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SAN MIGUEL BUILDING CORP
134 SAN RAFAEL LN
NAPLES FL 33999

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

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SAN MIGUEL

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 3 day of October, 1994 by SAN MIGUEL BUILDING CORPORATION, a Florida corporation, hereinafter referred to as Declarant, joined by SAN MIGUEL HOMEOWNERS' ASSOCIATION, INC., a Florida not-for-profit corporation.

STATEMENT OF BACKGROUND

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

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

C. San Miguel 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, as amended. 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 owner of Lot 5 in San Miguel, hereinafter referred to as the Initial Property, and anticipates that it will improve said property and San Miguel 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 Miguel will be encumbered by both the Master Declaration and this Declaration and will be governed by both the Master Association and the San Miguel 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.

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 Miguel.

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 Miguel 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 Miguel Association pursuant to a contract entered into by the San Miguel Association and a third party.

2.03 "Articles" shall mean and refer to the Articles of Incorporation of San Miguel 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 Miguel Association.

2.07 "Common Areas" shall mean and refer to those areas of land shown on any plat of San Miguel which are dedicated to or owned by the San Miguel 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 Miguel. Common Area may be dedicated by Supplement. The term "Common Area" shall also include any personal property acquired by the San Miguel 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 Miguel Building Corporation, a Florida corporation, and its successors in interest. A person or entity other than the said San Miguel 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 Miguel 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 Miguel Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for San Miguel 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 Miguel 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 Miguel including, but not limited to, any of the following institutions: a 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 Miguel and who have a mortgage lien of any priority on all or a portion of the property in the San Miguel 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 Miguel 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 Miguel Association.

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

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

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

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

2.29 "San Miguel Standards" shall mean the standards of conduct, maintenance, or other activity generally prevailing throughout San Miguel. Such standards may be more specifically determined by the Board of Directors of the San Miguel 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 Miguel 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 Miguel; or in order to impose, expressly or by reference, additional restrictions and obligations on all or any portion of San Miguel.

2.33 "Units" shall mean a portion of San Miguel, 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 Miguel, 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 MIGUEL PROPERTY; SUPPLEMENTS

3.01 Plan for Development.

(a) General. Declarant presently plans to develop San Miguel as zero lot line single family homes. Declarant also has the right to develop a portion of San Miguel 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 Miguel. Declarant reserves to itself the right, in its sole discretion, to develop San Miguel 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 Miguel.

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

3.02 Property. Declarant shall have the right by a Supplement to change the use of any portion of San Miguel 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 Miguel 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 Miguel; provided, however, that any such withdrawal is not unequivocally contrary to the overall, uniform scheme of development of San Miguel. In addition to the initial property subject to this Declaration, any property which Declarant shall acquire within San Miguel 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 Miguel; (b) modify the provisions of this Declaration as they apply to all or any portion of San Miguel; (c) create new provision to this Declaration as they apply to all or any portion of San Miguel; (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 MIGUEL AND COMMON AREAS

4.01 Land Use Within San Miguel.

(a) In general, Declarant may, in its sole and absolute discretion, establish any use for the property located in San Miguel 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 Miguel 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 Miguel Association, and the San Miguel Association shall accept, all of the Common Areas. Each owner acknowledges that certain portions of San Miguel 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 MIGUEL 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 MIGUEL ASSOCIATION AND ALL OWNERS RELEASE DECLARANT FROM ANY CLAIMS AND WARRANT THAT AND CLAIM SHALL BE MADE BY THE SAN MIGUEL 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 Miguel Association shall be paid for by the San Miguel 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 Miguel Association. Membership shall be appurtenant to and may not be separated from ownership of a Unit which is subject to Assessment by the San Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel Association shall not take any action or implement any policy, program or rule or regulation previously approved by the San Miguel 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 Miguel Association. The Declarant shall not use its right to disapprove to reduce the level of services which the San Miguel 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 Miguel Association, and Members will have no power to vote on Master Association matters other than through their San Miguel Association. The San Miguel Representative shall, on behalf of Members, cast the votes of Members on Master Association matters. The San Miguel Representative shall be the senior officer of the San Miguel Association, and in his absence the next most senior officer may fulfill the functions of the San Miguel Representative. The San Miguel 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 Miguel 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 Miguel 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 Miguel Representative shall have the authority, but not the obligation, in the San Miguel 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 Miguel Representative in casting votes for the Members has acted within the authority and consent of the Members.

