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**DECLARATION OF CONDOMINIUM**  
**OF**  
**BELLA CAPRI, A CONDOMINIUM**

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**OF**  
**BELLA CAPRI**

This DECLARATION OF CONDOMINIUM of Bella Capri, a Condominium (the "Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Indian Rocks Beach Development, LLC, a Florida limited liability company (the "Developer"), for itself, its successors, grantees and assigns:

**WITNESSETH:**

WHEREAS, Developer is the owner in fee simple of certain real property, lying and being situated in Pinellas County, Florida, as more particularly set forth in Exhibit "A" attached hereto, which lands are herein called "the Land", subject to reservations, restrictions and easements of record; and

WHEREAS, the Developer contemplates erecting upon the Land multi-unit residential buildings, housing a total of twenty-four (24) residential Condominium Units and related facilities on a portion of the Land described on Exhibit "A" and desires to submit it to condominium ownership pursuant to Chapter 718, Florida Statutes, the Condominium Act, as it exists on the date hereof; and

NOW, THEREFORE, the Developer makes the following declarations:

1. NAME. The name by which this Condominium is to be identified is Bella Capri, a Condominium.

2. DEFINITIONS. For all purposes in this Declaration and for all purposes in the Articles of Incorporation and Bylaws of Bella Capri Condominium Association, Inc., a Florida corporation not for profit, the following words shall have the definitions as hereinafter stated, to-wit:

(a) Articles. The Articles of Incorporation of the Association, as same may be amended from time to time.

(b) Assessments. Assessment means a share of the funds required for the payment of Common Expenses, which from time to time are assessed against the Condominium and its Unit Owner.

(c) Association. Association means Bella Capri Condominium Association, Inc., a Florida corporation not for profit, which is responsible for the operation of the Condominium, the Common Elements (as defined hereafter) and the Common Facilities (as defined hereafter), its successors and assigns.

(d) Board of Directors or Board. The Board of Directors or other representative body responsible for administration of the Association.

(e) Building. Any building contained within the Condominium Property from time to time as herein provided.

(f) Bylaws. The Bylaws of the Association as may be amended from time to time.

(g) Common Elements. Common Elements mean and include in addition to the items as listed in Section 718.108, *Florida Statutes*, the following items:

(1) The portions of the Condominium Property which are not included within the Units.

(2) Easements through Units for conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility and other services to Units and/or Common Elements.

(3) An easement of support in every portion of a Unit which contributes to the support of the Building.

(4) The property and installations required for the furnishing of utilities and other services to more than one Unit or to the Common Elements.

(5) Any other parts of the Condominium Property designated as Common Elements in this Declaration, which shall specifically include the Surface Water Management System and Storm Water Management System for the Condominium.

(6) Any and all portions of the Life Safety Systems (as hereinafter defined), regardless of where located within the Condominium Property.

(7) Cross-easements for ingress, egress, support, maintenance, repair, replacements and utilities.

(8) Easements for encroachments by the perimeter walls, ceilings and floors surrounding each Condominium Unit caused by the settlement or movement of the Building or by minor inaccuracies in building or rebuilding

which may now exist or hereafter exist, and such easements shall continue until such encroachments no longer exist.

(9) Roads installed on the Condominium property by the Developer or any third party with the approval of the Developer that have not been dedicated to the State of Florida or a political subdivision thereof.

(10) The recreational and other commonly used facilities depicted on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" to this Declaration;

(11) The elevators depicted on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" to this Declaration;

(12) The entrance way improvements;

(13) Mailboxes in such location as determined by the Developer; and

(14) The surface water management system for the land.

Some components of the Condominium which are typical "common elements" of a condominium have instead been designated as Limited Common Elements. References herein to Common Elements also shall include the Limited Common Elements unless the context would prohibit or it is otherwise expressly provided. Notwithstanding any provision to the contrary, amendments to the Common Elements may be made as provided for in Sections 718.110(5) and 718.110(6), *Florida Statutes*.

(h) Common Facilities or Association Property. Any real property or improvements thereon and any personal property owned by the Association for the use and benefit of the Unit Owners.

(i) Common Expenses. All expenses and assessments properly incurred by the Association for the Condominium.

(j) Common Surplus. The excess of all receipts of the Association collected on behalf of the Condominium, including, but not limited to, assessments, rents, profits and revenues on account of the Common Elements, over the Common Expenses.

(k) Condominium. Bella Capri, a Condominium, which is formed pursuant to this Declaration.

(l) Condominium Form of Ownership. That form of ownership of real property created pursuant to the provisions of Chapter 718, *Florida Statutes*, the "Condominium Act", and which is composed of Condominium Units that may be owned by one or more persons and, appurtenant to each Condominium Unit, an undivided share in the Common Elements.

(m) Condominium Act. Chapter 718, *Florida Statutes*, as it exists on the date hereof, which is incorporated herein by reference. All provisions thereof shall apply to this Condominium.

(n) Condominium Parcel. The Condominium Unit, together with the undivided share in the Common Elements appurtenant thereto.

(o) Condominium Unit or Unit. That part of the Condominium Property which is subject to exclusive ownership.

(p) Condominium Property. The lands, leaseholds and personal property that are submitted to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto provided by the Developer intended for use in connection with the Condominium.

(q) Declaration or Declaration of Condominium. The instrument or instruments by which this Condominium is created, as they are from time to time amended.

(r) Developer. Developer means Indian Rocks Beach Development, LLC, a Florida limited liability company, its successors or assigns, or any other person who creates the Condominium or offers Condominium Parcels for sale or lease in the ordinary course of business, but does not include an owner or lessee of a Condominium Unit who has acquired his or her Unit for his or her own occupancy.

(s) Institutional Mortgagee. Shall include any bank, federal savings and loan association, a state savings and loan association, an institutional investor, mortgage banker, the Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation, federal or state agency, insurance company and/or a real estate investment trust or any other similar type of lender generally recognized as an institutional-type lender holding a mortgage on one or more Condominium Units or all or part of the Condominium Property and the successors and/or assigns of such entities.

