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(space above line for official use only)

**DECLARATION OF CONDOMINIUM
 FOR
 GRANDE PHOENICIAN AT THE GRANDE PRESERVE,
 A CONDOMINIUM**

THIS DECLARATION is made this 17th day of August, 2006 by Vanderbilt Partners II, Ltd., a Florida limited partnership (the "Developer"), for itself and its successors, grantees and assigns.

WHEREIN the Developer makes the following declarations:

1. **THE LAND.** The Developer owns certain real property located in Collier County, Florida, as more particularly described in Exhibit "A" attached hereto (the "Land").
2. **SUBMISSION STATEMENT.** The Developer hereby submits the Land described in Exhibit "A" to this Declaration, and all improvements erected or to be erected thereon, all easements, rights and appurtenances belonging thereto, and all other property, real, personal or mixed, located on and intended for use in connection therewith, to the condominium form of ownership and use in the manner provided by the Florida Condominium Act as it exists on the date of recording this Declaration, excluding therefrom, however, all public utility installations, cable television lines, and other similar equipment, if any, owned by the utility furnishing services to the Condominium. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners of condominium parcels. The acquisition of title to a unit, or any interest in the condominium property, or the lease, occupancy, or use of the condominium property shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and shall signify agreement to be bound by its terms.
3. **NAME.** The name by which this Condominium shall be identified is GRANDE PHOENICIAN AT THE GRANDE PRESERVE, A CONDOMINIUM, (the "Condominium") and its address is Vanderbilt Drive, Naples, Florida 34110.
4. **DEFINITIONS.** The terms used in this Declaration and its exhibits shall have the meanings stated below and in Chapter 718, Florida Statutes, unless the context otherwise requires.

- 4.1 **“Apartment”** has the same meaning as the term “unit” as defined in the Condominium Act.
- 4.2 **“Assessment”** means a share of the funds required for the payment of common expenses which from time to time is assessed against the units.
- 4.3 **“Association”** means the Grande Phoenician at the Grande Preserve Condominium Association, Inc., a Florida not for profit corporation, the entity responsible for the operation of this Condominium.
- 4.4 **“Association Property”** means all property, real or personal, owned by the Association for the use and benefit of the Unit Owners.
- 4.5 **“Board of Directors”** or **“Board”** means the representative body which is responsible for the administration of the Condominium Association’s affairs, and is the same body referred to in the Condominium Act as the “Board of Administration.” Except for those Directors appointed by the Developer, each Director must be a member or the spouse of a member of the Association.
- 4.6 **“Common Areas”** means the real property owned or to be owned by the Master Association for the use and benefit of all owners of Units in the Dunes Complex, and all improvements thereon.
- 4.7 **“Community Areas”** means the real property owned or to be owned by the Community Association for the use and benefit of all owners of units in the Grande Preserve.
- 4.8 **“Community Documents”** means the Declaration of Covenants for Grande Preserve at The Dunes as recorded in the Public Records of Collier County, Florida at O.R. Book 3314, Pages 1282, *et seq.*, and all recorded exhibits thereto, as they may be amended from time to time.
- 4.9 **“Community Association”** means Grande Preserve at The Dunes Community Association, Inc., a Florida not for profit corporation responsible for the ownership, maintenance and operation of certain property within the Grande Preserve. The Condominium Association shall be a member of the Community Association.
- 4.10 **“Condominium Documents”** means this Declaration and all recorded exhibits hereto, as amended from time to time.
- 4.11 **“Developer”** means Vanderbilt Partners II, Ltd., a Florida general partnership, its grantees, successors and assigns. Developer shall have the right to assign any and all of the rights and privileges reserved for Developer under this Declaration. A Unit Owner, solely by the purchase of a unit, shall not be deemed a successor or assign of Developer or of the rights of Developer under the condominium documents or by law unless such Unit Owner is specifically so designated as a successor or assign of such rights in the instrument of conveyance or any other instrument executed by Developer.

