There shall be no cumulative voting for directors.

Section 4. Qualifications for Election. Except with respect to the directors elected prior to the termination of the Class B Membership or the director appointed pursuant to Section 5 hereof. the directors shall be Members.

Section 5. Declarant Director. After termination of the Class B Membership and until all Units have been conveyed by the Declarant to third party purchasers, the Declarant shall be entitled to appoint one (1) director to the Board of Directors. The Declarant appointed director shall be entitled to exercise the Declarant's veto power described in Section 5.03 of the San Rafael Declaration.

Section 6. Nomination of Directors. After termination of the Class B Membership, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and at least three (3) Members. The Nominating Committee shall be appointed by the Board of Directors not less than ninety (90) days prior to each annual meeting of the Members to serve for a term of (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but in no event less than the number of positions to be filled. The Nominating Committee shall recommend, at least sixty (60) days prior to the annual meeting, the names of Members selected by a majority vote of the Nominating Committee to be submitted to the Members for election to the Board of Directors.

Ten percent (10%) or more of the total votes to be cast by the Members who are not members of the Nominating Committee or the Board of Directors may also nominate candidates for the Board of Directors by petition signed by them and filed with the Secretary at least thirty (30) days prior to the annual meeting. The names of any such nominees, after having been certified by the Secretary or any other officer that they are qualified for election, and have been nominated in accordance with the provisions of these By-laws, shall be included in any proxy mailing to the Members. All candidates shall have reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

Prior to termination of the Class B Membership, the Class B Member shall notify the Board of Directors of names to be included in any proxy mailing to the Members.

Section 7. Removal of Directors and Vacancies. Any director elected by the Members may be removed, with or without cause, by the vote of the Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any Assessment or other charge due the San Rafael Association for more than thirty (30) days may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the members of the Board. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and the members of the Board may appoint a successor (however, the Declarant shall appoint a successor due to death, disability or resignation of its director appointed in accordance with Section 5 of this Article.

Section 8. Compensation. No director shall receive a salary or any other compensation whatsoever from the San Rafael Association for acting as such, but shall be entitled to be reimbursed for expenses reasonably incurred on behalf of the San Rafael Association.

## ARTICLE VI Meetings of Board of Directors

Section 1. Annual Organizational Meeting. The first meeting of the Board of Directors following each annual Members' meeting shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 2. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors. After the termination of the Class B Membership, at least one (1) regular meeting shall be held each quarter during each fiscal year. Notice of the time and place of the meeting shall be provided to the directors not less than four (4) days prior to the meeting.

Section 3. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or by any three (3) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by personal delivery, first class mail or telephone at least four (4) days prior to the date of the meeting, unless an emergency condition exists, in which event twenty-four (24) hours' notice shall be deemed sufficient.

**Section 4. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as when taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 5. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting until a later date which shall be not less than five (5), nor more than thirty (30), days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 6. Conduct of Meetings.** The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

**Section 7. Open Meetings.** All meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board of Directors and reconvene in executive session, excluding Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, grievances, etc.

**Section 8. Telephone Meeting.** Any regular or special meeting of the Board of Directors may be held by telephone conference, at which each participating director can hear and be heard by all other participating directors.

**Section 9. Action Without a Meeting.** Any action to be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

## ARTICLE VII Officers

Section 1. Officers. The Officers of the San Rafael Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the San Rafael Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by a two-thirds (2/3) vote of the Board of Directors whenever in its judgment the best interests of the San Rafael Association will be served thereby. Prior to the termination of the Class B Membership, the Class B Member may, with or without cause, remove any officer by written notice to the Board and the removed officer.

Section 4. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

## ARTICLE VIII Appointment of Neighborhood Representative

As provided in the Master Community Documents, the President of San Rafael Association shall serve as the Neighborhood Representative (as defined in the Master Community Documents) and the Vice-President as the Alternative Neighborhood Representative (as defined in the Master Community Documents).

## ARTICLE IX Duties of Officers

The officers of the San Rafael Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as from time to time are specifically conferred or imposed on the officers by the Board of Directors.

Section 1. President. The President shall be the chief executive officer of the San Rafael Association and shall:

(a) Act as presiding officer at all meetings of Members of the San Rafael Association and of the Board of Directors.

(b) Call special meetings of the Board of Directors.

(c) Sign, with the Secretary or Treasurer if the Board of Directors so requires, all checks, contracts, promissory notes, leases, subleases and other instruments on behalf of the San Rafael Association, except those which the Board of Directors specifies may be signed by other persons.

(d) Perform all acts and duties usually required of a chief executive to ensure that all orders and resolutions of the Board of Directors are carried out.

(e) Act as an ex-officio member of all committees, and render an annual report at the annual meeting of Members.