(t) Life Safety Systems. Life Safety Systems mean and refer to any and all emergency lighting, audio and visual signals, safety systems, sprinklers and smoke detection systems, which are now or hereafter installed in the Buildings, whether or not within the Units. All such Life Safety Systems, together with all conduits, wiring, electrical connections and systems related thereto, regardless of where located, shall be deemed Common Elements hereunder. Without limiting the generality of the foregoing, when the context shall so allow, the Life Safety Systems shall also be deemed to include all means of emergency ingress and egress, which shall include all stairways and stair landings. Notwithstanding the breadth of the foregoing definition, nothing herein shall be deemed to suggest or imply that the Buildings or Condominium contains all such Life Safety Systems.

(u) Limited Common Elements. Limited Common Elements mean those Common Elements the use of which is reserved to a certain Unit or Units to the exclusion of other Units, as specified in this Declaration. References herein to Common Elements also shall include all Limited Common Elements unless the context would prohibit or it is otherwise expressly provided. Nothing herein shall be deemed to preclude the Developer from assigning

the exclusive use of Limited Common Elements (i.e., a parking space) to one or more, but not all, of the Units, all as more particularly described in Section 3(d) below (and any such assignment shall not cause the particular item to lose its designation as a Common Element).

(v) Management Agreement. The agreement, if any, which provides for management of the Condominium Property and the Common Elements.

(w) Member. An owner of a fee simple estate in any Condominium Parcel who is a member of the Association.

(x) Unit Owner or Owner of a Condominium Unit. The record owner of legal title in a Condominium Parcel.

(y) Surface Water Management System and Storm Water Management System shall mean and refer to the surface water management system and storm water management system for the Condominium Property including, but not limited to, all inlets, ditches, swales, culverts, water control structures, stormwater pumps, retention and detention areas, ponds, lakes, flood plain compensation areas, wetlands, and any associated buffer areas, and wetland mitigation areas, which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use or reuse water to prevent or reduce flooding, over drainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges.

(z) Bella Capri. Bella Capri means the lands described in Exhibit "A" of this Declaration, as are now or hereafter made subject to this Declaration, and shall include any improvements, if any, constructed thereon.

### 3. PROPERTY SUBMITTED TO CONDOMINIUM FORM OF UNIT OWNERSHIP

(a) Submission. Subject to easements, restrictions and reservations of record, and except as set forth in this Subsection 3(a), the Developer hereby submits the Land and all improvements erected or to be erected thereon and all other property, real, personal or mixed, now or hereafter situated on or within the Land – but excluding all public or private (e.g. cable television and/or other receiving or transmitting lines, fiber, antennae or equipment) utility installations therein or thereon –to the condominium form of ownership and use in the manner provided for in the Florida Condominium Act as it exists on the date hereof and as it may be hereafter renumbered. Without limiting any of the foregoing, no property, real, personal or mixed, not located within or upon the Land as aforesaid shall for any purposes be deemed part of the Condominium or be subject to the jurisdiction of the Association, the operation and effect of the Florida Condominium Act or any rules or regulations promulgated pursuant thereto, unless expressly provided.

(b) Identification of Units. The Land has constructed thereon one (1) buildings containing a total of twenty-four (24) Units. Each such Unit is identified by a separate numerical or alpha-numerical designation. The designation of each of such Units is set forth on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" hereto. The Survey,



Graphic Description and Plot Plan attached as Exhibit "B" consists of a survey of the Land, a graphic description of the Improvements located thereon, including, but not limited to, the Building in which the Units are located, and a plot plan thereof (the "Survey, Graphic Description and Plot Plan"). The Survey, Graphic Description and Plot Plan attached as Exhibit "B", together with this Declaration, is sufficient in detail to identify the Common Elements and each Unit and their relative locations and dimensions. There shall pass with a Unit as appurtenances thereto: (a) an undivided share in the Common Elements and Common Surplus; (b) the exclusive right to use such portion of the Common Elements as may be provided in this Declaration, including, without limitation, the right to transfer such right to other Units or Unit Owners; (c) an exclusive easement for the use of the airspace occupied by the Unit as it exists at any particular time and as the Unit may lawfully be altered or reconstructed from time to time, provided that an easement in airspace which is vacated shall be terminated automatically; (d) membership in the Association with the full voting rights appurtenant thereto; and (e) other appurtenances as may be provided by this Declaration.

The floor plans depicted in the Survey, Graphic Description and Plot Plan are the standard floor plans and if the Developer approves of the change, in its sole discretion, each individual Unit Owner may have floor plans customized to reflect a different design, based on the Unit Owner's individual needs or desires. Any modifications or options selected for a particular Unit by the Owner shall not be deemed a material amendment altering or modifying the Condominium in a manner adverse to any other Unit Owner. The estimated latest date of completion of constructing, finishing and equipping the Condominium Property is December 31, 2008.

(c) Unit Boundaries. Each of the Condominium Units is identified and designated as set forth in the Survey, Graphic Description and Plot Plan contained in Exhibit "B". Each Unit shall consist of that part of the building containing such Unit which lies within the boundaries of the Unit, which boundaries are as follows:

(1) Upper Boundaries

a. The upper boundary of all Units shall be the horizontal plane of the lowest surface of the unfinished ceiling of the Unit extended to an intersection with the perimetrical boundaries.

b. The upper boundary of the portion of the Units comprising the garage shall be the plane of the lowest surface of the unfinished garage ceiling.

(2) Lower Boundaries

The lower boundary of all Units shall be the horizontal plane of the unfinished floor slab of that Unit and the horizontal plane of the unfinished garage slab extended to an intersection with the perimetrical boundaries.

