

*This Instrument Prepared by/Returned to:*  
*Michael J Posner, Esq.*  
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*4420 Beacon Circle*  
*West Palm Beach, Florida 33407*

## **DECLARATION OF COVENANTS AND RESTRICTIONS FOR SANTA CATALINA**

**WHEREAS**, Greenacres Construction and Development LLC, a Florida limited liability company, hereinafter referred to as “Declarant” is the owner of a certain tract of land, more particularly described as follows:

Lots 1-29, inclusive, Tract L1, Tract B, Tract D1, and Tract R of SANTA CATALINA, according to the Plat thereof, recorded in Plat Book 123, Page 10, of the Public Records of Palm Beach County, Florida

**WHEREAS**, the Declarant desires to create Santa Catalina, a planned residential development consisting of single-family, attached homes, and which shall be hereinafter called “Santa Catalina”; and

**WHEREAS**, the Declarant intends to sell lots within Santa Catalina and to construct and sell residential dwelling units on the lots within Santa Catalina, subject to certain protective restrictions, conditions, limitations, reservations and covenants in order to assure the most beneficial development of Santa Catalina and to prevent any such use thereof as might tend to diminish the value or pleasurable enjoyment of Santa Catalina; and

**WHEREAS**, the Declarant intends to assign or delegate certain rights and obligations under this Declaration of Covenants and Restrictions, and make conveyances of certain common properties to be constructed within Santa Catalina, to the Santa Catalina Homeowners Association, Inc., a Florida corporation not-for-profit (hereinafter referred to as the “Association”).

**NOW, THEREFORE**, the Declarant hereby declares that certain covenants and restrictions are imposed upon Santa Catalina as set forth in the Articles below.

### **ARTICLE 1 - DEFINITIONS**

For the purposes of the Declaration of Covenants and Restrictions, the following terms shall have the following definitions:

1.1 “Act” means the Homeowners Association Act (Chapter 720 of the Florida Statutes) as it exists on the date hereof and as it may be hereafter amended

1.2 “Association” shall mean Santa Catalina Homeowner’s Association, Inc., a Florida corporation not-for-profit, which shall enforce this Declaration of Covenants and Restrictions.

1.3 “Board” or “Board of Directors” shall mean the Board of Directors of Santa Catalina Homeowner’s Association, Inc., a Florida corporation not-for-profit.

1.4 “Building” shall mean structure situated upon a Lot, as herein defined, designated and intended for use and occupancy as single family residential Units, as herein defined.

1.5 “By-Laws” mean the By-Laws of the Association, as amended from time to time.

1.6 “Commercial Association” means the Santa Catalina Condominium Association, Inc., a Florida not for profit corporation means, its successors and/or assignees, which is responsible for the management and operation of the adjacent commercial condominium association.

1.7 “City” means the City of Greenacres.

1.8 “County” means the County of Palm Beach, State of Florida.

1.9 “Declarant” or “Declarant” shall mean Greenacres Construction and Development LLC, a Florida limited liability company, the present owner of Santa Catalina, and its successors or assigns. In the event that the rights and duties granted or imposed upon Santa Catalina are assigned as provided in this Declaration of Covenants and Restrictions, then the Declarant shall mean the company and/or any committee, employee, delegatee or assignee thereof with regard to any rights or duties assigned, as appropriate. Whenever the word “Declarant” is used with reference to maintenance of any property herein, it shall be deemed to refer to Greenacres Construction and Development LLC.

1.10 “Declaration” or “Declaration of Covenants and Restrictions” means this instrument, as it may be amended from time to time.

1.11 “Institutional Mortgagee” means a bank, savings and loan association, insurance company, real estate or mortgage investment trust, pension fund, an agency of the United States Government, mortgage banker, the Federal National Mortgage Association (“FNMA”), the Federal Home Loan Mortgage Corporation (“FHLMC”) or any other lender generally recognized as an institutional lender, or the Declarant, holding a first or second mortgage on a Unit or Units

1.12 “Lot” shall mean a numbered parcel as shown on, and included within the Plat, as herein defined, and shall include, where applicable, the Residential Unit (as hereinafter defined) located thereon.

1.13 “Lot Owner(s)” or “Owner(s)” shall mean the holder or holders of the fee simple title to a Lot, as herein defined.

1.14 “Member(s)” shall mean an Owner(s) of a Lot.

1.15 “Plat” shall mean the Plat of Santa Catalina, to be recorded in the Public Records of Palm Beach County, Florida encumbering that portion of the land more particularly described above.

1.16 “Recreational Facilities” shall mean those facilities constructed upon Tract R of the Plat for the use of the Members of the Association.

1.17 “Residential Unit” or “Unit” shall mean a structure situated upon a Lot, as herein defined, designated and intended for use and occupancy as a residence by a single family.

1.18 “Rules” or “Rules and Regulations” means the rules adopted from time to time by the Association to govern activity at Santa Catalina not otherwise addressed by the Declaration.

1.19 "Santa Catalina" shall mean the property subject to this Declaration of Covenants and Restrictions as described in Article 2, and shall include all of the land described above.

## **ARTICLE 2 - PROPERTY SUBJECT TO DECLARATION**

The property subject to this Declaration of Covenants and Restrictions shall be those lands described above.

## **ARTICLE 3 - DURATION**

The covenants and restrictions of this Declaration shall run with and bind all Lot Owners, and shall inure to the benefit of and be enforceable by Declarant, the Association or the Owner of any Unit subject to this Declaration and their respective legal representatives, heirs, successors and assigns, for a term of ninety-nine (99) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each unless an instrument signed by the then Owners of not less than sixty-six and two-thirds (66 and 2/3%) of the Units has been recorded, agreeing to revoke said covenants and restrictions; provided, however, that no such agreement to revoke shall be effective unless made and recorded three (3) years in advance of the effective date of such revocation, and unless written notice of the proposed agreement is sent to every Owner at least ninety (90) days in advance of any action taken.

## **ARTICLE 4 - INTENTION**

4.1 It is the intent of the Declarant to develop Santa Catalina into a planned residential development, containing twenty-nine (29) single-family residential townhomes and common properties and recreational facilities for the benefit of the residents therein, in accordance with this Declaration of Covenants and Restrictions.

4.2 In order to effectuate the intent of the Declarant, this Declaration of Covenants and Restrictions shall establish general and special protective restrictions and administrative procedures applicable to the development of, and activities within, Santa Catalina.

## **ARTICLE 5 - HOMEOWNERS ASSOCIATION**

5.1 For the purpose of enforcing this Declaration of Covenants and Restrictions, fulfilling all obligations, and enabling the property owners and residents within Santa Catalina to have a fair and equitable manner of governing the activities within, and the use and maintenance of Santa Catalina, the Declarant has caused to be established a homeowner's association entitled Santa Catalina Homeowners Association, Inc., a Florida corporation not-for-profit.

5.2 A copy of the Articles of Incorporation and the By-Laws of the Association are attached hereto and made a part hereof by reference as Exhibits "B" and "C" respectively, and all powers, rights, privileges and duties granted to or imposed upon the Association or its Members are specifically incorporated into this Declaration of Covenants and Restrictions by reference.

5.3 Upon the conveyance in fee title of any Lot within Santa Catalina, and the recording of the instrument of conveyance of the same in the Public Records of Palm Beach County, Florida, any person or entity gaining such interest shall become a Member of the Association and shall be entitled to all incidents of Membership and shall be burdened by all obligations and responsibilities of Membership in the Association,

provided in the Articles of Incorporation and By-Laws of the Association.

5.4 All rights, privileges, powers, duties, obligations and liabilities granted to the Association Members are further incorporated herein by reference and made a part hereof. Further, any amendment of the Articles of Incorporation or By-Laws of the Association shall automatically be deemed an amendment, modification or alteration of this Declaration of Covenants and Restrictions.

5.5 All rights, privileges, powers, duties, obligations and liabilities currently granted to, or vested in, the Declarant by virtue of this Declaration of Covenants and Restrictions shall automatically be transferred and assigned and/or delegated to the Association within three months after ninety (90%) percent of the Lots in have been conveyed to members from the Declarant and the Declarant no longer holds record fee title thereto, or Declarant no longer holds any Lots for sale in the ordinary course of business, all in accordance with the Act. However, this does not preclude the Declarant from transferring, conveying, assigning, and/or delegating any right, privilege, power, duty, obligations, liability created by this Declaration of Covenants and Restrictions, in part or otherwise, to the Association prior to that time.

5.6 The power to make and collect assessments, whether the same be general assessments, special assessments, or individual assessments, granted to the Association as set forth in the Articles of Incorporation and the By-Laws, are specifically incorporated into this Declaration of Covenants and Restrictions by reference and made a part hereof.