Section 2. Vice President. The Vice President, in the absence or disability of the President, shall exercise the powers and perform the duties of the President. The Vice President also shall assist the President generally, and exercise other powers and perform other duties as shall be prescribed by the directors.

Section 3. Secretary. The Secretary shall have the following duties and responsibilities:

(a) Attend all regular and special meetings of the Members and the Board of Directors and keep all records and minutes of proceedings thereof or cause the same to be done.

(b) Have custody of the corporate seal and affix the same when necessary or required.

(c) Attend to all correspondence on behalf of the Board of Directors, prepare and serve notice of meetings and keep membership books.

(d) Have custody of the minute book of the meetings of the Board of Directors and Members, and act as transfer agent of the corporate books.

Section 4. Treasurer. The Treasurer shall:

(a) Receive monies as shall be paid into his hands for the account of the San Rafael Association and disburse funds as may be ordered by the Board of Directors, taking proper vouchers for disbursements, and be custodian of all contracts, leases and other important documents of the San Rafael Association which he shall keep safely deposited.

(b) Supervise the keeping of accounts of all financial transactions of the San Rafael Association in books belonging to the San Rafael Association, and deliver the books to his successor. The Treasurer shall prepare and distribute to all of the Members of the Board of Directors prior to each annual meeting, and whenever else required, a summary of the financial transactions and condition of the San Rafael Association from the preceding year. The Treasurer shall make a full and accurate report on matters and business pertaining to his office to the Members at the annual meeting, and make all reports required by law. The Treasurer shall be the chairman of the Finance Committee.

(c) The Treasurer may have the assistance of an accountant or auditor, who shall be employed by the San Rafael Association. In the event the San Rafael Association enters into a management agreement, it shall be proper to delegate any or all of the Treasurer's functions to the management agent as is deemed appropriate by the Board of Directors.

## ARTICLE X Committees

Section 1. Committees. The President, subject to the approval of the Board of Directors, shall designate the chairman and members of advisory committees as the Board of Directors determines to be appropriate.

Section 2. Powers of Committees. The committees shall act only as advisors to the Board of Directors and the committees and the individual members thereof shall have no power or authority to act on behalf of the Board or the San Rafael Association. The chairman of each committee may appoint from the members of such committee such sub-committees as he or she deems desirable. Such sub-committees shall report directly to the committee as a whole, which shall approve, amend or disapprove the report of the sub-committee. Members of a committee may be removed by the Board, with or without cause.

## ARTICLE XI Discipline

Section 1. Enforcement. The Board of Directors shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Member, to suspend a Member's right to vote or to use the Common Areas, and to preclude contractors, subcontractors, agents and other invitees of a Member or occupant from San Rafael for violation of any provision of the Governing Documents; provided, however, nothing herein shall authorize the San Rafael Association or the Board of Directors to limit a Member's or occupant's ingress and egress to or from a Unit. In the event that any occupant of a Unit violates any provision of the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Member shall pay the fine upon notice from the San Rafael Association. The failure of the Board to enforce any provision of the Governing Documents shall not be deemed a waiver of the right of the Board to do so thereafter.

**Section 2. Notice.** Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the accused with written notice describing: (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge has been requested within ten (10) days of the notice.

**Section 3. Hearing.** If a hearing is requested within the allotted ten (10) day period, the hearing shall be held in executive session affording the accused a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the accused appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Any suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

**Section 4. Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the San Rafael Association, acting through the Board of Directors, may elect to enforce any provisions of the San Rafael Documents or by suit at law in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Member or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees and costs actually incurred.

## **ARTICLE XII**

### **Fiscal Management**

**Section 1. Fiscal Year.** The fiscal year of the San Rafael Association shall commence upon the first day of January and conclude on the thirty-first day of December.

**Section 2. Depositories.** The funds of the San Rafael Association shall be deposited in such accounts in Collier County, Florida, as may be selected by the Board of Directors, including checking and savings accounts in one (1) or more banks and/or savings and loan associations, Certificates of Deposit, U.S. Treasury Bills and money market accounts with an investment firm or firms, all in accordance with resolutions approved by the Board of Directors. The funds shall be used only for corporate purposes.

**Section 3. Expenses.** The receipts and expenditures of the San Rafael Association may be credited and charged to accounts as the Board of Directors may determine, in accordance with good accounting practices.

**Section 4. Reserve Accounts.** The San Rafael Association shall establish and maintain a reserve account for the periodic maintenance, repair and replacement of improvements to the Areas of Common Responsibility.

**Section 5. Budget.** The Board of Directors shall adopt a budget for each fiscal year that shall include the estimated funds required to defray the expenses of the San Rafael Association for the fiscal year, and to provide and maintain funds for the accounts established by the Board of Directors, in accordance with good accounting practices.