(3) Perimetrical Boundaries

The perimetrical boundaries of a Unit shall be the following boundaries extended to an intersection with upper and lower boundaries:

a. EXTERIOR BUILDING WALLS:

The intersecting vertical plane(s) of the innermost unfinished surfaces of the exterior wall of the building bounding such Unit.

b. INTERIOR BUILDING WALLS:

The vertical planes of the innermost unfinished surface of the party walls dividing such Units extended to intersections with other perimetrical boundaries.

(4) Apertures

Where there are apertures in any boundary, including, but not limited to, windows and doors, such boundaries shall be extended to include the interior, unfinished surfaces of such apertures, including all frameworks thereof, exterior surfaces made of glass or other transparent materials, exterior doors of any type, including the locks, hinges and other hardware thereof, and all framings and casings thereof shall be included in the boundaries of the Unit.

(5) Air Conditioning Units

The boundaries of each Unit shall also be deemed to include all integral parts of the air conditioning unit.

(6) Excluded from Units

The Unit shall not be deemed to include utility services which may be contained within the boundaries of the Unit, but which are utilized to serve Common Elements and/or a Unit or Units other than or in addition to the Unit within which contained. Such utility services are part of the Common Elements, and shall be the maintenance responsibility of the Association. The Unit shall not be deemed to include columns or partitions contributing to the support of the building. Such columns or partitions are part of the Common Elements. Moreover, notwithstanding any provision to the contrary, pipes, wires, conduits, cable wires, or other utility lines or installations constituting a part of the overall systems designed for the service of any particular Condominium Unit, or any of the structural members or portions of any kind, including fixtures and appliances and stairways within the Condominium Unit, which are not removable without jeopardizing the soundness, safety or usefulness of the remainder of the Building or another Condominium Unit, shall not be deemed to be part of any Condominium Unit.

(7) Exceptions. In cases not specifically covered above, and/or in any case of conflict or ambiguity, the survey of the Units set forth on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" hereto shall control in determining the boundaries of a Unit, except that the provisions of Section 3(c)(6) above shall control unless specifically depicted and labeled otherwise on such survey.

(d) Limited Common Elements. Each Unit may have, to the extent applicable and subject to the provisions of this Declaration, as Limited Common Elements appurtenant thereto:

(1) Patios, Balconies, Terraces, Patios and Lanais appurtenant to Units. Any patio, balcony, terrace and/or lanai (and all improvements thereto) as to which direct and exclusive access shall be afforded to any particular Unit or Units to the exclusion of others shall be a Limited Common Element of such Unit(s). The Association shall be responsible for the maintenance of the structural and mechanical elements of any such Limited Common Elements, with the costs of same being a part of the Common Expenses. Each Owner shall, however, be responsible for the general cleaning, plant care and upkeep of the appearance of the area(s) and, for the repair and replacement of any floor coverings placed or installed on any patio, balcony, terrace and/or lanai. A Unit Owner using a patio, balcony, terrace and/or lanai or making or causing to be made any additions, alterations or improvements thereto agrees, and shall be deemed to have agreed, for such Owner, and his heirs, personal representatives, successors and assigns, as appropriate, to hold the Association, the Developer and all other Unit Owners harmless from and to indemnify them for any liability or damage to the Condominium and/or Association Property and expenses arising therefrom.

(2) Parking Spaces and Garages. Each parking space and/or any parking garage shown on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" hereto shall be a Limited Common Element only upon it being assigned as such to a particular Unit in the manner described herein. So long as Developer holds a Unit for sale in the ordinary course of business, Developer hereby reserves the right to assign, with or without consideration, the exclusive right to use any and all parking spaces and/or parking garages (if any) located within the Common Elements of the Condominium to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. Any such consideration shall be retained by Developer for its own account; provided, however, each Penthouse Unit shall be assigned a private two (2) car garage and all other Units shall always have the exclusive use of a minimum of one (1) assigned covered parking space. Such assignment shall not be recorded in the Public Records of the County but, rather, shall be made by way of instrument placed in the official records of the Association (as same are defined in the By-Laws). A Unit Owner may assign the Limited Common Element parking space and/or parking garage appurtenant to his or her Unit to another Unit by written instrument delivered to (and to be held by)

the Association. A Limited Common Element parking space and/or parking garage may be relocated at any time, and from time to time, by the Board to comply with applicable Federal, State and local laws and regulations regarding or affecting handicap accessibility. The maintenance of any parking space and/or parking garage so assigned shall be the responsibility of the Association. Each Owner understands and agrees that not all parking spaces are covered.

(3) Stairwells. Each stairwell labeled on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" hereto shall be a Limited Common Element of the vertically aligned Units adjacent to each floor that it services. The maintenance of any stairwell shall be the responsibility of the Association.

(4) Cabanas. So long as Developer holds a Unit for sale in the ordinary course of business, Developer hereby reserves the right to assign, with or without consideration, the exclusive right to use any Cabana located within the Condominium Property and labeled as LCE on the Survey, Graphic Description and Plot Plan attached as Exhibit "B" hereto to one or more Units, whereupon the space so assigned shall be deemed a Limited Common Element of the Unit(s) to which it is assigned. A grant with respect to Cabanas shall be made by the Developer by written assignment (which shall not be recorded). All fees collected by the Developer for assigning Cabanas, if any, shall be retained by the Developer and shall not constitute income or revenue of the Association. After assignment to a Unit by the Developer, a Unit Owner may reassign the Limited Common Element Cabana appurtenant to his Unit to another Unit by written instrument delivered to (and to be held by) the Association. The costs of maintenance of any Cabanas so assigned as well as the insurance of its contents, shall be the sole responsibility of the Owner of the Unit(s) to which it is assigned. The Association shall maintain the Cabanas. The costs for performing same shall be a Limited Common Expense of the Association, which shall be paid by the Unit Owners that have subleased the Cabanas, the share for each which shall be computed based upon the total square footage of the Cabana in uniform relationship to the total square footage of all other Cabanas. So long as Developer holds a Unit for sale in the ordinary course of business, the Developer reserves the right to use the Cabanas in its sole and absolute discretion until the Cabanas are assigned to a Unit, including, but not limited to, allowing designated Unit Owners to use the same as determined by the Developer.