5.6. General and Special Assessments shall be levied equally on a 1/29<sup>th</sup> share per Lot.

5.7 The purposes and basis of the aforementioned assessments are as follows:

5.7.1 General Assessments: General Assessments shall be made annually, and collected monthly, quarterly, semi-annually, or annually, at the discretion of the Board, but not more frequently than monthly, for the purpose of maintenance and management of the Association and the maintenance and management of property acquired by the Association and privately owned property or the maintenance of which is the obligation of the Association.

5.7.1.1 Maintenance and management expenses shall include, but need not be limited to, the cost and expense of operation, maintenance and management of the Association, its property, and privately owned property the maintenance of which is the obligation of the Association; property taxes and assessments against the Association's property; insurance premiums for fire, windstorm, and extended coverage insurance on the Association's real and personal property, if any; premiums for public liability insurance; legal and accounting fees; management fees; operating expenses of the Association's property and the Association; maintenance, repairs and replacement of the Association's property; charges for utilities and water used by the Association; cleaning services; expenses and liabilities incurred by the Association arising from the enforcement of its rights and duties against Members or others; the creation of reasonable cash reserves for contingencies to protect the Members and the property; maintenance requirements of the security system, and all other expenses deemed by the Board of Directors necessary and proper for the management, maintenance and repair of said property.

5.7.1.2 The Association shall annually estimate the amount of expenses it expects to incur and the period of time involved therein, and the Association may assess its Members sufficient monies to meet this estimate. Should the Association, through its Board of Directors, at any time determine that the assessments made are not sufficient to pay the expenses, or in the event of an emergency, the Board of Directors shall have authority to levy and collect additional general assessments to meet such needs of the Association.

5.7.2 Special Assessments: The Board of Directors may levy a special assessment for any of the following purposes: to make up any shortfall in the approved budget of the Association; to cover extraordinary costs due to Acts of God; the acquisition of property; defraying the cost of construction of capital improvements to Association property; and the cost of construction, reconstruction, unexpected substantial repair or replacement of a capital improvement, including the necessary fixtures and personal property related thereto.

5.7.2.1 Any special assessment shall have the approval of the Membership of the Association, said approval to be obtained at a duly convened regular or special meeting called at least in part to secure this approval by an affirmative vote of a majority of the Members, voting in person, or by proxy.

5.7.2.2 All special assessments shall be paid equally by each Lot owner.

5.7.3 Individual Assessments: Pursuant to the Association's power and authority to enforce these covenants, restrictions and regulations and the powers granted pursuant to this Declaration of Covenants and Restrictions, the Board of Directors may separately assess Members an individual assessment. Individual assessments are collectible in a manner determined by the Board of Directors, and may be levied for violations of the rules and regulations promulgated by the Association if permitted by the Act, and for any maintenance, repair or restoration of any Residential Unit which is the responsibility of a Lot Owner, but which is performed by the Association pursuant to its enforcement powers.

5.8 Prior to the first meeting of the Members as described in the Articles of Incorporation and the By-Laws of the Association, the Declarant shall have the right to establish a maximum assessment on any Lot within Santa Catalina. This reserved right may be exercised at the Declarant's sole discretion and may be discriminatory. During the period from the date of recording of this Declaration until the date on which control of the Association is transferred to Lot Owners other than the Declarant (the "Turnover Date"), the Declarant shall not be obligated to pay the share of the Common Expenses and Assessments attributable to Units it is offering for sale, provided further that the Declarant shall be obligated to pay any amount of Common Expenses actually incurred during such period and not produced by General Assessments. For purposes of this Article, income to the Association other than Assessments (as defined herein and in the Act) shall not be taken into account when determining the deficits to be funded by the Declarant. After the Turnover Date, the Declarant shall have the option of extending the subsidy funding for a definite period of time by written agreement with a majority of non-Declarant Lot Owners on the same terms of paying the share of Common Expenses and Assessments attributable to Lots it is then offering for sale. No funds receivable from Unit purchasers or Owners payable to the Association or collected by the Declarant on behalf of the Association, other than regular periodic Assessments for Common Expenses as provided in this Declaration and disclosed in the Estimated Operating Budget referred to above, shall be used for the payment of Common Expenses prior to the Turnover Date. This restriction shall apply to funds including, but not limited to, capital contributions or start-up funds collected from Unit purchasers at closing.

5.9 The Association has the specific right and power, as set forth in its Articles of Incorporation and By-Laws, upon default of an installment, to accelerate the remaining installments of any assessment for the fiscal year upon proper notice to the defaulting Member of the Association. Thereupon, the unpaid balance of the assessment shall become due upon the date stated in the notice.

5.10 Each of the Lots and the respective single family detached homes constructed thereon within Santa Catalina is automatically subject to a lien and a permanent charge in favor of the Association for general assessments, special assessments, and individual assessments. Any and all of the assessments together with interest thereon, if any, constitute a permanent charge upon, and a continuing lien on, the Lot to which the

assessment relates and such permanent charge and lien shall bind such Lot in the hands of any and all persons.

5.11 Assessments shall be due and payable and collected as set forth in the Articles of Incorporation and the By-Laws of the Association.

5.12 The lien of any assessment provided herein shall be subordinate to the lien of any first Institutional Mortgage now or hereafter placed upon the properties subject to the assessment, subject to any subordination in whole or in part provided for by the Act. In the event an Institutional Mortgagee holding a first mortgage lien shall obtain title to a Lot as a result of foreclosure of its mortgage, or as a result of a deed given in lieu of foreclosure or in satisfaction of debt, such Institutional Mortgagee, its successors and assigns, shall be liable for no more than twelve (12) months or one (1%) percent of the debt, whichever is lesser, or such greater amount provided for by the Act, of such Lot's share of Common Expenses or Assessments or other charges imposed by the Association pertaining to such Lot or chargeable to the former Lot Owner of such Lot which became due prior to, but not after, acquisition of title as a result of the foreclosure provided the Association has been properly named as a defendant junior lienholder, or the acceptance of such deed-in-lieu of foreclosure. In the event Assessments due on such Unit exceed such amount, the Institutional Mortgagee holding a first mortgage shall not be liable for any additional amount unless such share is secured by a claim of lien that is recorded prior to the recording of the subject mortgage, if permitted by the Act. Such subordinated assessments shall be deemed to be an Association expense and shall be assessed against all the Lot Owners, including anyone who acquires title at such sale or transfer. Such sale or transfer shall not release such property from liability for any assessment thereafter becoming due or from the lien of any subsequent assessment.

5.13 Assessments not paid by the due date shall be subject to a late charge promulgated by the Association, shall bear interest at the maximum rate permitted at law, and shall be the personally liability and obligation of the Lot Owner, and shall remain a joint and several obligation of the Lot Owner after sale or transfer of title to such Lot with the new Lot Owner.

## **ARTICLE 6 - SPECIAL PROTECTIVE RESTRICTIONS**

6.1. Public Properties and Facilities. It is the intent of the Declarant to construct certain structures, improvements, and properties in conjunction with the development of Santa Catalina for the benefit of residents and public therein, as follows:

6.1.1 A perimeter landscape and drainage buffer throughout Santa Catalina, as shown on the Plat as Tracts L-1 and L-2 of "Santa Catalina", dedicated thereunder to the Association for the perpetual use of the public for landscape and drainage purposes.

6.1.2 Limited Access Easements, as shown on the Plat as Limited Access Easements thereon.

6.1.3 The aforementioned improvements, or properties, are dedicated to the City of Greenacres for the use, enjoyment and benefit of the Members and the public thereof, and the maintenance thereof is the perpetual obligation of the City of Greenacres.

6.2 Recreation Tract. Those areas depicted as a Recreation Tract on the Plat shall be maintained for parking and recreation purposes for the perpetual use of the Members of the Association and the maintenance thereof is the perpetual obligation of the Association.

### 6.3. Easements.

6.3.1 Utility Easements. Declarant hereby specifically reserves a utility easements parallel to and within a lot line of each of the Lots inclusive shown on the Plat. The utility easements shall be for the purposes of installation and maintenance of electricity, gas, telephone and any similar facility deemed necessary by the Declarant for the service of Santa Catalina. Said easements shall also be for the installation of cable television facilities and internet systems. The Declarant further reserves the right to assign the use of said easements to any person, firm, entity or municipality furnishing any of the utilities or facilities mentioned. No structure shall be built upon the easements thus reserved, and said easement property shall at all times be open to Declarant, its assigns and any public service corporation and franchised cable television or utility providers which may require the use of said easements. In addition, the utility easements may be utilized for drainage purposes and for the installation and maintenance of street lighting. Mailboxes shall also be placed within those easements. Notwithstanding the forgoing, the Declarant shall have the right to construct a driveway to provide ingress and egress to each Lot over the easement described herein.