ARTICLE VI MAINTENANCE

6.01 San Miguel Association Responsibility

(a) General Maintenance. The San Miguel 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 Miguel 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 Miguel Association can most efficiently and economically provide their respective services to the Owners. If the San Miguel Association fails, neglects, or is unable to perform a duty or obligation required by the San Miguel Documents, including without limitation maintenance responsibilities, then the Master Association may, after reasonable notice and an opportunity to cure given to the San Miguel Association, perform such duties or obligations until such time as the San Miguel Association is able to resume such functions, and charge the San Miguel 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 Miguel Association, and the Master Association in the event that the San Miguel 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 Miguel to carry out the provisions of this Declaration and same shall not constitute a trespass. Neither the San Miguel 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 Miguel Association, the Master Association, and their officers, directors, agents and employees from any action undertaken pursuant to this Section.

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 Miguel Standards, the Community Wide Standards and the Governing Documents. No Owner shall take any action which (a) increases the maintenance responsibility of the San Miguel Association, (b) causes the San Miguel Association's insurance premiums to increase, or (c) interferes with the San Miguel Association's maintenance or operational responsibilities. If any Owner fails to perform his or her maintenance responsibility in accordance with this Section, the San Miguel 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 Miguel 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 MIGUEL ASSOCIATION SHALL NOT BE RESPONSIBLE FOR STRUCTURAL REPAIRS TO ANY UNIT.

6.05 Rules and Regulations. The San Miguel 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 Miguel 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 Miguel Association. Fines shall constitute Individual Assessments subject to the lien rights provided in this Declaration.

6.06 Implied Rights. The San Miguel 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 Miguel Association, payment of use or access fees or other charges reasonably imposed by the San Miguel Association and subject to any restrictions or limitations contained in any instrument conveying such property to the San Miguel 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 Miguel 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 Miguel 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 Miguel or the Vineyards in general, subject to limitations as to the then existing buildings or other permanent structures or facilities constructed within San Miguel.

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 Miguel 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 Miguel Association and its Members for all damage or injury caused by the negligence of the San Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel Association.

8.04 Duty to Maintain Workers' Compensation Insurance. The San Miguel 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 Miguel Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the San Miguel 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 Miguel 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 be substantially the natural state in which it existed prior to the beginning of construction and thereafter the San Miguel 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 Miguel Association as an additional insured and shall require that the San Miguel 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 Miguel covered by insurance written in the name of the San Miguel 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 Miguel 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 Mortgagees 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 Miguel shall be restored to their natural state and maintained by the San Miguel 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 Miguel 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 Miguel 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 Miguel Expenses as the Board of Directors of the San Miguel 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 Miguel Association annually to prepare a budget covering the estimated San Miguel Expenses to be incurred by the San Miguel Association. This budget may include a capital contribution establishing a reserve fund for repair and

replacement of capital items within San Miguel, as appropriate. San Miguel Expenses shall be allocated equally among all Units within San Miguel. 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 Miguel 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 Miguel 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 Miguel Association or any other unbudgeted expenses of the San Miguel 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 Miguel Documents, or any expense of the San Miguel Association which is the obligation of an Owner or which is incurred by the San Miguel Association on behalf of the Owner pursuant to the San Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel Association or the manager and payment of a processing fee set by the San Miguel 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 Miguel 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 Miguel Association.

The information contained in such statement, when signed by an officer of the San Miguel Association, shall be conclusive upon the San Miguel 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 Miguel 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 Miguel 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 Miguel Association shall, upon the request of the Master Association, collect assessments owed the Master Association by Owners. The San Miguel 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 Miguel 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 Miguel 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 MIGUEL 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 Miguel Documents. The San Miguel 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 Miguel 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 Miguel 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 Miguel Association that such failure is due to circumstances beyond the Owner's control, the San Miguel 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 Miguel 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 Miguel 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 Miguel Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing 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 Miguel Standards. All Owners and their contractors shall comply with the construction regulations of the San Miguel 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 Miguel 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 lake 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 Miguel 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 lake 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 Miguel 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 Miguel 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 Miguel Documents and any failure of the tenant to comply with the San Miguel Documents shall be a default under the lease; and

(c) The Owner shall be liable for any violation of the San Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel, 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 Miguel, 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 Miguel 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 an 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. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

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 Miguel is a planned neighborhood within the Vineyards and is being developed by the Declarant. The individual residential units constructed within San Miguel 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 Miguel Association unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Members of the San Miguel Association. This Section shall not apply, however, to: (a) actions brought by the San Miguel 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 Miguel 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 Miguel Association shall assess all Members of the San Miguel 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 Miguel Association shall levy a Special Assessment against all Owners of Units in San Miguel, 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.

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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel 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 Miguel comprehends a subdivision of lands situated between Silver Oaks Drive and the lake within the Vineyards, consisting of twenty-eight residential building sites, hereinafter referred to as the Lots, on either side of a private road designated as Vista 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 Miguel other than the boundary which abuts the lake.

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 21, 22, 23 and 24; and

(d) Easement 5 feet in width along the Easterly boundary of Lots 5, 6, 7 and 8.