(5) Miscellaneous Areas, Equipment. Any fixtures or equipment (e.g., an air conditioning compressor or hot water heater) serving a Unit or Units exclusively and any area (e.g., a closet or ground slab) upon/within which such fixtures or equipment are located shall be Limited Common Elements of such Unit(s). The maintenance (and cost) of any such equipment and/or areas so assigned shall be the sole responsibility of the Owner of the Unit(s) to which the fixtures and/or equipment are appurtenant.

(6) Other. Any other portion of the Common Elements which, by its nature, cannot serve all Units but serves one Unit or more than one Unit (i.e., any hallway and/or elevator landing serving a single Unit or more than one (1) Unit owned by the same Owner) shall be deemed a Limited Common Element of the Unit(s) served and shall be maintained by said Owner. In the event of any doubt or dispute as to whether any portion of the Common Elements constitutes a Limited Common Element or in the event of any question as to which Units are served thereby, a decision shall be made by a majority vote of the Board of Directors of the Association and shall be binding and conclusive when so made. To the extent of any area deemed a Limited Common Element hereunder, the Owner of the Unit(s) to which the Limited Common Element is appurtenant shall have the right to alter same as if the Limited Common Element were part of the Owner's Unit, rather than as required for alteration of Common Elements. Notwithstanding the foregoing, the designation of same as a Limited Common Element hereunder shall not allow the Owner of the Unit to which the Limited Common Element is appurtenant to preclude passage through such areas as may be needed from time to time for emergency ingress and egress, and for the maintenance, repair, replacement, alteration and/or operation of the elevators, Life Safety Systems, mechanical equipment and/or other Common Elements which are most conveniently serviced (in the sole determination of the Board) by accessing such areas (and an easement is hereby reserved for such purposes).

(e) Recreational Facilities.

The approximate location of the recreational facilities intended to be constructed is indicated on the Survey, Graphic Description, and Plot Plan contained herein as Exhibit "B" and shall be located on the lands legally described in Exhibit "A" attached hereto. The Developer reserves the right to increase or add to the recreational facilities described in Exhibit "B" without the consent of the Unit Owners or the Association, but is not obligated to add or increase same. If the recreational facilities are increased, in addition to those described in Exhibit "B", by the Developer, the Common Expenses of the Association and the Unit Owner's maintenance expense may increase. Such recreational facilities that may be added or increased shall be whatever facilities Developer, in its sole discretion, deems necessary or desirable in connection with developing Bella Capri.

The Unit Owners shall have an obligation to contribute to the payment of expenses for maintenance, repair, replacement and insurance for such recreational and other commonly used facilities constructed as a part of the Condominium, based on each Unit Owner's undivided percentage share in the Common Expenses as set forth in Sections 8 and 9 of the Declaration. Each Unit Owner's undivided percentage share in the Common Expenses is computed based upon the ratio of one over the total number of all Units in the Condominium. There is a lien right against each Condominium Parcel to secure the payment of assessments or other exactions coming due for the use, maintenance, upkeep or repair of the recreational or commonly used facilities. The Unit Owner's failure to make these payments may result in foreclosure of the lien.

4. UNIT IDENTIFICATION. The location of the Condominium Units on the Condominium Property submitted to the Condominium Form of Ownership is set forth on the Survey, Graphic Description and Plot Plan attached hereto and made a part hereof as Exhibit "B". Each Condominium Unit is described on said Survey, Graphic Description and Plot Plan in such manner that there can be determined therefrom the identification, location, dimensions and size of each as well as the Common Elements and Limited Common Elements, if any appurtenant thereto. Each Condominium Unit is identified by a letter and/or number as shown on the Survey, Graphic Description and Plot Plan attached hereto as Exhibit "B" and made a part hereof, so that no such Condominium Unit bears the same designation as any other such Condominium Unit.

5. CHANGE IN PLANS AND SPECIFICATIONS. The Developer is hereby authorized to make changes in the plans and specifications and construction methods and materials during the construction of improvements on said Property, so long as such changes do not conflict with the Condominium Act.

6. EASEMENTS AND RIGHTS OF ACCESS. Each of the following easements is a covenant running with the land of the Condominium and, notwithstanding any of the other provisions of this Declaration, may not be substantially amended or revoked in such a way as to unreasonably interfere with their proper and intended uses and purposes, and each shall survive the termination of the Condominium.

(a) Utility Services. Easements as may be required for utility services in order to adequately serve the Condominium Property or any Condominium Unit, Limited Common Element or Common Element, including, but not limited to, electricity, telephone facilities, sewer, water, lighting, irrigation, drainage, internet service, television antenna and cable television facilities and any electronic security facilities. However, easements through a Condominium Unit shall be only according to the plans and specifications for the Building containing the Condominium Unit or as the Building is actually constructed or reconstructed, unless approved in writing by the Owner. A Unit Owner shall do nothing within or outside his Condominium Unit that interferes with or impairs the utility services using these easements. The Association or its designee shall have a right of access to each Condominium Unit and the improvements constructed thereon when necessary for the maintenance, repair or replacement of any Common Elements (which include Limited Common Elements) or for making emergency repairs which are necessary to prevent damage to the Common Elements (which include Limited Common Elements) or to another Condominium Unit or Condominium Units; provided, however, such right of access shall not be deemed to be an easement and shall not unreasonably interfere with the Unit Owner's permitted use of the Condominium Unit and, except in the event of an emergency, entry into any Condominium Unit shall be made on reasonable notice to the Unit Owner.

(b) Easement of Support. Every portion of a Condominium Unit contributing to the support of a Building or an adjacent Condominium Unit shall be burdened with an easement of support for the benefit of all Condominium Units in the Building.