6.3.2 Maintenance and Drainage Easements. Declarant hereby specifically reserves for the Association Tract D1 of the Plat for drainage easement parallel to Lots 10-19, inclusive as shown on the Plat.

6.3.3 Drainage Easements. A non-exclusive easement in favor of Developer, Association, and their designees, the South Florida Water Management District, county agency and/or federal agency having jurisdiction over the Association over, across and upon the Residential Property for drainage, irrigation and water management purposes. An easement for ingress, egress and access shall exist for such parties to enter upon and over any portion of the Residential Property in order to construct, maintain, inspect, record data on, monitor, test, or repair, as necessary water management areas, drainage areas, irrigation systems and facilities thereon and appurtenances thereto. No structure, landscaping, or other material shall be placed or be permitted to remain which may damage or interfere with the drainage or irrigation of the Residential Property and/or installation or maintenance of utilities or which may obstruct or retard the flow of water through the Residential Property and/or water management areas and facilities or otherwise interfere with any drainage, irrigation and/or easement provided for in this Article or the use rights set forth elsewhere in this Declaration.

6.4. Maintenance of Common Areas, Facilities and Landscaping. The maintenance of any common areas, facilities, sprinkler systems, pump covers, and landscaping, are hereby deemed the obligation of the Declarant, which obligation may be assigned at some time in the future to the Association. The landscaping maintained shall be that exterior to any walls, fences or gates. The cost thereof shall be assessed against the Members of the Association as a general assessment and may be so assessed prior to any conveyance of said properties to the Association. The Declarant shall retain the right to maintain the utility, internet, fiber and television distribution systems in the event that such systems are not properly maintained by the utility companies or such organizations as are primarily responsible for this maintenance. Declarant shall retain the right to assess the Members of the Association for the cost of such maintenance, such assessment to be a special assessment.

6.5. Parking and Garages. There shall be no overnight "on street" parking of vehicles, including, but not limited to Boats and Recreational Vehicles within Santa Catalina. Parking of vehicles owned by Members of the Association shall be allowed only in driveways and in garages provided at the individual Residential Units. The doors to said garages must be kept closed except when they must be opened to allow access to, or removal of, vehicles. Driveways may be used only for a maximum of two (2) cars for parking. No garages shall be used or converted for use as a habitable space.

6.6 Pets. Dogs, cats, and other common household pets may be kept, provided they are not raised,

bred or kept for any commercial purpose. No dogs owned or kept by any Member of the Association within Santa Catalina shall be allowed to roam or otherwise be let out of the Member's Residential Unit without a leash and in the custody of an individual. Every Owner shall be responsible for immediately cleaning-up private property and Association property after use by such pet. In no event shall any pet become a nuisance or a disturbance to any other Lot Owner. Should a complaint be made by any Lot Owner to the Board of Directors as to a disturbance caused by any pet kept in any Residential Unit, and such complaint is confirmed by the Board of Directors, the Board of Directors shall have the right to require that such pet shall no longer be permitted to be kept in such Residential Unit upon notice to the Lot Owner thereof to that effect.

6.7 Maintenance of Landscaping. The maintenance of all landscaping within the Common Areas of Santa Catalina shall be assessed against the Members of the Association as a general assessment. The landscaping maintained shall include all lands lying both interior to and exterior to any walls, or fences and any area lying between the Lot line and the street, commonly known as the Swale but exclude any portion of a Lot lying within the side or rear of any such Residential Unit, which maintenance obligation shall be solely of that of the Lot Owner. Any sprinkler systems and landscaping within said walls or fences shall be maintained by the individual Lot Owners, as shall all driveways, mail boxes, and walkways to the individual Units. Notwithstanding the foregoing, the Declarant may elect to require maintenance of the front of any Lot to and including the Swale, become the sole maintenance obligation of a Lot Owner, in which event, no such obligation shall be imposed upon the Association for maintenance thereof.

Such maintenance, as to privately owned Residential Units, shall include maintenance of roofs, glass enclosed areas, or screen areas. Any structural repair of a privately owned Residential Unit or alterations thereto shall be the sole obligation of the Lot Owner. If, however, any such privately owned Residential Unit, structure, landscaping or planting shall fall into a state of disrepair, the Declarant and the Association reserve the right to enter upon the Lot to make such structural repairs or other extraordinary maintenance as it deems necessary, the cost of which may be assessed against the Member as an individual assessment.

Exterior painting of Units shall be the obligation of, and at the election of, each Lot Owner, provided, however, when the Board of Directors shall deem it necessary for such painting to be done, they shall notify the Lot Owner in writing that the Member shall cause such painting to be done.

All other maintenance and structural repair of any common properties, improvements and facilities is the obligation and duty of the Association, the cost of which may be assessed against the Members as a general assessment.

The Association reserves a maintenance easement on all lands within Santa Catalina for the purposes of such landscaping maintenance. Further, the Association specifically reserves a maintenance easement on and over all privately-owned lands and Residential Units for the purpose of extraordinary maintenance and extraordinary cleaning of the same.

The Association may not prohibit or be enforced so as to prohibit any Lot Owner from implementing Florida-friendly landscaping, as defined in Florida Statute §373.185, on any Lot or create any requirement or limitation in conflict with any provision of part II of chapter 373, Florida Statutes or a water shortage order, other order, consumptive use permit, or rule adopted or issued pursuant to part II of chapter 373, Florida Statute.

6.8 Signs. No signs of any kind, shape or form whatsoever shall be permitted without the express approval of the Association.



6.9 Painting. All Residential Units shall be painted or stained with colors approved by the Board of Directors of the Association.

6.10 Walls and Fences. No wall or fence may be erected on any Lot without the express approval of the Board of Directors of the Association. Those walls, structures, or fences, which may be constructed between two adjoining Lots and are to be shared by the Owners of said adjoining Lots are to be known as and are hereby declared to be "Shared Fences." Shared Fences shall be the joint maintenance obligation of the Owners of the detached Units bordering the fences. Each detached Lot Owner shall have the right to full use of said fence subject to the limitation that such use shall not infringe on the rights of the Owner of the adjacent detached single family Unit or in any manner impair the value of said fence. Each Owner shall have the right and duty to maintain and to perform superficial repairs to that portion of a Shared Fence which faces such Owner's Unit or Yard. The cost of said maintenance and superficial repairs shall be borne solely by said Owner. In the event of damage or destruction of the Shared Fence from any cause whatsoever, other than negligence or willful misconduct of one of the adjacent detached single family Lot Owners, the Owners of the adjacent Attached single family Units shall, at their joint expense, repair and rebuild said Shared Fence within thirty (30) days, unless extended by the Board. In the event it is necessary to repair or rebuild a Shared Fence, the Owners shall agree on the cost of such repairs or rebuilding, and shall agree on the person or entity to perform such repairs, provided however, all such repairs must be performed by a qualified contractor. If the Owners cannot agree on the cost of such repairs or on the person or entity to perform such repairs, each Owner shall choose a member of the Board to act as their arbiter. The Board members so chosen shall agree upon and choose a third Board member to act as an additional arbiter. All of the said Board members shall thereafter choose the person or entity to perform the repairs and shall assess the costs of such repairs in equal shares to the Owners. Whenever any such Shared Fence or any part thereof shall be rebuilt, it shall be erected in the same manner and be of the same size and of the same or similar materials and of like quality and color and at the same location where it was initially constructed. Provided, that if such maintenance, repair or construction is brought about solely by the neglect or the willful misconduct of one Owner, any expense incidental thereto shall be borne solely by such wrongdoer. If the Owner shall refuse to repair or reconstruct the fence within thirty (30) days, unless extended by the Board, and to pay their share, all or part of such cost in the case of negligence or willful misconduct, the Association may have such fence repaired or reconstructed and shall be entitled to a lien on the Lot of the Lot Owner so failing to pay for the amount of such defaulting Owner's share of the repair or replacement. In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Lot shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a workmanlike manner, and consent is hereby given to enter on the adjacent lots to effect necessary repairs and reconstruction.

6.10.1 All perimeter fences in Santa Catalina (North, East, South, & West Boundaries) are to be the maintenance obligation of the Association, even if said fences are located on a Lot Owner's Lot.

6.11 Rules, Regulations and Supervision. The Association is entitled to adopt reasonable rules and regulations regarding the supervision, maintenance, control, regulation and use of the common properties, improvements and facilities, and to enforce the same in any lawful manner, which may include, but need not be limited to, the imposition of individual assessments for violations thereof.