4.12 **“Dunes Complex”** means the land subject to the Master Association Documents as described therein, and all improvements located thereon.

4.13 **“Family”** or **“Single Family”** shall refer to any one of the following:

- (A) One (1) natural person.
- (B) Two (2) or more natural persons who commonly reside together as a single housekeeping unit, each of whom is related by blood, marriage or adoption to each of the others.
- (C) Two (2) or more natural persons meeting the requirements of (B) above, except that there is among them not more than one person who is not related to some or all of the others.

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

4.15 **“Grande Preserve”** means the land subject to the Community Documents as described therein, and all improvements located thereon.

4.16 **“Guest”** means any person (other than the Unit Owner and his or her family) who is physically present in, or occupies an apartment on a temporary basis at the invitation of the Unit Owner or other permitted occupant, without the payment of consideration. “Temporary” means not longer than sixty (60) days in any calendar year.

4.17 **“Institutional Mortgagee”** shall refer to any one (1) of the following:

- (A) A lending institution holding a mortgage encumbering a unit, including without limitation any of the following types of institutions or entities: a federal or state savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company doing business in Florida which is approved by the Commissioner of Insurance of the State of Florida.
- (B) A governmental, quasi-governmental or private company that is engaged in the business of making, purchasing, holding, guaranteeing or insuring residential mortgages, including without limitation the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration and the Department of Urban Development.

4.18 “Lease” means the grant by a Unit Owner of a temporary right of use of the owner’s unit for valuable consideration.

4.19 “Limited Common Elements” means those common elements which are reserved for the use of a certain unit or units to the exclusion of other units.

4.20 “Master Association” means The Dunes of Naples Property Owners Association, Inc., a Florida not for profit corporation responsible for the ownership, maintenance and operation of certain property within the Dunes Complex. The Condominium Association shall be a member of the Master Association.

4.21 “Master Association Documents” means the Declaration of Covenants for The Dunes of Naples, as recorded in the Public Records of Collier County, Florida at O.R. Book 2777, Pages 3027, *et seq.*, and all recorded exhibits thereto, as they may be amended from time to time.

4.22 “Occupant” or “Occupy”, when used in connection with a unit, refers to a person staying overnight in a unit.

4.23 “Primary Institutional Mortgagee” means that Institutional Mortgagee which, at the time a determination is made, holds more first mortgages on units in the Condominium than any other Institutional Mortgagee, such determination to be made by reference to the number of units encumbered, and not by the dollar amount of such mortgages.

4.24 “Rules and Regulations” means the rules and regulations promulgated by the Board of Directors concerning the use of the common elements and the operation of the Association.

4.25 “Unit Owner” or “Owner” means the record owner of legal title to a condominium parcel.

5. DESCRIPTION OF IMPROVEMENTS; SURVEY AND PLANS.

5.1 Survey and Plot Plans. Attached to this Declaration as part of Exhibit “B” and incorporated by reference herein, are a survey of the Land and plot plans, which graphically describe the improvements in which units are located, and which show all the units, including their identification numbers, locations and approximate dimensions and the common elements and Limited Common Elements. Together with this Declaration, the exhibit is in sufficient detail to identify each unit, the common elements and Limited Common Elements, and their relative locations and dimensions.