(c) Use of Common Elements. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the

Unit Owners and residents of the Condominium, and their guests and invitees, for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended.

(d) Encroachments. If any portion of the Common Elements or Limited Common Elements encroaches upon any Condominium Unit; if any Condominium Unit encroaches upon any other Condominium Unit or upon any portion of the Common Elements or Limited Common Elements; or if any encroachment shall hereafter occur as a result of (i) construction or reconstruction of any improvement; (ii) settling or shifting of any improvements; (iii) any addition, alteration or repair to the Common Elements or Limited Common Elements made by or with the consent of the Association; or (iv) any repair or restoration of any improvements (or any portion thereof) or any Condominium Unit after damage by fire or other casualty or any taking by condemnation or eminent domain proceedings of all or any portion of any Condominium Unit or the Common Elements or Limited Common Elements, then, in any such event, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the improvements shall stand. Such easements shall exist to a distance of not more than three (3) feet, as measured from any common boundary between adjacent Condominium Units and between each Condominium Unit and any adjacent Common Element along a line perpendicular to such boundaries at such points. Any such easement for encroachment shall include an easement for the maintenance and use of encroaching improvements in favor of each of the Unit Owners and their respective designees.

(e) Overhanging Troughs and Gutters. There shall be easements for overhanging troughs or gutters, downspouts and the discharge therefrom of rainwater and the subsequent flow thereof over the Condominium Units and the Condominium Property.

(f) Natural Growth. There shall be easements for over-hanging natural growth of trees and shrubbery over the Condominium Units, the Limited Common Elements and the Common Elements.

(g) Restrictions, Reservations and Easements of Record. The creation of this Condominium is subject to restrictions, reservations and easements which have been placed of record prior to the formation and filing hereof.

(h) Pedestrian and Vehicular Traffic. Easements for pedestrian traffic over, through and across sidewalks, driveways, paths, lanes and walks as the same may from time to time exist upon the Common Elements and the Limited Common Elements, including but not limited to the driveways; and for pedestrian and vehicular traffic and parking over, through, across and upon such portions of the Common Elements and the Limited Common Elements as may from time to time be paved and intended for such purposes, including but not limited to all driveways, same being for the use and benefit of the Association and the Unit Owners and residents of the Condominium and their employees, guests and invitees.

(i) Developer's Ingress and Egress and Utility Purposes. In addition to the foregoing, the Developer for itself, its successors, assigns, agents and employees, including, without limitation, any person residing within the Property described in Exhibit "A", their guests and invitees, their mortgagees, successors and assigns, expressly reserves an easement for

ingress and egress and utility purposes over and across all roads existing from time to time within the property described in Exhibit "A", if such property is submitted to the condominium form of ownership.

(j) Grant of Additional Easements; Modifications and Termination. The Association shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Common Elements in favor of the Unit Owners and residents of the Condominium and their guests and invitees, or in favor of any other person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements within or outside of the Condominium in favor of the Association and/or the Unit Owners and residents of the Condominium and their guest and invitees or in favor of any person, entity, public or quasi-public authority or utility company, as the Association may deem desirable for the proper operation and maintenance of the Condominium or any portion thereof, or for the health, safety or welfare of the Unit Owners, or for any other reason or purpose. So long as such additional easements or the modification, relocation or abandonment of existing easements will not unreasonably and adversely interfere with the use of Condominium Units for dwelling purposes, no joinder of any Unit Owner or any mortgagee of any Condominium Unit shall be required or, if same would unreasonably and adversely interfere with the use of any Condominium Unit for dwelling purposes, only the joinder of the Unit Owners and mortgagees of Condominium Units so affected shall be required. To the extent required, all Unit Owners hereby irrevocably appoint the Association as their attorney-in-fact for the foregoing purposes.

(k) Maintenance of Improvements. The Developer for itself and the Association reserves easements over the Condominium Property for ingress and egress, or for such other purposes as shall not unreasonably interfere with the customary use of the Condominium Property, including construction, maintenance, operation and the like over the Condominium Property.

(l) Sales and Leasing Activity. For as long as the Developer retains any ownership interest in any portion of Bella Capri, the Developer, its designees, successors and assigns, shall have the right to use any such Units and parts of the Common Areas or Condominium Property for guest accommodations, model apartments and sales, leasing and construction offices, to show model Units and the Common Areas to prospective purchasers and tenants of Units and/or "units" or "improvements" intended to be constructed within Bella Capri, and/or to erect on the Condominium Property and Condominium Property signs and other promotional material to advertise Units or other portions of Bella Capri for sale or lease.

(m) Warranty. For as long as Developer remains liable under any warranty, whether statutory, express or implied, for act or omission of Developer in the development, construction, sale and marketing of the Condominium, then Developer and its contractors, agents and designees shall have the right, in Developer's sole discretion and from time to time and without requiring prior approval of the Association and/or any Unit Owner (provided, however, that absent an emergency situation, Developer shall provide reasonable advance notice), to enter the Condominium Property, including the Units, Common Elements and Limited Common Elements, for the purpose of inspecting, testing and surveying same to determine the need for repairs, improvements and/or replacements, and effecting same, so that Developer can fulfill any of its warranty obligations. **Nothing herein shall be deemed or construed as the Developer**



**making or offering any warranty, all of which are disclaimed (except to the extent same may not be) as set forth in Section 24(c) below.**

(n) Exterior Building Maintenance. An easement is hereby reserved on, through and across each Unit and all Limited Common Elements appurtenant thereto in order to afford access to the Association (and its contractors) to perform roof repairs and/or replacements, repair, replace, maintain and/or alter rooftop mechanical equipment, to stage window washing equipment and to perform window washing and/or any other exterior maintenance and/or painting of the Building.