6.12 Platted Open Space. No portion of any plat of Santa Catalina or replat thereof containing an open space shall be vacated, in whole or in part, unless the entire plat or replat is vacated.

6.13 Destruction or Removal of Residential Units. In the event that any Residential Unit constructed in Santa Catalina is destroyed or removed by or for any cause, the Lot Owner shall be obligated to repair, restore and rebuild the damage caused by said loss. Any such repair, restoration and rebuilding shall be undertaken immediately and completed within one (1) year of the date of commencement of construction but in no event

more than eighteen (18) months after the casualty. Should the Lot Owner fail to undertake such repair, restoration or rebuilding as required herein, the Declarant shall have the right to do so and to levy an individual assessment against the Lot Owner for reimbursement of any expenses so incurred. If replaced, said replacement Unit shall be of at least similar size and type of the Residential Unit so damaged or destroyed, not to exceed the dimensions of the previous Unit.

6.14 Barbecues and Outdoor Cooking. There shall be no permanently constructed barbecue pits without the express approval of the Association. Portable barbecue grills are permissible when used only in a Lot Owner's backyard. Said portable barbecue grills must be stored in a screened area when not in use in a manner that places same out of view of any other Lot Owner.

6.15 Changes, Improvements, etc. Prior to any Lot Owner presenting a requested change, improvement or other matter which must be approved by the Association, the Lot Owner must present the matter to the Association in order that the Association may make its recommendation with regard to such matter. No addition, alteration or improvement in or to the exterior of any Unit or any terrace or balcony attached or appurtenant thereto shall be made by the Owner of any Unit or any other party without the prior written consent thereto of the Board of Directors. The Board shall have the obligation to answer any written request by an Owner for approval of such proposed addition, alteration or improvement. The refusal of the Board to consent to such proposed addition, alteration or improvement may be based on any grounds, including aesthetic grounds, which the Board, in its sole discretion, deems sufficient. It shall be a condition precedent to the granting of the consent of the Board of Directors to the making of any such additions, alterations or improvements that the Owner of such Unit furnish satisfactory evidence to the Board of Directors that the proposed addition, alteration or improvement complies with all laws, rules, ordinances and regulations of all governmental authorities having jurisdiction and it shall be a further condition precedent to such consent that such Owner comply with all the requirements, restrictions and provisions of this Declaration. Any change in the exterior appearance of any Unit, including any screening, fencing or other enclosures of any balcony, terrace or patio attached or appurtenant thereto, shall be deemed an alteration requiring the approval of the Board of Directors.

The Board of Directors shall have the power to promulgate such rules and regulations and to impose reasonable fees and charges as it seems necessary to carry out the purposes and intent of this Paragraph and the Board of Directors may delegate the authority granted herein to a committee for purposes of enforcing the provisions of this Article.

In the event any addition, alteration or improvement is constructed or placed upon or installed in or about the exterior of any Unit or any patio attached or appurtenant thereto without the written consent of the Board of Directors, the Board shall have the right to demand that such addition, alteration or improvement be removed and the premises restored to the condition thereof prior to such addition, alteration or improvement at the sole cost and expense of the Owner of such Unit. If such Owner fails to remove such addition, alteration or improvement and restore the premises within twenty (20) days after the giving of written notice by the Board to such Owner demanding such removal and restoration, the Board may, at its option, in addition to any other rights and remedies available to it, cause such addition, alteration or improvement to be removed and the premises restored at the sole cost, expense and risk of such Owner. The Board of Directors, its contractors, agents and employees, shall have the right to enter upon such Unit at all reasonable times for the purpose of performing such removal and restoration. If such Owner fails to pay the costs and expenses of such removal and restoration within twenty (20) days after written demand therefore, the Board may assess the amount of such costs and expenses against such Unit. All of the provisions of this Declaration which generally apply to special assessments shall apply to any special assessment imposed on the basis of this Paragraph.

6.16 Sales Activity and Declarant's rights. Until the Declarant has sold and conveyed all of the property situated within and comprising Santa Catalina, neither the Owners, nor the Association nor their use of the Common Areas shall interfere with the completion of the contemplated improvements and the sale of the property by Declarant. The Declarant may make such use of the unsold property, and the Common Areas as may facilitate such completion and sale including, but not limited to, the maintenance of sales offices for the showing of the property, the leasing and resale of Units by a licensed real estate brokerage company affiliated with the Declarant and display of signs, bill boards, placards and visual promotional materials. The Declarant shall have the right to use common parking spaces and boat slips, if any, located on the Common Areas for prospective purchasers and such other parties as Declarant determines. Declarant reserves the inalienable right to complete the development of Santa Catalina, including the Common Areas, notwithstanding that a purchaser of any Unit has closed title to his Unit. Notwithstanding any provision to the contrary in this Declaration, the Declarant shall have the absolute right and ability to lease Units owned by the Declarant within Santa Catalina until such time as all such Units are sold and conveyed to third party purchasers.

Each Lot Owner shall allow the Declarant to enter his Unit to alter utility lines, cables, wires, pipes and other utility and security facilities after said Unit has been conveyed to him, provided, however, that in such event the Declarant shall fully restore and repair the premises from the effects of such alteration. In addition, Declarant shall have a construction easement to enter upon any Unit for the purposes of constructing improvements throughout Santa Catalina.

6.17 Hurricane Season. Each Owner who intends to be absent from his Unit during the hurricane season (currently June 1 - November 30 of each calendar year) shall prepare such Unit prior to departure by doing the following:

6.17.1 Removing all furniture, potted plants, and other movable objects from the Lot's yard; and

6.17.2 Designating a responsible person or firm, satisfactory to the Association, to care for the Unit should it suffer hurricane damage. Such person or firm shall also contact the Association for permission to install temporary hurricane shutters, which must be removed when no longer necessary for protection. At no time shall hurricane shutters be permanently installed, without the consent of the Association and the City.

6.18 Lot Use Restrictions. The following additional restrictions shall apply to all Lots within Santa Catalina:

6.18.1 No impervious areas or facilities shall be constructed within any Lot without Board approval;

6.18.2 Maximum patio/impervious area is not to exceed Three Hundred (300) square feet.

6.18.3 No sheds or other storage structures shall be erected on any Lot; and

6.18.4 No pools (in ground or above) of any kind shall be constructed on any Lot.

6.19 United States Flag. Any Lot Owner may display one portable, removable United States flag in a respectful way and, on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day, may display, in a respectful way, portable, removable official flags, not larger than 4 and 1/2 feet by 6 feet, that represent the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

6.20 Recreational Facilities. All Recreational Facilities furnished by the Association or erected within

the Properties, if any, shall be used at the risk of the user, and the Association shall not be held liable to any person or persons for any claim, damage, or injury occurring thereon or related to use thereof. All recreational facilities, including any swimming pool, patio or appurtenant facilities located on the common property, shall be used only for the purposes for which they were intended and shall be subject to the rules and regulations of the Association.

## **ARTICLE 7 - AMENDMENT**

7.1 The foregoing Declaration of Covenants and Restrictions can be modified, altered or amended by instruments in writing, recorded in the Public Records of Palm Beach County, Florida, approved by the affirmative vote of two-thirds (2/3) of the Board of Directors, prior to the first meeting of the Members. Subsequent to the first meeting of the Members, the Declaration of Covenants and Restrictions may be modified, altered or amended at any duly called meeting of the Members, provided:

7.1.1 Notice of the meeting shall contain a statement of the proposed amendment.

7.1.2 The amendment shall be approved by the affirmative vote of two-thirds (2/3) of the Board of Directors and two-thirds (2/3) of the Members of the Association.

7.2 Directors and Members not present in person at the meeting considering a proposed amendment may cast their vote for such proposal in writing provided such votes are delivered to the Secretary of the Association at or prior to the meeting.

7.3 Any amendment must comply with all applicable requirements imposed by any governmental agency with jurisdiction over the property including without limitation the City of Greenacres and the site plan approval for the Property.

## **ARTICLE 8 - ENFORCEABILITY AND SEVERABILITY**

Each and all of the Covenants and Restrictions contained in this Declaration of Covenants and Restrictions shall be enforceable by injunction or other form of action available to the parties aggrieved, or to the Declarant, or its successors or assigns. Invalidation of any part of this Declaration of Covenants and Restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

## **ARTICLE 9 - INSTRUMENT OF CONVEYANCE**

Subsequent to the recording of this Declaration of Covenants and Restrictions in the Public Records of Palm Beach County, Florida, each and every deed (or other conveyance document) conveying the said lands or any part thereof shall, upon its face, expressly recite that said deed (or other conveyance document) and conveyance is subject to the herein contained covenants and restrictions and shall recite the Official Record Book and Page number wherein this Declaration of Covenants and Restrictions is recorded in the Public Records of Palm Beach County, Florida. The covenants and restrictions contained herein shall be covenants running with the said land, and any part thereof, and binding on the parties thereto, their successors, successors in title, designees, grantees and assigns.