5.2 Unit Boundaries. Each unit shall include that part of the building that lies within the following boundaries:

- (A) Upper and Lower Boundaries. The upper and lower boundaries of the unit shall be the following boundaries extended to their intersections with the perimeter boundaries:
- (1) Upper Boundaries. The horizontal plane of the unfinished lower surface of the ceiling of the unit.
 - (2) Lower Boundaries. The horizontal plane of the unfinished upper surface of the concrete floor of the unit.
- (B) Perimeter Boundaries. The perimeter boundaries of the unit shall be the vertical planes of the unfinished interior surfaces of the plasterboard or drywall bounding the unit as shown in Exhibit "B" hereto, extended to their intersections with each other and with the upper and lower boundaries.
- (C) Interior Walls. No part of the non-structural interior partition walls within an apartment shall be considered part of the boundary of a unit.
- (D) Apertures. Where there are openings in any boundary, including, without limitation, windows, doors and skylights, the boundaries of the unit shall extend to the interior unfinished surfaces of the coverings of such openings, and their frameworks thereof. Therefore, windows, doors, screens and all framing, casings and hardware therefor, are excluded from the unit.
- (E) Utilities. The unit shall not be deemed to include any pipes, wiring, ducts or other utility installations that are physically within the above-described boundaries, but which serve other units or the common elements. Such utility installations shall be common elements.
- (F) Entry. Any enclosed entry area, walkway or stairway exclusively serving a unit shall be included in the unit.

In cases not specifically covered in this Section 5.2, or in any case of conflict or ambiguity, the graphic depictions of the unit boundaries set forth in Exhibit "B" hereto shall control in determining the boundaries of a unit, except Section 5.2(D), above, shall control over Exhibit "B."

6. CONDOMINIUM PARCELS; APPURTENANCES AND USE.

6.1 Shares of Ownership. The Condominium contains ninety (90) residential units and six (6) guest cottage units (both referred to herein as "Units" or "units"). The owner of each residential unit and guest cottage unit shall also own a fractional share of the common elements and the common surplus as described on the attached Exhibit "C." Such fractional share is based on the total square footage of each unit in uniform relationship to the total square footage of all other units in the Condominium.

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

- (A) An undivided ownership share in the Land and other common elements and the common surplus, as specifically set forth in Section 6.1, above.
- (B) Membership and voting rights in the Association, which shall be acquired and exercised as provided in the Articles of Incorporation and Bylaws of the Association, attached hereto as Exhibits "D" and "E," respectively. The members of the Association shall consist of all owners of a fee simple interest in one (1) or more of the Units, as more particularly described in said Articles and Bylaws. The members of the Association are entitled to one (1) vote for each residential unit as more particularly described in said Bylaws.
- (C) The non-exclusive right to use Common Areas, subject to the Master Association Documents and the rules of the Master Association.
- (D) The non-exclusive right to use the Community Areas, subject to the Community Documents and the rules of the Community Association.
- (E) The exclusive right to use the Limited Common Elements reserved for the unit, and the non-exclusive right to use the common elements.
- (F) An exclusive easement for the use of the airspace occupied by the unit as it exists at any particular time and as the unit may lawfully be altered or reconstructed from time to time. An easement in airspace which is vacated shall be terminated automatically.
- (G) Other appurtenances as may be provided by law or by this Declaration and its exhibits.

Each unit and its appurtenances constitutes a "**condominium parcel.**"

6.3 Use and Possession. A Unit Owner is entitled to exclusive use and possession of his or her unit. He or she is entitled to use the common elements and Common Areas in accordance with the purposes for which they are intended, but no use may unreasonably interfere with the rights of other Unit Owners or other persons having rights to use the condominium property. No unit may be divided or any fractional portion sold, leased or otherwise transferred. The use of the units, common elements, and Limited Common Elements shall be governed by the Condominium Documents and by the rules and regulations adopted by the Association, through its Board of Directors, as set forth in the Bylaws.

7. COMMON ELEMENTS; EASEMENTS.

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

- (A) The Land.
- (B) All portions of the buildings and other improvements on the Land not included within the units, including Limited Common Elements.
- (C) Easements through units for conduits, ducts, plumbing, wiring, and other facilities for furnishing utility services to units and the common elements.
- (D) An easement of support in every portion of the Condominium which contributes to the support of a building.
- (E) The property and installations required for furnishing utilities and other services to more than one (1) unit or to the common elements.