7. DEVELOPER'S UNITS AND PRIVILEGES Subject to the terms of Section 19, the Developer is empowered to sell, lease or rent Condominium Units to any person approved by it, unless prohibited by law. The Developer shall have the right to transact on the Condominium Property any business necessary to consummate the sale of Condominium Units, including but not limited to the right to maintain models, sales offices and construction trailers, erect signs, place employees in the office, use the Common Elements and show unsold Condominium Units. In addition to and without limiting the generality of the foregoing, the Developer shall have the right to show the Condominium Units it owns, the Limited Common Elements appurtenant thereto, if any, and the Common Elements to prospective purchasers and tenants, as well as the right to maintain a sales office, and to place and maintain signs and other promotional material on the Condominium Project. The sales office(s), signs and all items pertaining to sales shall not be considered Common Elements and shall remain the property of the Developer. In the event there are unsold Condominium Units, the Developer retains the right to be the Owner thereof, under the same terms and conditions as other Owners, save for this right to sell, rent or lease as contained in this Section.

Moreover, the Developer hereby reserves the right, in its sole and absolute discretion, to alter, relocate, or revise the shoreline and/or boundary line of any lake constructed or located on the Land. Neither Developer nor the Association shall be liable to any Owner or other Unit Owner for any loss or damage arising out of the location or relocation of the boundary and/or shoreline of any lake constructed and Developer reserves the right to alter or change the shoreline of any lake, if constructed without the consent of any Unit Owner.

8. PERCENTAGE OF OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS. The undivided share of the Common Expenses and ownership of the Common Elements and Common Surplus attributable to each Condominium Unit shall be computed upon the following basis:

(a) The Developer has not considered the size of the Unit in apportioning the Common Expenses and in determining the ownership of Common Elements and Common Surplus. Each Unit has an undivided one/twenty-fourth (1/24th) share in the ownership in the Condominium of the Common Elements and the Common Surplus, and in apportioning the Common Expenses.

9. COMMON EXPENSES AND COMMON SURPLUS.

(a) Common Expenses of the Condominium Association, as defined hereinabove, shall be shared by all Unit Owners in accordance with an undivided share in the ownership of the Common Elements and the Common Surplus attributable to each Condominium Unit submitted to condominium ownership, as set forth in Section 8 hereinabove. It is understood that this shall include all expenses in connection with any assessments, insurance and all other expenditures for which the Association shall be responsible.

(b) The Common Surplus shall be owned by Unit Owners in accordance with the provisions set forth in Section 8 hereinabove as they relate to the undivided share in the ownership of the Common Elements and Common Surplus attributable to each Condominium Unit submitted to condominium ownership pursuant to this Declaration.

10. GOVERNING BODY. The affairs of the Condominium shall be conducted by a corporation incorporated pursuant to the Florida Statutes governing corporations not for profit. The name of the corporation to conduct the affairs of the Condominium shall be Bella Capri Condominium Association, Inc., the Articles of Incorporation of which are attached hereto as Exhibit "C" and are made a part hereof as though set out in full herein. The Bylaws of the Association are attached hereto as Exhibit "D" and are made a part hereof as though set out in full herein.

11. MEMBERSHIP IN THE ASSOCIATION.

(a) The Association shall at all times maintain a register setting forth names of the Owners of all of the Condominium Units and in the event of the sale or transfer of any Condominium Unit to a third party, the Purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit together with such recording information as shall be pertinent to identify the instrument by which Purchaser or Transferee has acquired his interest in the Condominium Unit. Further, the Owner of each Condominium Unit shall at all times notify the Association of the names of the parties holding any mortgage or mortgages on any Condominium Unit, the amount of such mortgage or mortgages and the recording information which shall be pertinent to identify the mortgage or mortgages. The holder of any mortgage or mortgages upon any Condominium Unit may, if he or it so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit and, upon receipt of such notice, the Association shall register in its records all pertinent information pertaining to the same.

(b) The Developer and all persons hereinafter owning an interest in the Condominium Units, whose interest is evidenced by the recordation of a proper instrument in the Public Records of Pinellas County, Florida, shall automatically be members of the Association and such membership shall automatically terminate when such persons have divested themselves of such interest.

(c) An Owner or Owners of a single Condominium Unit shall collectively be entitled to one (1) vote for that Condominium Unit, which vote shall be cast by the voting member. If any Condominium Unit is owned by more than one person, other than a husband and

wife, one of the Owners of such Condominium Unit shall be designated, by a duly sworn certificate signed by all of the record Owners of the Condominium Unit and filed with the Secretary of the Association, as the voting member for that Condominium Unit. Failure by all Owners of a Condominium Unit (except in the case of a husband and wife who are the sole owners of the Condominium Unit) to file such a sworn certificate with the Secretary prior to a members' meeting shall result in depriving such Owners of a vote at such meeting. In the case of a corporation, partnership or joint venture, the officer, director, agent or partner entitled to vote shall be designated by a certificate signed by the appropriate officer, director or partner of such entity and filed with the Secretary of the Association. In the case a husband and wife are the sole owners of the Condominium Unit, they need not designate the voting member and either of them appearing at a meeting of the members may, if there is no objection from the other, cast the voting interest for that Condominium Unit. The appearance at any meeting of any co-owner of a Condominium Unit shall constitute that Condominium Unit's presence for the purpose of establishing a quorum, whether or not the co-owner in attendance is authorized to vote. Whenever a particular numerical or percentage vote is called for or provided for in this Declaration or the Articles or Bylaws, unless the particular provision describing the vote required shall specifically require to the contrary, the vote required shall be that percentage or fraction of the total number of voting interest of the Unit Owners present and voting or, if the provision involved so requires, that percentage or fraction of the total number of votes entitled to be voted on the matter. Unless a particular provision shall require otherwise, a majority vote of the number of voting interests of Unit Owners present and voting and entitled to vote on any matter shall be controlling, provided a quorum is present. A person or entity owning an interest in more than one (1) Condominium Unit may be designated as a voting member for each Condominium Unit which he or it owns and may cast one (1) vote for each such Condominium Unit.