## **ARTICLE 10 - DISSOLUTION OF ASSOCIATION**

In the event of dissolution of the Association, for whatever reason, any Member of the Association may petition the Circuit Court of the Fifteenth Judicial Circuit of the State of Florida for the appointment of a

receiver to manage the affairs of the dissolved Association and the properties in place and instead of the Association, and to make such provisions as may be necessary for the continued management of the affairs of the dissolved Association and the properties.

## **ARTICLE 11 - INSURANCE**

Insurance covering the Residential Units and the Association Property shall be governed by the following provisions:

### **11.1 Purchase, Custody and Payment.**

11.1.1 Purchase. All insurance policies described herein covering portions of the Residential Units shall be purchased by the Association and shall be issued by an insurance company authorized to do business in Florida.

11.1.2 Named Insured. The named insured shall be the Association, individually, and as agent for Owners of Residential Units covered by the policy, without naming them, and as agent for their mortgagees, without naming them. The Lot Owners and their Institutional Mortgagees shall be deemed additional insureds.

11.1.3 Custody of Policies and Payment of Proceeds. All policies shall provide that payments for losses made by the insurer shall be paid to the Insurance Trustee, hereinafter defined, if appointed, and all policies and endorsements thereto shall be deposited with the Insurance Trustee, if appointed.

11.1.4 Copies to Mortgagees. One (1) copy of each insurance policy, or a certificate evidencing such policy, and all endorsements thereto, shall be furnished by the Association, upon request, to each Institutional Mortgagee who holds a mortgage upon a Unit covered by the policy. Copies or certificates shall be furnished not less than ten (10) days prior to the beginning of the term of the policy, or not less than ten (10) days prior to the expiration of each preceding policy that is being renewed or replaced, as appropriate.

11.1.5 Personal Property and Liability. Except as specifically provided herein or by the Act, the Association shall not be responsible to Lot Owners to obtain insurance coverage upon the property lying within the boundaries of their Unit, including, but not limited to, their personal property, and for their personal liability and living expenses and for any other risks not otherwise insured in accordance herewith.

### **11.2 Coverage. The Association shall maintain insurance covering the following:**

11.2.1 Casualty. The Building (including all fixtures, installations or additions comprising that part of the Building within the boundaries of the Units and required by the Act to be insured under the Association's policy(ies), but excluding all furniture, furnishings, floor coverings, wall coverings and ceiling coverings or other personal property owned, supplied or installed by Lot Owners or tenants of Lot Owners including any Unit Owner improvements within the Limited Common Elements) and all Improvements installed by the Developer or Association located on the Common Elements and Limited Common Elements from time to time, together with all fixtures, building service equipment, personal property and supplies constituting the Common Elements and Limited Common Elements or owned by the Association (collectively the "Insured Property"), shall be insured in an amount not less than One Hundred (100%) percent of the full insurable replacement value thereof, excluding foundation, vacant land and excavation costs. Such policies may contain reasonable deductible provisions as determined by the Board of Directors of the Association. Such coverage shall afford protection against such other risks as from time to time are customarily covered with respect to buildings and improvements similar to the Insured Property in construction, location and use, including, but not limited

to, vandalism and malicious mischief.

11.2.2 Liability. Comprehensive general public liability insurance covering loss or damage resulting from accidents or occurrences on or about or in connection with the Insured Property or adjoining driveways and walkways, or any work, matters or things related to the Insured Property, with such coverage as shall be required by the Board of Directors of the Association, but with combined single limit liability of not less than One Million and NO/100 Dollars (\$1,000,000.00) per occurrence, and with a cross liability endorsement to cover liabilities of the Lot Owners as a group to any Unit Owner, and vice versa.

11.2.3 Worker's Compensation and other mandatory insurance, when applicable.

11.2.4 Flood Insurance if required by the FNMA/FHLMC or if the Association so elects, and every casualty insurance policy obtained by the Association shall have agreed amount and inflation guard if required by FNMA/FHLMC.

11.2.5 Fidelity Insurance, equal to the maximum amount of funds that will be in the custody of the Association at any one (1) time shall be required for all persons who control or disburse funds of the Association.

11.2.6 Appropriate additional policy provisions, policies or endorsements extending the applicable portions of the coverage described above to all Association Property, where such coverage is available.

11.2.7 Such other Insurance as the Board of Directors of the Association shall determine, from time to time, to be desirable, including, without limitation, directors and officers liability insurance.

When appropriate and obtainable, each of the foregoing policies shall waive the insurer's right to (i) subrogation against the Association and against the Lot Owners individually and as a group; (ii) pay only a fraction of any loss in the event of coinsurance or if other insurance carriers have issued coverage upon the same risk; and (iii) avoid liability for a loss that is caused by an act of the Board of Directors of the Association, a member of the Board of Directors of the Association, one (1) or more Lot Owners or as a result of contractual undertakings. Additionally, each policy shall provide that any insurance trust agreement will be recognized, that the insurance provided shall not be prejudiced by any act or omissions of individual Lot Owners that are not under the control of the Association, and that the policy shall be primary, even if a Unit Owner has other insurance that covers the same loss.

11.3 Additional Provisions. All policies of insurance shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all of the named insureds, including all Institutional Mortgagees of Units. Prior to obtaining any policy of casualty insurance or any renewal thereof, the Board of Directors shall obtain an appraisal from a fire insurance company, or other competent appraiser, of the full insurable replacement value of the Insured Property, (exclusive of foundations, vacant land and excavation costs), without deduction for depreciation, for the purpose of determining the amount of insurance to be effected pursuant to this Article.

11.4 Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense, including the costs of fidelity bonding for any persons who control or disburse funds of the Association.

11.5 Insurance Trustee; Share of Proceeds. All insurance policies obtained by or on behalf of the Association shall be for the benefit of the Association, the Lot Owners and their Institutional Mortgagees, as

their respective interests may appear, and shall provide that all proceeds covering property losses shall be paid to the Insurance Trustee which may be designated by the Board of Directors and which, if so appointed, shall be a bank or trust company in Florida with trust powers, with its principal place of business in the State of Florida. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal or the sufficiency of policies, nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Lot Owners and their respective mortgagees in the following shares, but shares need not be set forth on the records of the Insurance Trustee:

11.5.1 Insured Property. Proceeds on account of damage to the Insured Property shall be held in undivided shares for each Unit Owner, such shares being the same as the undivided shares in the Common Elements appurtenant to each Unit, provided that if the Insured Property so damaged includes property lying within the boundaries of specific Units (or their balconies, if any), that portion of the proceeds allocable to such property shall be held as if that portion of the Insured Property were Optional Property as described in paragraph 11.5.2 below.

11.5.2 Optional Property. Proceeds on account of damage solely to Units and/or certain portions or all of the contents thereof not included in the Insured Property, all as determined by the Association in its sole discretion, (hereinafter collectively the "Optional Property"), if any, is collected by reason of optional insurance which the Association elects to carry thereon, as contemplated herein, shall be held for the benefit of Owners of Units or other portions of the Optional Property damaged in proportion to the cost of repairing the damage suffered by each such affected Owner, which cost and allocation shall be determined in the sole discretion of the Association.

11.5.3 Mortgagees. No mortgagee shall have any right to determine or participate in the determination as to whether or not any damaged property shall be reconstructed or repaired, and no mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds, except for actual distributions thereof made to the Unit Owner and mortgagee pursuant to the provisions of this Declaration.

11.6 Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee, if any, shall be distributed to or for the benefit of the beneficial owners thereof in the following manner:

11.6.1 Expenses of the Trust. All expenses of the Insurance Trustee shall be first paid or provision shall be made therefore.

11.6.2 Reconstruction or Repair. If the damaged property for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as elsewhere provided herein. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, remittances to Lot Owners and their mortgagees being payable jointly to them.

11.6.3 Failure to Reconstruct or Repair. If it is determined in the manner elsewhere provided that the damaged property for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be allocated among the beneficial owners as provided in this Article, and distributed first to all Institutional Mortgagees in an amount sufficient to pay off their mortgages, and the balance, if any, to the beneficial owners.

11.6.4 Certificate. In making distributions to Lot Owners and their Institutional Mortgagees, the Insurance Trustee, if appointed, may rely upon a certificate of the Association made by its President and

Secretary as to the names of the Lot Owners and their mortgagees and their respective shares of the distribution.