7.2 **Easements.** Each of the following easements and easement rights is reserved through the Condominium property and is a covenant running with the land of the Condominium, and notwithstanding any of the other provisions of this Declaration, may not be revoked and shall survive the exclusion of any land from the Condominium. None of the easements specified in this section may be encumbered by any leasehold or lien other than those on the condominium parcels. Any lien encumbering these easements shall automatically be subordinate to the rights of Unit Owners with respect to such easements.

- (A) **Utility and other Easements.** The Association has the power, without the joinder of any Unit Owner, to grant easements such as electric, gas, cable television, or other utility or service easements, or relocate any existing easements, in any portion of the common elements, and to grant access easements or relocate any existing access easements in any portion of the common elements, as the Association shall deem necessary or desirable for the proper operation and maintenance of the Condominium. Such easements, or the relocation of existing easements, may not prevent or unreasonably interfere with the use of the units. The Association may also transfer title to utility-related equipment, facilities or material, and to take any other action to satisfy the requirements of any utility company or governmental agency to which any such utility-related equipment, facilities or material are to be so transferred.
- (B) **Encroachments.** If any unit encroaches upon any of the common elements or upon any other unit for any reason other than the intentional act of the Unit Owner, or if any common element encroaches upon any unit, then an easement shall exist to the extent of that encroachment as long as the encroachment exists.

- (C) Ingress and Egress. A non-exclusive easement shall exist in favor of each Unit Owner and Occupant, their respective guests and invitees for pedestrian traffic over, through, and across sidewalks, streets, paths, walks, and other portions of the common elements as from time to time may be intended and designated for such purpose and use, and for vehicular and pedestrian traffic over, through, and across such portions of the common elements as from time to time may be paved or intended for such purposes, and for purposes of ingress and egress to the public ways.
- (D) Support. Each unit shall have an easement of support and necessity and shall be subject to an easement of support and necessity in favor of all other units and common elements.
- (E) Construction. The Developer (including its designees and contractors) shall have the right to enter the Condominium property and take any action reasonably necessary or convenient for the purpose of completing the construction thereof, provided such activity does not prevent or unreasonably interfere with the use or enjoyment by the Unit Owners of the condominium property.
- (F) Sales Activity. For as long as it holds any unit for sale in the ordinary course of business, the Developer and its designees shall have the right to use, without charge, any units owned by it, and the common elements and common areas (including, but not limited to, all recreational facilities), in order to establish, modify, maintain and utilize, as it and they deem appropriate, model apartments and sales and other offices. Without limiting the generality of the foregoing, the Developer and its designees may show model apartments or the common elements to prospective purchasers or tenants, erect on the common areas or on the condominium property signs and other promotional material to advertise units for sale or lease, and take all other action helpful for sales, leases and promotion of the Condominium. Any models, sales or other offices, signs and any other items pertaining to any sales or leasing efforts shall not be considered part of the common elements and Association Property and shall remain the property of Developer. Developer reserves the right for itself and any of its affiliates to use the office(s) and show models, unsold units, common elements and association property to sell, lease or promote other communities located within or outside Grande Phoenician, as Developer and/or any of Developer's affiliates as developers of other communities may determine, in their sole discretion, to the extent permitted by law.
- (G) The easements and rights described in (E) and (F) above shall terminate upon the sale of all units in the Condominium to purchasers other than a successor Developer.

7.3 Restraint Upon Separation and Partition. The undivided share of ownership in the common elements and common surplus appurtenant to a unit cannot be conveyed or encumbered separately from the unit and shall pass with the title to the unit, whether or not separately described. No Owner may maintain an action for partition of the common elements. The shares in the funds and assets of the Association cannot be assigned, pledged or transferred in any manner except as an appurtenance to the units.

8. LIMITED COMMON ELEMENTS.

8.1 Description of Limited Common Elements. Certain of the common elements have been, or may be, designated as Limited Common Elements, reserved for the use of a particular unit or units, to the exclusion of the other units. Except as hereinafter provided, the Limited Common Elements and the units to which their use has been designated are as described in this Declaration and as further identified on the attached survey and plot plan.