(d) There shall be one (1) voting member for each Condominium Unit submitted to condominium ownership pursuant to this Declaration and amendments hereto.

(e) All the affairs, policies, regulations and property of the Association shall be controlled and governed by the Board of Directors of the Association, consisting of not less than three (3) and not more than seven (7) voting Members who are to be elected annually by the voting members; provided, at all times there may only be an odd number of Directors on the Board.

(f) Subsequent to the filing of this Declaration, the Association, when authorized by a vote of two-thirds (2/3) of the total vote of the members of said Association, may purchase and/or acquire and enter into agreements, from time to time, whereby it acquires leaseholds, memberships and other possessory or use interests in lands or facilities, including, but not limited to, country clubs and other recreational facilities, whether or not contiguous to the lands of the Condominium intended to provide for the enjoyment, recreation and other use or benefit of the Unit Owners. The expense of ownership, rental fees, operations, replacements and other undertakings in connection therewith shall be Common Expenses, together with all other expenses and costs herein or by law defined as Common Expenses.

12. AMENDMENT OF DECLARATION.

(a) This Declaration may be amended by affirmative vote of at least 66 2/3% of the Unit Owners at a meeting duly called for such purpose pursuant to the Bylaws; provided, however, that no amendment shall be made which shall in any manner impair the security of an Institutional Mortgagee having a mortgage or other lien against any one or more Condominium Units or Condominium Parcels, or any other record Unit Owners of liens thereon. However, if such amendment is only for the purpose to correct an error or omission in this Declaration or in other documentation required by law to establish the condominium form of Unit Ownership, then such amendment shall nevertheless be effective when duly passed by an affirmative vote of fifty-one (51%) percent of the Unit Owners of the Association present or represented by written proxy in accordance with the Bylaws and recorded among the Public Records of Pinellas County; provided, however, that the property rights of the Unit Owners are not materially and/or adversely affected by such amendment.

(b) Unless otherwise specified to the contrary in this Declaration, no amendment shall change the configuration or size of any Unit in any material fashion, materially alter or modify the appurtenances to any Unit, or change the percentage by which the Owner of a Unit shares the Common Expenses and owns the Common Elements and Common Surplus (any such change or alteration being a "Material Amendment"), unless the record Owner(s) thereof, and all record owners of mortgages or other liens thereon, shall join in the execution of the amendment and the amendment is otherwise approved by in excess of 66 2/3% or more of the voting interests of Unit Owners. The acquisition of property by the Association, material alterations or substantial additions to such property or the Common Elements by the Association and installation, replacement, operation, repair and maintenance of approved hurricane shutters, if in accordance with the provisions of this Declaration, shall not be deemed to constitute a material alteration or modification of the appurtenances of the Units, and accordingly, shall not constitute a Material Amendment. Moreover, no amendment may be made to this Declaration which would affect the Surface Water Management System and the Storm Water Management System without the prior written approval of the Southwest Florida Water Management District.

(c) Notwithstanding anything herein contained to the contrary, during the time the Developer has the right to elect a majority of the Board of Directors of the Association, the Declaration, the Articles of Incorporation or the By-Laws of the Association may be amended by the Developer alone, without requiring the consent of any other party, to effect any change whatsoever, except for an amendment: (i) to permit time-share estates (which must be approved, by all Unit Owners and mortgagees on Units); or (ii) to effect a Material Amendment which must be approved in the manner set forth in Section 12(b) above. No amendment may be adopted which would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Developer, without the consent of the Developer in each instance.

(d) An amendment, other than amendments made by the Developer alone pursuant to the Act or this Declaration, shall be evidenced by a certificate of the Association, executed either by the President of the Association or a majority of the members of the Board of Directors which shall include recording data identifying the Declaration and shall be executed with the same formalities required for the execution of a deed. An amendment of the

Declaration is effective when the applicable certificate and amendment are properly recorded in the public records of the County. No provision of this Declaration shall be revised or amended by reference to its title or number only. Proposals to amend existing provisions of this Declaration shall contain the full text of the provision to be amended; new words shall be inserted in the text and underlined; and words to be deleted shall be lined through with hyphens. However, if the proposed change is so extensive that this procedure would hinder, rather than assist, the understanding of the proposed amendment, it is not necessary to use underlining and hyphens as indicated to words added or deleted but, instead a notation must be inserted immediately preceding the proposed amendment in substantially the following language: (“Substantial rewording of the Declaration. See provision \_\_\_ for present text.”).

(e) If it shall appear through scrivener’s error, that a Condominium Unit has not been designated as owning an appropriate undivided share of the Common Elements or does not bear an appropriate share of the Common Expenses or that all the Common Expenses or interest in the Common Surplus or all of the Common Elements in the Condominium have not been distributed in the Declaration, such that the sum total of the shares of Common Elements which have been distributed or the sum total of the shares of the Common Expenses or Unit Ownership of Common Surplus fail to equal one hundred (100%) percent (or if it shall appear that, through such error, more than one hundred (100%) percent of Common Elements or Common Expenses or Unit Ownership of the Common Surplus shall have been distributed) such error may be corrected by the filing of an amendment to this Declaration approved by the Board or fifty-one percent (51%) of the Unit Owners. The amendment to the Declaration shall be evidenced by a certificate of the Association which shall include the recording data identifying the Declaration and shall be executed in the form required for the execution of a deed and recorded in the Public Records of Pinellas County, Florida.