11.7 Association as Agent. The Association is hereby irrevocably appointed as agent and attorney-in-fact for each Unit Owner and for each owner of a mortgage or other lien upon a Unit and for each owner of any other interest in the Residential Units to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

11.8 Lot Owners' Personal Coverage. Unless the Association elects otherwise, the insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within a Unit or Limited Common Elements, nor casualty or theft loss to the contents of an Owner's Unit or Limited Common Elements. It shall be the obligation of the individual Unit Owner, if such Owner so desires, to purchase and pay for insurance as to all such and other risks not covered by insurance carried by the Association.

11.9 Benefit of Mortgagees. Certain provisions in this Article entitled "Insurance" are for the benefit of mortgagees of Units and may be enforced by such mortgagees.

11.10 Insurance Trustee. The Board of Directors of the Association shall have the option, in its discretion, of appointing an Insurance Trustee hereunder. If the Association fails or elects not to appoint such Insurance Trustee, the Association will perform directly all obligations imposed upon such Insurance Trustee by this Declaration. Fees and expenses of any Insurance Trustee shall be deemed Common Expenses.

11.11 Presumption as to Damaged Property. In the event of a dispute or lack of certainty as to whether damaged property constitutes a Unit(s) or Common Elements, such property shall be presumed to be Common Elements.

## **ARTICLE 12 - RECONSTRUCTION OR REPAIR AFTER FIRE OR OTHER CASUALTY**

12.1 Determination to Reconstruct or Repair. Subject to the provisions of Article 11, in the event of damage to or destruction of the Insured Property and the Optional Property, if insurance has been obtained by the Association with respect thereto, as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Insured Property and the Optional Property, if insurance has been obtained by the Association with respect thereto, and the Insurance Trustee, if appointed, shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments.

If seventy-five (75%) percent or more of the Insured Property and the Optional Property, if insurance has been obtained by the Association with respect thereto, is substantially damaged or destroyed and if Lot Owners owning seventy-five (75%) percent of the applicable interests in the Common Elements duly resolve within sixty (60) days of such damage or destruction not to proceed with the repair or restoration thereof and a majority of Institutional Mortgagees approve such resolution, the Residential Units will not be repaired and shall be subject to an action for partition instituted by the Association, any Unit Owner, mortgagee or lienor, as if the Residential Units were owned in common, in which event the net proceeds of insurance resulting from such damage or destruction shall be divided among all the Lot Owners in proportion to their respective interests in the Common Elements (with respect to proceeds held for damage to the Insured Property other than that portion of the Insured Property lying within the boundaries of the Unit), and among affected Lot Owners in proportion to the damage suffered by each such affected Unit Owner, as determined in the sole discretion of the Association (with respect to proceeds held for damage to the Optional Property, if any, and/or that portion of the Insured Property lying within the boundaries of the Unit); provided, however, that no payment shall be made to a Unit Owner until there has first been paid off out of his share of such fund all mortgages and liens on his Unit



in the order of priority of such mortgages and liens.

Whenever in this Article the words “promptly repair” are used, it shall mean that repairs are to begin not more than one hundred fifty (150) days from the date the Insurance Trustee, if appointed, or the Board of Directors if no Insurance Trustee is appointed, notifies the Board of Directors and Lot Owners that it holds proceeds of insurance on account of such damage or destruction sufficient to pay the estimated cost of such work, or not more than one hundred eighty (180) days after the Insurance Trustee, if appointed, notifies the Board of Directors and the Lot Owners that such proceeds of insurance are insufficient to pay the estimated costs of such work. The Insurance Trustee, if appointed, or the Board of Directors if no Insurance Trustee is appointed, may rely upon a certificate of the Association made by its President and Secretary to determine whether or not the damaged property is to be reconstructed or repaired.

12.2 Plans and Specifications. Any reconstruction or repair must be made substantially in accordance with the plans and specifications for the original Improvements and then applicable building and other codes; or if not, then in accordance with the plans and specifications approved by the Board of Directors of the Association and then applicable building and other codes, and if the damaged property which is to be altered is a Building or the Optional Property, by the Owners of not less than seventy-five (75 %) percent of the applicable interests in the Common Elements, as well as the Owners of all Units, Limited Common Elements and other portions of the Optional Property and their respective Institutional Mortgagees the plans for which are to be altered.

12.3 Special Responsibility. If the damage is only to those parts of the Optional Property for which the responsibility of maintenance and repair is that of the respective Lot Owners, then the Lot Owners shall be responsible for all necessary reconstruction and repair, which shall be effected promptly and in accordance with guidelines established by the Board of Directors (unless insurance proceeds are held by the Association with respect thereto by reason of the purchase of optional insurance thereon, in which case the Association shall have the responsibility to reconstruct and repair the damaged Optional Property, provided the respective Lot Owners shall be individually responsible for any amount by which the cost of such repair or reconstruction exceeds the insurance proceeds held for such repair or reconstruction on a Unit by Unit basis, (as determined in the sole discretion of the Association). In all other instances, the responsibility for all necessary reconstruction and repair shall be that of the Association.

12.4 Disbursement. The proceeds of insurance collected on account of a casualty, and the sum collected from Lot Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:

12.4.1 Association - Lesser Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is less than Fifty Thousand and NO/100 Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the Board of Directors of the Association; provided, however, that upon request to the Insurance Trustee, if appointed, or the Board of Directors if no Insurance Trustee is appointed, by an Institutional Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided below for the reconstruction and repair of major damage.

12.4.2 Association - Major Damage. If the amount of the estimated costs of reconstruction and repair which are the responsibility of the Association is more than Fifty Thousand and NO/100 Dollars (\$50,000.00); then the construction fund shall be disbursed in payment of such costs in the manner contemplated by (a) above, but then only upon the further approval of an architect or engineer qualified to practice in Florida and employed by the Association to supervise the work.

12.4.3 Lot Owners. If there is a balance of insurance proceeds after payment of all costs of reconstruction and repair that are the responsibility of the Association, this balance may be used by the Association to effect repairs to the Optional Property, if not insured or if under-insured, or may be distributed to Owners of the Optional Property who have the responsibility for reconstruction and repair thereof. The distribution shall be in the proportion that the estimated cost of reconstruction and repair of such damage to each affected Unit Owner bears to the total of such estimated costs to all affected Lot Owners, as determined by the Board; provided, however, that no Unit Owner shall be paid an amount in excess of the estimated costs of repair for his portion of the Optional Property. All proceeds must be used to effect repairs to the Optional Property, and if insufficient to complete such repairs, the Owners shall pay the deficit with respect to their portion of the Optional Property and promptly effect the repairs. Any balance remaining after such repairs have been effected shall be distributed to the affected Lot Owners and their mortgagees jointly as elsewhere herein contemplated.

12.4.4 Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs relating to the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated; except, however, that part of a distribution to an Owner which is not in excess of Assessments paid by such Owner into the construction fund shall not be made payable jointly to any mortgagee.

12.4.5 Certificate. Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Lot Owners upon Assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be made upon the order of the Association alone or upon the additional approval of an architect, engineer or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine whether surplus funds to be distributed are less than the Assessments paid by Owners, nor to determine the payees or the amounts to be paid. The Insurance Trustee may rely upon a certificate of the Association, made by its President and Secretary, as to any or all of such matters and stating that the sums to be paid are due and properly payable, and stating the names of the payees and the amounts to be paid.

12.5 Assessments. If the proceeds of the insurance are not sufficient to defray the estimated costs of reconstruction and repair to be effected by the Association, or if at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs of reconstruction and repair are insufficient, Assessments shall be made against the Lot Owners in sufficient amounts to provide funds for the payment of such costs. Such Assessments on account of damage to the Insured Property shall be in proportion to all of the Owners' respective shares in the Common Elements, and on account of damage to the Optional Property, in proportion to the cost of repairing the damage suffered by each Owner thereof, as determined by the Association.

12.6 Benefit of Mortgagees. Certain provisions in this Article are for the benefit of mortgagees of Units and may be enforced by any of them.

12.7 Deductibles. Any expenses incurred by the Association as a result of the unavailability of insurance proceeds because of deductibles shall be a Common Expense of the Association; provided, however, that the Association shall have the right to collect, by all legal means, from the applicable Unit Owner(s) any sums expended by the Association pursuant to this Article which are made necessary by the acts or omissions of a Unit Owner (or other Unit occupant, tenant, guest or invitee for whom the Unit Owner is responsible) which caused damage to any property insured pursuant to this Declaration.