It is hereby declared that each of the above Easements are further dedicated, granted and reserved in favor of the San Miguel 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 Miguel 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 Miguel Association along the boundary of San Miguel which abuts the lake within the Vineyards unless the owners of Lots 8 through 21, 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 Miguel 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 Miguel 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 MIGUEL BUILDING CORPORATION, a Florida corporation, has executed this Declaration of Covenants, Conditions and Restrictions for San Miguel on this ~~20~~ 3 day of ~~September~~ ^{October}, 1994.

Signed, sealed and delivered
in the presence of:

SAN MIGUEL BUILDING CORPORATION

By: *Paul Jacobson*
Paul Jacobson, President
134 San Rafael Lane
Naples, Florida 33999

SIGN: *Michel Saadeh*

MICHEL SAADEH
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: *Richard M. Jones*

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

STATE OF FLORIDA
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this ~~20~~ 3 day of ~~September~~ ^{October}, 1994, 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 MIGUEL BUILDING CORPORATION, a Florida corporation, on behalf of said corporation.

(NOTARY SEAL HERE)
"OFFICIAL NOTARY SEAL"
SANDRA A. WALSH
Notary Public, State of Florida
Commission No. 00247556
Expires 12/31/96
Sandra A. Walsh & Associates, P.A.
NOTARY

SIGN: *Sandra A. Walsh*
NOTARY PUBLIC
SANDRA A. WALSH
PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires: 12/31/96

JOINDER

FURTHER, the said SAN MIGUEL HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, hereby joins in this Declaration of Covenants, Conditions and Restrictions for San Miguel on this ~~30~~ 3 day of ~~September~~, 1994.
October

Signed, sealed and delivered in the presence of:

SAN MIGUEL HOMEOWNERS' ASSOCIATION, INC.

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

SIGN: [Signature]

MICHEL SAADEN
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: [Signature]

SONVA MORE
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

STATE OF FLORIDA
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 30 day of ~~September~~, 1994, 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 MIGUEL HOMEOWNERS' ASSOCIATION, INC., a Florida non-profit corporation, on behalf of said corporation.



SIGN: [Signature]
NOTARY PUBLIC

Sandra A. Walsh
PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires: 12/21/96

JOINDER AND CONSENT

FURTHER, VINEYARDS DEVELOPMENT CORPORATION, a Florida corporation, as Mortgagee under a Mortgage which encumbers the hereinabove described real property, hereby joins in and consents to this Declaration of Covenants, Conditions and Restrictions for San Miguel on this 30 day of September, 1994.
O-4-6-1

Signed, sealed and delivered in the presence of:

VINEYARDS DEVELOPMENT CORPORATION

SIGN: [Signature]

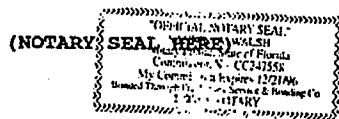
By: Michael Saadeh
Michael Saadeh, President
98 Vineyards Boulevard
Naples, Florida 33999

DONNA MORE
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: [Signature]
Sandra A. Walsh
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

STATE OF FLORIDA
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this 30 day of September, 1994, by Michael Saadeh, 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 VINEYARDS DEVELOPMENT CORPORATION, a Florida corporation, on behalf of said corporation.



SIGN: [Signature]
NOTARY PUBLIC

Sandra A. Walsh
PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires: 12/21/96

JOINDER AND CONSENT

FURTHER, DORA INVESTMENT COMPANY, a Florida corporation, as Mortgagee under a Mortgage which encumbers the hereinabove described real property, hereby joins in and consents to this Declaration of Covenants, Conditions and Restrictions for San Miguel on this ~~30~~ day of ~~September~~, 1994.

October

Signed, sealed and delivered
in the presence of:

DORA INVESTMENT COMPANY

By: John S. Moore
John S. Moore, President
400 Fifth Avenue South
Naples, Florida 33940

SIGN: Michel Saaden

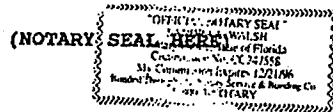
MICHEL SAADEN
PLEASE PRINT OR TYPE NAME OF FIRST WITNESS ABOVE

SIGN: Donna Moore

DONNA MOORE
PLEASE PRINT OR TYPE NAME OF SECOND WITNESS ABOVE

STATE OF FLORIDA
COUNTY OF COLLIER

THE FOREGOING INSTRUMENT was acknowledged before me this ~~30~~ day of ~~September~~, 1994, by John S. Moore, 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 DORA INVESTMENT COMPANY, a Florida corporation, on behalf of said corporation.



SIGN: Sandra A. Walsh
NOTARY PUBLIC
Sandra A. Walsh
PLEASE PRINT OR TYPE NAME OF NOTARY PUBLIC ABOVE

My commission expires: 12/21/96