**Section 6. Fidelity Bonds.** The San Rafael Association shall, to the extent available at a reasonable cost, purchase blanket fidelity bonds for all officers and employees of the San Rafael Association and for any management agent, who controls or disburses funds of the San Rafael Association and any contractor handling or responsible for San Rafael Association funds. The following provisions shall govern the San Rafael Association's purchase of the bonds.

(a) Each fidelity bond purchased by the San Rafael Association shall name the San Rafael Association as an obligee of the bond.

(b) The premiums for bonds shall be paid by the San Rafael Association.

(c) The fidelity bonds shall cover the maximum funds that will be in the custody of an officer or employee of the San Rafael Association, or a management agent, at any time while the bonds are in force. Additionally, coverage of the fidelity bonds must be no less than the San Rafael Assessment on all the Units for three (3) months, plus the funds in the San Rafael Association's reserve account.

(d) Each bond shall include a provision requiring ten (10) days written notice to the San Rafael Association before the bond can be canceled or substantially modified for any reason.

**Section 7. Accounts and Reports.** The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting (with the exception of depreciation), as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the San Rafael Association shall not be commingled with any other accounts;



(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the San Rafael Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the San Rafael Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the San Rafael Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the month in which the first Unit is sold and closed, financial reports shall be prepared for the San Rafael Association at least annually containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding business period; and

(v) a delinquency report listing all Members who are delinquent in paying any San Rafael Assessments at the time of the report and describing the status of any action to collect such San Rafael Assessments which remain delinquent. An installment of a San Rafael Assessment shall be considered to be delinquent fifteen (15) days after the date such San Rafael Assessment is due unless otherwise determined by the Board of Directors; and

(g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet; (2) an income statement; and (3) a statement of changes in financial position for the fiscal year.

**Section 8. Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the San Rafael Association shall be executed by the President and Secretary or by such other person or persons as may be designated by resolution of the Board of Directors.

**Section 9. Books and Records.**

(a) **Inspection by Members and Mortgagees.** The San Rafael Declaration and these By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Institutional Mortgagee, Member, the Master Association,

or by a Member's duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the San Rafael Association or at such other place as the Board shall prescribe. Such records shall include a record of receipts and expenditures and accounts for each Member, which accounts shall designate the names and addresses of the Members, the due dates and amount of each Assessment, the amounts paid upon the account and the balance due. Records of a Member's payment of Assessments shall be disclosed only to persons authorized by the Member or the Institutional Mortgagee holding a mortgage on the Member's Unit. Minutes of grievance hearings will not be released to any person other than the person subject to the disciplinary action.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the San Rafael Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the San Rafael Association.

Section 10. Insurance. The San Rafael Association shall procure, maintain, and keep in full force and effect, insurance as may be required by the San Rafael Declaration to protect the interests of the San Rafael Association and the Members.

### ARTICLE XIII Miscellaneous

Section 1. Parliamentary Rules. Robert's Rules of Order (current edition) shall govern the conduct of San Rafael Association proceedings when not in conflict with the Articles of Incorporation, the San Rafael Declaration, or these By-Laws.

Section 2. Construction. If there are conflicts between the provisions of Florida law, the Articles of Incorporation, the San Rafael Declaration, the Master Declaration and/or these By-Laws, the provisions of Florida law, the Master Declaration, the San Rafael Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 3. Validity. If any By-Law, rule or regulation adjudicated to be invalid, such fact shall not affect the validity of any other By-Law, rule or regulation.

**Section 4. Notices.** Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member; or

(b) if to the San Rafael Association, the Board of Directors, or the managing agent, at the principal office of the San Rafael Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

**Section 5. Amendments.** Until the termination of the Class B Membership, the Declarant may amend these By-Laws in its sole and absolute discretion. After the termination of the Class B Membership, the Declarant may amend these By-Laws in its sole and absolute discretion at any time and from time to time if such amendment is (a) necessary to bring any provisions hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Units; or (d) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Member shall consent thereto in writing. So long as it still owns any part of the property in San Rafael for development, the Declarant may amend these By-Laws in its sole and absolute discretion for any other purpose, provided the amendment has no material adverse effect upon the rights of any Member. Thereafter or otherwise, these By-Laws may be amended only by the affirmative vote (in person or by alternate) or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total votes in the San Rafael Association; provided, however, the percentage of votes necessary to amend a specific clause shall be not less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the Class B Member or the assignee of such right or privilege.

# CERTIFICATION

I, the undersigned, do hereby certify:

That I am duly elected and acting Secretary of San Rafael Homeowners' Association, Inc., a Florida not-for-profit corporation;

That the foregoing By-Laws constitute the original By-Laws of said San Rafael Homeowners' Association, Inc. as duly adopted at a meeting of the Board of Directors thereof held on the 14 day of December, 1992.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said San Rafael Homeowners' Association, Inc. this 14 day of December, 1992.