## ARTICLE 13 - MISCELLANEOUS

13.1 Assignability of rights of Declarant. The rights and privileges reserved in this Declaration in favor of the Declarant are freely assignable, in whole or in part, by the Declarant to any party who may be hereafter designated by the Declarant to have and exercise such rights, and such rights may be exercised by the Declarant, the nominee, assignee or designee of the Declarant, the successor or successors in interest of the Declarant, and/or the successor or successors in interest of the nominees, assignees or designees of the Declarant.

13.2 Indemnification. Association covenants and agrees that it shall indemnify, defend and hold harmless Declarant, and any related corporations, including but not limited to, parent corporations and their employees and Association's officers and members of the Board, from and against any and all claims, suits, actions, causes of action and/or damages arising from any personal injury, loss of life and/or other property serving Association, or resulting or arising out of the operation of Association and improvements thereof and thereon, or resulting from or arising out of activities or operation of Association, and from and against all costs, expenses, counsel fees (including, but not limited to, all trial and appellate levels and whether or not suit be instituted), expenses and liabilities incurred by Declarant arising from any such claim the investigation thereof, or the defense of any action or proceedings brought thereon, and from and against any orders, judgments and/or decrees which may be entered thereon. The cost and expense of fulfilling this covenant of indemnification set forth in this paragraph shall be a common expense to the extent such matters are not covered by Association's insurance.

13.3 Conflicts. In the event of any inconsistency or conflict between this Declaration and the Articles and By-Laws of Association, the provisions of this Declaration and the Articles and By-Laws of Association, the provisions of this Declaration shall supersede, govern and control.

13.4 Duration. The covenants, conditions and restrictions of this Declaration shall run with and bind Santa Catalina, and shall inure to the benefit of and be enforceable by Association, the Declarant and any Owner, their respective personal representatives, heirs, successors, and assigns, for an initial period to expire on the thirtieth (30th) anniversary of the date of recordation of this Declaration. Upon the Expiration of said initial period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, seventy-five percent (75%) of the votes cast at a duly held meeting of members of Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, shall be given at least forty-five (45) days in advance of said meeting. In the event that Association votes to terminate this Declaration, the President and Secretary of Association shall execute a certificate which shall set forth the resolution of termination adopted by Association, the date of the meeting of Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of Association, the total number of votes required to constitute a quorum at such meeting of Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Palm Beach County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

13.5 Notice. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known

address of the person who appears as Member or Owner on the records of Association at the time of such mailing.

13.6 Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding provided herein or by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the property to enforce any lien created by these covenants and restrictions. Any failure by the Declarant, Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. In the event a Lot Owner or occupant fails to maintain a Residential Unit or fails to cause such Residential Unit to be maintained, or fails to observe and perform all of the provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, applicable Rules and Regulations, or any other agreement, document or instrument affecting the Association in the manner required hereby and thereby, the Association shall have the right to file for mediation, arbitration or proceed in a court of equity to require performance and/or compliance, to impose any applicable fines (to the maximum permitted under the Act) or to sue in a court of law for damages all as limited or permitted by or under the Act.

13.7 Severability. Invalidation of any one or more of the covenants, restrictions or provisions of this Declaration by judgment or court order shall in no way affect any other covenant, restriction and provisions are hereby declared to be severable and shall remain in full force and effect.

13.8 Captions. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relief upon and/or used in construing the effect or meaning of the text of this Declaration.

13.9 Limitations. So long as the Declarant is in control of Association and is pursuing the development of Santa Catalina, the Association may take no action whatsoever in opposition to the development plan of Santa Catalina or to any changes proposed thereto by the Declarant.

13.20 Context. Whenever the context so requires, any pronoun used herein shall be deemed to mean the corresponding masculine, feminine or neuter form thereof and the singular form of any nouns and pronouns herein shall be deemed to mean the corresponding plural form thereof and vice versa.

13.21 No Implied Waiver. The failure of Declarant, Association, the Board of Directors or any Owner to object to an Owner's or other party's failure to comply with any covenant, restriction or provision contained herein shall in no event be deemed a waiver of any such covenant, restriction or provision.

13.22 Execution of Documents. The plan for the development of Santa Catalina may require from time to time the execution of certain documents required by Palm Beach County. If and to the extent that said documents require the joinder of Owners, the Declarant, as the agent or attorney-in-fact for the Owners, may execute, acknowledge and deliver such documents and the Owners, by virtue of their acceptance of deeds, irrevocably nominate, constitute and appoint the Declarant, as their proper and legal attorneys-in-fact for such purpose. Said appointment is coupled with an interest and is therefore irrevocable. Any such documents executed pursuant to this Article shall recite that it is made pursuant to this Article.

13.23 Additional Rights of Institutional Lenders. Institutional Lenders shall have the right to make insurance premium payments on insurance policies carried by Association for the benefit of Association and the Owners in connection with the maintenance of the Common Areas in the event Association fails to make said payments. Association shall be liable to said Institutional Lenders for any insurance premium payments made by said Institutional Lender. In addition, Institutional Lenders shall have the right to cure defaults of Association in connection with Association's obligations under this Declaration. Actions undertaken by Institutional Lenders

to cure such defaults shall be made at Association's expense.

13.24 Ownership. Each Lot shall be used as a residence only, except as otherwise herein expressly provided. A Unit may be owned by an individual or an individual's corporation, limited liability company, partnership, trust or other fiduciary established solely for that individual's estate planning purposes. If a Lot is owned by a corporation, limited liability company, partnership, trust or other fiduciary the use and occupancy of such Lot shall be limited to the individual(s) for whom said corporation, limited liability company, partnership, trust or other fiduciary was established, and their family or lessees.

13.25 Capital Contribution. Upon the sale of any Lot, including a sale by the Developer, the purchaser shall pay a prorated portion of the then existing periodic assessment of the Homeowners Association, and a working capital contribution to the Homeowners Association equal to two (2) months assessments for the Lot.

13.26 The Declarant and the Association shall not in any manner be held liable or responsible, either directly or indirectly, for any violation of this Declaration of Covenants and Restrictions by any person or entity other than themselves.

#### **ARTICLE 14 - TURNOVER**

14.1 Turnover of Santa Catalina shall be in accordance with the Act as follows:

14.1.1 Lot Owners other than the Declarant are entitled to elect at least a majority of the members of the Board of Directors of the Association three (3) months after Declarant has sold ninety (90%) percent of the lots to Members.

14.1.2 The Declarant is entitled to elect at least one (1) member of the Board of Directors of the Association as long as the Declarant holds for sale in the ordinary course of business at least one (1) Lot. After the Declarant relinquishes control of the Association, the Declarant may exercise the right to vote any Declarant-owned voting interests in the same manner as any other member, except for purposes of reacquiring control of the Association or selecting the majority of the members of the Board of Directors.

#### **ARTICLE 15 - COMPLIANCE WITH ZONING**

The Association shall, at all times, comply, and keep the Common Areas in compliance, with all applicable zoning, land use, drainage, building code and other governmental requirements and shall fully indemnify and hold harmless the Declarant and its affiliates for and from all losses, damages, claims and liabilities as a result of the Association's failure to do so. The aforesaid indemnification shall include all attorneys' fees and court costs, regardless of whether suit is brought or any appeal is taken therefrom.

## ARTICLE 16 - DISCLAIMER OF WARRANTIES/ARBITRATION

DEVELOPER HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE RESIDENTIAL UNIT, EXCEPT ONLY THOSE SET FORTH IN THE LIMITED WARRANTY PROVIDED BY DEVELOPER TO EACH OWNER AT CLOSING. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL LOT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

16.1 In the event that there are any warranty, negligence or other claims (the "Claims") against the Declarant or any party having a right of contribution from, or being jointly and severally liable with, the Declarant, the Claims relating to the design, construction, furnishing or equipping of the Residential Unit shall be adjudicated pursuant to binding arbitration, rather than civil litigation, as permitted by the Florida Arbitration Code (the "Code"), Chapter 682, Florida Statutes, in the following manner:

16.1.1 The party making the Claims (the "Claimant") shall notify the Declarant in writing of the Claims, specifying with particularity the nature of each component thereof and providing a true and complete copy of each and every report, study, survey or other document supporting or forming the basis of the Claims.

16.1.2 Within thirty (30) days of receipt of the notice of the Claims, the Declarant will engage, at its own expense, a duly licensed engineer (the "Arbitrator") to serve as the arbitrator of the Claims pursuant to the Code. Such engineer shall be independent of the Declarant and the Claimant, not having any then current business relationship with the Declarant or Claimant, other than by virtue of being the Arbitrator. Upon selecting the Arbitrator, the Declarant shall notify the Claimant of the name and address of the Arbitrator.