(f) Notwithstanding any provision of this Declaration to the contrary, mortgagee consent shall not be required for any amendment to this Declaration unless such amendment materially affects the rights and interests of any mortgagee, or is otherwise required by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and no mortgagee shall unreasonably withhold its consent to any proposed amendment. Except for amendments to this Declaration changing the configuration or size of any Condominium Unit in any material fashion, materially altering or modifying the appurtenances to any Condominium Unit, or changing the proportion or percentage by which the Unit Owner of any Condominium Unit shares the common expenses and owns any common surplus and except for any amendments to this Declaration permitting time-share estates, amendment to this Declaration shall be presumed not to materially affect the rights or interests of mortgagees. In the event that mortgagee(s) consent to any amendment to this Declaration is provided other than by a properly recorded joinder, such consent shall be evidenced by an affidavit of an officer of the Association recorded in the Public Records of Pinellas, Florida. This Section may not be amended without the consent of the Developer.

(g) Any amendment which would materially adversely affect the surface water management system, must have the prior written approval of the Southwest Florida Water Management District.

13. TYPE OF OWNERSHIP. Ownership of each Condominium Parcel, which shall include the Condominium Unit and the undivided share in the Common Elements herein specified, shall be evidenced by Special Warranty Deed from the Developer conveying fee simple title to the Condominium Parcel, and such change shall not be deemed an amendment changing the configuration or size of a Condominium Unit.

14. ASSESSMENTS, LIABILITY, LIEN, INTEREST, COLLECTION.

(a) The Association, through its Board of Directors, shall have the power to make and collect assessments, special assessments and such other assessments as are provided for by the Condominium Act, this Declaration and/or the Bylaws.

(b) Common Expenses shall include but not be limited to costs and expenses incurred or expended by the Association for operation, maintenance and management of the Condominium Property for the maintenance, repair and/or replacement of roads, or other improvements benefiting the Condominium Property or any part thereof, property taxes and assessments against the Condominium Property (until such time as any of such taxes and assessments are made against the Condominium Parcels individually and thereafter only as to such taxes or assessments, if any, as may be assessed against the Condominium Property as a whole), insurance premiums as described in Section 17, legal and accounting fees, management fees and operating expenses of the Condominium Property and the Association; maintenance, repairs and replacement (but only as to the Common Elements and Limited Common Elements, except for emergency repairs or replacements to individual Condominium Units deemed necessary to protect the Common Elements and if properly chargeable to the individual Condominium Unit concerned the Association may nevertheless thereafter charge such individual Unit Owner concerned), charges for utility and water used in common for the benefit of the Condominium or if not separately metered for each unit and any bulk metered or bulk calculated utility services rendered to the Condominium Property or the Condominium Units for their benefit, cleaning and janitorial services for the Common Elements and Limited Common Elements, and liability incurred by the Association in and about the enforcement of its rights and duties against the members or others, and the creation of reasonable contingency or reserve requirements for the protection of the members and the Condominium Property (i.e., including but not limited to reserves for roof replacement, building painting and pavement resurfacing if such reserves are not waived), and all other expenses declared by the Board of Directors of the Association to be Common Expenses from time to time, and any and all other sums due from the Association under any lease, contract or undertaking for recreational facilities.

(c) The Association shall estimate from time to time the amount of Common Expenses it expects to incur and the period of time involved therein and shall assess sufficient monies from Unit Owners to meet this estimate. Assessments for Common Expenses shall be borne by Unit Owners in the portions or shares set forth in Sections 8 and 9 hereinabove. Assessments shall be payable monthly or in such other installments and at such other times as may be fixed by the Board of Directors.

(d) Should the Association through its Board of Directors at any time determine that the assessments made are not sufficient to pay the Common Expenses or, in the

event of emergencies, the Board of Directors shall have the authority to levy and collect additional assessments to meet such needs of the Association.

(e) All notices of assessments from the Association to the Unit Owners shall designate when they are due and payable.

(f) The Association has a lien on each Condominium Unit for any unpaid assessments, regular or special, made hereunder and costs incurred in collecting same, including reasonable attorneys' fees and interest (as described in Section 14(g) below), which are incident to the collection of the assessment with respect to said Condominium Unit or enforcement of the lien. The lien is effective from and shall relate back to the recording of this Declaration of Condominium or an amendment hereto creating the Unit. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien. The lien shall be recorded in the Public Records of Pinellas County and provide for the description of the Condominium Unit, the name of the record owner, the name and address of the Association, the amount due and the due dates.

(g) In addition to the lien rights set forth above, the Association shall be entitled to collect interest at a rate determined by the Association which rate shall not exceed the highest rate allowed by law from the due date until the date of payment of any assessment, regular or special, made hereunder which is not paid within ten (10) days of the due date of any such assessment. Also, the Association may charge an administrative late fee in addition to such interest, in an amount not to exceed the greater of Twenty-Five and No/100 Dollars (\$25.00) or five percent (5%) of each installment of the assessment for each delinquent installment that the payment is late. Any payment received by the Association shall be applied first to any interest accrued by the Association, then to any administrative late fee, then to any costs and reasonable attorneys' fees incurred in collection, and then to the delinquent assessment.

(h) A Unit Owner, regardless of how his or her title has been acquired, including by purchase at a foreclosure sale or by deed in lieu of foreclosure is liable for all assessments which come due while he or she is the Unit Owner. Additionally, a Unit Owner is jointly and severally liable with the previous Owner for all unpaid assessments that came due up to the time of transfer of title. This liability is without prejudice to any right the Owner may have to recover from the previous Owner the amounts paid by the Owner. The liability of a first mortgagee or its successors or assignees who acquire title to a Unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that became due prior to the mortgagee's acquisition of title is limited to the maximum amount that the condominium association can collect under Chapter 718, *Florida Statutes*, as amended from time to time.

The person acquiring title shall pay the amount owed to the Association within thirty (30) days after transfer of title. Failure to pay the full amount when due shall entitle the Association to record a claim of lien against the Condominium Parcel and proceed in the same manner as provided in this Section for the collection of unpaid assessments.

(i) The Association may bring an action in its name to foreclose a lien for assessments in the manner a mortgage of real property is foreclosed and may also bring an action to recover a money judgment for the unpaid assessments without waiving any claim of lien.