{SEAL}

  
Secretary

OR BOOK  
1779

PAGE  
000944

Recorded and Verified  
in Official Records of  
COLLIER COUNTY, FLORIDA  
JAMES C. GILPS, CLERK

JSN\VNDRS\HO\BL

**AMENDMENT TO  
DECLARATION OF  
COVENANTS,  
CONDITIONS  
AND RESTRICTIONS  
FOR SAN RAFAEL**

2012699 OR: 2138 PG: 0249

RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL  
01/12/96 at 10:27AM DWIGHT B. BROCK, CLERK  
RBC FEE 15.00

Retn:  
JONES & JONES  
400 FIFTH AVE S #201  
NAPLES FL 33940

RESERVED FOR USE BY CLERK

**THIS AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 3 day of January, 1996 by SAN RAFAEL BUILDING CORPORATION, a Florida corporation, hereinafter referred to as Declarant.**

**ARTICLE I**

**The following Section G is added to the Statement of Background in said Declaration:**

**G. Declarant has developed the Lots in San Rafael as twenty-four building sites. Building sites situated on Lots numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 22, 23, 24, and 25 comprise the Lots originally depicted in the Plat; with respect to each such parcel, the Unit number shall be the Lot number. Building sites situated on Lots numbered 15, 16, 18, 19, 20 and 21 substantially comprise the Lots originally depicted in the Plat with side lot lines having been slightly adjusted by contributing small portions to one or more neighboring Lots and adding small portions from one or more neighboring Lots, and building sites situated on Lots 19 and 21 also contain substantial portions of Lot 22; with respect to each such parcel, the Unit number shall be the number of the Lot which comprises the major portion of the building site.**

**ARTICLE II**

**The following sentence is added to Section 2.33 of said Declaration:**

**There are twenty-four Units in San Rafael.**

### ARTICLE III

The following sentence is added to paragraph (b) of Section 5.02 and to paragraph (b) of Section 5.03 of said Declaration:

The Declarant's right to disapprove under this paragraph shall expire on December 31, 1997, if not sooner terminated.

### ARTICLE IV

The third sentence in the first paragraph of Section 9.04 of said Declaration is amended to read as follows:

San Rafael Expenses shall be allocated among all Units within San Rafael as set forth in the second paragraph of this Section 9.04.

### ARTICLE V

The second paragraph of Section 9.04 of said Declaration is amended to read as follows:

Effective upon termination of the Class B Membership, the Base Assessment to be levied against each Unit shall be one twenty-fourth of the budgeted San Rafael Expenses, except that Units for which a Certificate of Occupancy has not been issued shall not be assessed for (i) irrigation, (ii) water, (iii) common area electricity, (iv) common area repair, (v) common area maintenance, or (vi) cable television service until the completion of construction of improvements thereon.

### ARTICLE VI

The following sentence is added to Section 14.04 of said Declaration:

The foregoing reference to the location of Easements being situated along a "Lot boundary" is deemed to mean the boundary of a Unit when the boundary of a Unit is not the boundary of a Lot.

RESERVED FOR USE BY CLERK

IN WITNESS WHEREOF, the said SAN RAFAEL BUILDING CORPORATION, a Florida corporation, has executed this Declaration of Covenants, Conditions and Restrictions for San Rafael on this 3 day of January, 1996.

Signed, sealed and delivered in the presence of:

SAN RAFAEL BUILDING CORPORATION

SIGN: [Signature]

By: [Signature]  
Paul Jacobson, President  
134 San Rafael Lane  
Naples, Florida 33999

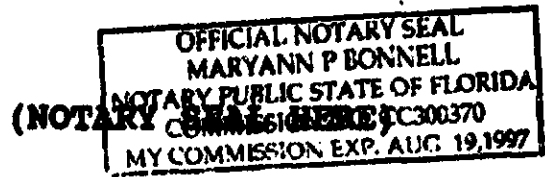
Richard M. Jones  
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: [Signature]

Maryann P. Bonnell  
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

STATE OF FLORIDA  
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 3 day of January, 1996, by Paul Jacobson, who is personally known to me ~~or who has produced a current driver's license as~~ identification, as President of SAN RAFAEL BUILDING CORPORATION, a Florida corporation, on behalf of said corporation.



SIGN: [Signature]  
NOTARY PUBLIC  
MARYANN P. BONNELL

PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires:

THIS INSTRUMENT WAS PREPARED BY:

Richard M. Jones, Esq.  
Richard M. Jones, P.A.  
Jones and Jones  
Suite 201  
400 Fifth Avenue South  
Naples, Florida 33940

PLEASE RETURN TO ABOVE ADDRESS UNLESS OTHERWISE INDICATED

SR\COVS.AM