16.1.3 Within thirty (30) days from the date of his appointment, the Arbitrator shall review the Claims and supporting materials, inspect the Residential Unit and all appropriate plans, specifications and other documents relating thereto, and render a report (the "Final Report") to the Declarant and the Claimant(s) setting forth, on an item by item basis, the Arbitrator's findings with respect to the Claims and the method of correction of those the Arbitrator finds to be valid. If the Declarant so requests, by written notice to the Arbitrator, the Arbitrator will specify the estimated cost of the correction of each of those Claims the Arbitrator finds to be valid and shall offset therefrom costs reasonably attributable to any failure to maintain or mitigate or to any contributory negligence, in all cases whether chargeable to the Claimant or others.

16.1.4 The Declarant shall have one hundred eighty (180) days after receipt of the Final Report in which to (i) correct the Claims found to be valid; or (ii) pay to the Claimant(s) the amount estimated by the Arbitrator to be the cost to correct same after the aforesaid offset.

16.1.5 As to those matters the Declarant elects to correct, upon the completion of all corrective work the Declarant will so notify the Arbitrator (with a copy of such notice to the Claimants) and the Arbitrator shall then inspect the corrected items and render a report (the "Remedial Report") to the Declarant

and the Claimants on whether those items have been corrected. Such procedure shall be repeated as often as necessary until all items have been corrected.

16.1.6 For all purposes, the Final Report and Remedial Report of the Arbitrator will constitute binding and enforceable arbitration awards as defined in §682.09 of the Code and any party affected by such reports will have the right to seek the enforcement of same in a court of competent jurisdiction. Moreover, no party will have the right to seek separate judicial relief with respect to warranty disputes as defined above, or to seek to vacate the aforementioned arbitration awards, except in accordance with the Code, and then only upon the specific grounds and in the specified manner for the vacation of such awards as established by §682.13 of the Code.

16.1.7 The Arbitrator shall not be liable to the Association, the Claimants or the Declarant by virtue of the performance of the Arbitrator's services hereunder, fraud and corruption excepted.

16.1.8 The procedures set forth above shall also be the sole means by which disputes as to Association finances (including, without limitation, the Declarant's payment of Assessments, any deficit funding obligations, the handling of reserves and the keeping of accounting records), except that the Arbitrator shall be a Certified Public Accountant who (i) is a member of the Community Associations Institute; and (ii) meets the independence test set forth above.

16.1.9 In the event that there is any dispute as to the legal effect or validity of any of the Claims (e.g., as to standing, privity of contract, statute of limitations or laches, failure to maintain or mitigate, existence of duty, foreseeability, comparative negligence, the effect of disclaimers or the interpretation of this Declaration as it applies to the Claims), such dispute shall be submitted to arbitration, as herein provided, by a member in good standing of the Florida Bar chosen by the Declarant, which arbitrator shall be independent of the Declarant and the Claimant as set forth above. In such event, all time deadlines which cannot be met without the resolution of such disputed matters shall be suspended for such time as the arbitration provided for in this subsection continues until final resolution.

16.1.20 The prevailing party in any Arbitration hereunder, as determined by the Arbitrator, shall be entitled to all costs and reasonable attorneys' fees.

**THIS SECTION REQUIRES YOU TO WAIVE YOUR RIGHT TO SUE THE DECLARANT IN COURT AND, INSTEAD, ARBITRATE OR MEDIATE DISPUTES INCLUDING, BUT NOT LIMITED TO DECLARANT REPRESENTATIONS PERTAINING TO COMMONLY USED FACILITIES; ACTIONS TAKEN BY DECLARANT-ELECTED DIRECTORS WHILE THE DECLARANT CONTROLS THE ASSOCIATION; FALSE OR MISLEADING STATEMENTS PUBLISHED BY THE DECLARANT AND RELIED UPON BY THE PURCHASER; AND WARRANTY RIGHTS ON YOUR RESIDENTIAL UNIT. YOU SHOULD CONSULT AN ATTORNEY ABOUT YOUR RIGHTS UNDER THESE PROVISIONS.**

#### **ARTICLE 17 – SECURITY**

**THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, FROM TIME TO TIME, UNDERTAKE MEASURES OR SPONSOR ACTIVITIES DESIGNED TO IMPROVE SAFETY WITHIN THE COMMUNITY. HOWEVER, NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN SANTA CATALINA AND**

NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF OR FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF ANY SECURITY MEASURES UNDERTAKEN FOR ALL OWNERS, TENANTS, GUESTS AND INVITEES OF ANY OWNER, AS APPLICABLE, AND EACH OWNER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, ITS BOARD OF DIRECTORS, AND EACH COMMITTEE ESTABLISHED BY ANY OF THE FOREGOING ENTITIES, ARE NOT INSURERS OR GUARANTORS, AND THAT EACH OWNER, TENANT, GUESTS AND INVITEES ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSON OR PROPERTY, TO RESIDENTIAL UNITS, AND TO THE CONTENTS OF ANY RESIDENTIAL UNIT, AND FURTHER ACKNOWLEDGES THAT THE DECLARANT, THE ASSOCIATION, ITS BOARD OF DIRECTORS, AND COMMITTEES HAVE MADE NO REPRESENTATION OR WARRANTIES, NOR IS ANY OWNER, TENANT, GUESTS, OR INVITEE RELIED UPON ANY SUCH REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR ANY CURRICULAR PURPOSE RELATIVE TO ANY SECURITY MEASURES, IF ANY, RECOMMENDED OR UNDERTAKING HEREUNDER OR HEREINAFTER.

#### ARTICLE 18 - SHARED RESPONSIBILITY

18.1 Entrance. Developer hereby reserves unto itself, including its designees from time to time, and hereby grants to the members of the Association and the Commercial Association, including their respective tenants, guests and invitees, a perpetual, non-exclusive easement of ingress and egress over and across the entrance parcel described below, it being the specific intent of Developer to hereby grant perpetual, uninterrupted and contiguous access for ingress and egress to and from the public road to the Association and the Commercial Association. Any rights granted or reserved under this Article, shall be subject to any rights granted or permitted to be granted by Developer and/or the Association, as provided elsewhere in this Declaration, to-wit:

Entrance Parcel: Tract A, SANTA CATALINA, according to the Plat thereof, recorded in Plat Book 123, Page 10 of the Public Records of Palm Beach County, Florida

18.2 Landscaping. In order to provide consistent landscaping to the Residential Property and the Commercial Property, all landscaping located within the Plat shall be maintained by a licensed landscaping company selected mutually by the Association and the Commercial Association, the cost of which to be shared equally as follows:

Condominium Association	Fifty (50%) percent of Landscape Costs
Residential Association	Fifty (50%) percent of Landscape Costs



IN WITNESS WHEREOF, the Declarant, the present owner, has caused these presents to be executed in its name, and its company seal to be hereunto affixed by its Manager thereto duly authorized, as of this \_\_\_\_ day of \_\_\_\_\_, 2017.

Signed, sealed and delivered in the presence of:

Greenacres Construction and Development LLC

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

John P. Reichard, III, Manager

(Company Seal)

STATE OF FLORIDA                    )  
  ) ss:  
COUNTY OF PALM BEACH         )

I HEREBY CERTIFY that on this day, sworn to and subscribed before me, an officer duly authorized in the State and County aforesaid to take acknowledgements, personally appeared John P. Reichard, III, Manager of Greenacres Construction and Development LLC, to me known to be the person described in or who has produced \_\_\_\_\_ as identification and who executed the foregoing instrument and acknowledged before me that he executed the same for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid this \_\_\_\_\_ day of May, 2017.

\_\_\_\_\_  
Notary Public State of Florida at Large

My Commission Expires:

# EXHIBIT A

## JOINDER OF HOMEOWNERS ASSOCIATION

**SANTA CATALINA HOMEOWNERS ASSOCIATION, INC.**, a Florida corporation not for profit, hereby joins in the foregoing Declaration for **SANTA CATALINA**, and agrees to accept all the benefits and all of the duties, responsibilities, obligations and burdens imposed upon it by the provisions of this Declaration and Exhibits attached hereto.

**IN WITNESS WHEREOF**, the undersigned corporate officer has caused these presents to be signed in its name by its proper officer and its corporate seal to be affixed this \_\_\_\_ day of \_\_\_\_\_, 2017.

Signed, sealed and delivered in the presence of:

**SANTA CATALINA HOMEOWNERS  
ASSOCIATION, INC.**

\_\_\_\_\_

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
John P. Reichard, III, President

(Corporate Seal)

# **EXHIBIT B**

## **ARTICLES OF INCORPORATION**

# **EXHIBIT C**

## **BY-LAWS AND RULES AND REGULATIONS**