- (A) Garage and Driveway Parking Areas. Each residential unit will have as an appurtenance the exclusive use of two (2) parking spaces. Garage parking spaces shall be assigned to each residential unit by the Developer in the deed of conveyance to each unit. Such garage parking space shall be appurtenant to its designated residential unit and the right to use such garage parking space shall pass with title to the residential unit regardless of whether such garage parking space shall be referred to in any such unit deed of conveyance. All parking areas are intended for the primary use of parking and storage of motor vehicles. No designated parking area may be converted to another primary use except with prior approval of the Board of Directors.
- (B) Air Conditioning and Heating Equipment. All equipment, fixtures and installations located outside of a unit, which furnish air conditioning or heating exclusively to that unit, shall be Limited Common Elements, the exclusive use of which is appurtenant to the unit.
- (C) Balcony, Terrace, Patio and Lanai. Any balcony, terrace, or lanai which is attached or contiguous to a unit shall be a Limited Common Element, the exclusive use of which is appurtenant to that unit.
- (D) Storage Lockers. Storage lockers may be placed on the plaza level of the main building. If storage lockers are so placed the Developer reserves the rights to assign individual storage lockers to residential Unit Owners as Limited Common Elements.
- (E) Others. Any part of the common elements that is connected to and exclusively serves a single unit, and is specifically required in Section 11 of this Declaration to be maintained, repaired or replaced by, or at the expense of, the Unit Owner, shall be deemed a Limited Common Element, whether specifically described above or not.

8.2 Exclusive Use-Assignment and Transfer. The exclusive right to use of a Limited Common Element is an appurtenance to the unit or units to which the Limited Common Element is designated or assigned. The right to such use passes with the unit, whether or not separately described, and cannot be separated from it except by separate assignment. Assigned parking spaces, and storage lockers (if any) may be separated from a residential unit and assigned to another unit provided however each residential unit has two (2) parking spaces assigned to it. No assignment of parking space or storage locker is valid unless it is first presented to the Association and approval by it in writing so as to insure that the Association has a record of the spaces, and number thereof, assigned to each residential unit.

9. ASSOCIATION. The operation of the Condominium is by the Grande Phoenician at the Grande Preserve Condominium Association, Inc., a Florida not for profit corporation, which shall perform its functions pursuant to the following:

9.1 Articles of Incorporation. A copy of the Articles of Incorporation of the Association is attached as Exhibit "D."

9.2 Bylaws. The Bylaws of the Association shall be the Bylaws attached as Exhibit "E," as they may be amended from time to time.

9.3 Delegation of Management. The Board of Directors may contract for the management and maintenance of the Condominium property and authorize a manager or management company to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules, and maintenance and repair of the common elements with funds made available by the Association for such purposes. The Association and its Directors and officers shall, however, retain at all times the powers and duties provided in the Condominium Act.

9.4 Membership. The membership of the Association shall be comprised of Owners of the units, as further provided in the Bylaws.

9.5 Acts of the Association. Unless the approval or affirmative vote of the Unit Owners is specifically made necessary by some provision of the Condominium Act or the Condominium Documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the Unit Owners. The officers and Directors of the Association have a fiduciary relationship to the Unit Owners. A Unit Owner does not have the authority to act for the Association by reason of being a Unit Owner.

9.6 Powers and Duties. The powers and duties of the Association include those set forth in the Condominium Act and the Condominium Documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the Condominium property and Association Property. The Association may impose reasonable fees for use of common elements or Association Property. The Association has the

power to enter into agreements to acquire leaseholds, memberships and other possessory or use interests in lands or facilities contiguous to the lands of the Condominium, for the use and enjoyment of the Unit Owners.

9.7 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

9.8 Purchase of Units. The Association has the power to purchase units in the Condominium and to acquire and hold, lease, mortgage, and convey them, such power to be exercised by the Board of Directors.

9.9 Acquisition of Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as provided in Section 9.8, above, the power to acquire real property may be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.

9.10 Disposition of Property. Any property owned by the Association, whether real, personal or mixed, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of the Board of Directors, without need for authorization by the Unit Owners.

9.11 Roster. The Association shall maintain a current roster of names and mailing addresses of Unit Owners. A copy of the roster shall be made available to any member upon request.

9.12 Membership in Master Association. The Association shall be a member of the Master Association. As long as the Master Association shall exist, this Declaration may not be amended to eliminate or modify this membership requirement. By virtue of the Association's membership in the Master Association, the Unit Owners in this Condominium have a non-exclusive right to use the common facilities owned by the Master Association, subject to the Master Declaration and the rules and regulations of the Master Association. The share of the expenses of the Master Association for which this Association is liable shall be common expenses to the Unit Owners hereunder and shall be in such amounts as required under the Master Association Documents.

9.13 Membership in Community Association. The Association shall be a member of the Community Association. As long as the Community Association shall exist, this Declaration may not be amended to eliminate or modify this membership requirement. By virtue of the Association's membership in the Community Association, the Unit Owners in this Condominium have a non-exclusive right to use the common facilities owned by the Community Association, subject to the Community Declaration and the rules and regulations of the Community Association. The share of the expenses of the Community Association for which this Association is liable shall be common expenses to the Unit Owners hereunder and shall be in such amounts as required under the Community Documents.

9.14 Indemnification. The Association covenants and agrees that it will indemnify and hold harmless Developer and the members of the Board from and against any and all claims, suits, actions, damages, and/or causes of action arising from any personal injury, loss of life, and/or damage to property sustained in or about Condominium property, Association Property or the appurtenances thereto from and against all costs, legal fees, expenses and liabilities incurred in and about any such claim, the investigation thereof or the defense of any action or proceeding brought thereon, and from and against any orders, judgments and/or decrees which may be entered therein, to the extent permitted by law. Included in the foregoing provisions of indemnification are any expenses that Developer may be compelled to incur in bringing suit for the purpose of compelling the specific enforcement of the provisions, conditions and covenants contained in this Declaration to be kept and performed by the Association.

10. ASSESSMENTS AND LIENS. The Association has the power to levy and collect assessments against each unit and Unit Owner in order to provide the necessary funds for proper operation and management of the Condominium and for the operation of the Association, including regular assessments for each unit's share of the common expenses as set forth in the annual budget, and special assessments for unusual, non-recurring or unbudgeted common expenses. The Association may also levy special charges against any individual unit for any amounts other than common expenses which are properly chargeable against such unit under this Declaration or the Bylaws. Assessments shall be levied and payment enforced as provided in Section 6 of the Bylaws and as follows:

10.1 Common Expenses. Common expenses include all expenses of the operation, maintenance, repair, replacement and protection of the common elements and Association Property, the expenses of operating the Association, and any other expense properly incurred by the Association for the Condominium, including any amounts budgeted for the purpose of funding reserve accounts. Assessments levied by the Master Association and by the Community Association against this Condominium shall be a common expense.

10.2 Share of Common Expenses. The Owner of each unit shall be liable for a share of the common expenses of the Association equal to his or her share of ownership of the common elements and the common surplus, as set forth in Section 6.1, above.

10.3 Ownership. Assessments collected by or on behalf of the Association become the property of the Association. No Unit Owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his or her unit. No Owner has the right to withdraw or receive distribution of his or her share of the common surplus, except as otherwise provided herein or by law.

10.4 Who is Liable for Assessments. The Owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he or she is the owner. Multiple Owners are jointly and severally liable. Except as provided in Section 20.3, below, whenever title to a condominium parcel is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments against the transferor,

