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Retn:
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NAPLES FL 34108

(space above line for official use only)

**DECLARATION OF COVENANTS AND EASEMENTS
FOR THE GRANDE PRESERVE AT
THE DUNES**

This Declaration is made this 9th day of June, 2003, by **VANDERBILT PARTNERS II, LTD.**, a Florida limited partnership authorized to do business in Florida, for itself and its successors, grantees, and assigns (the "Declarant").

BACKGROUND:

- A. Declarant owns certain real property (the "Property") located in Collier County, Florida, described in Exhibit "A" attached hereto (hereinafter the "Grande Preserve"), which property is part of the Dunes Project as defined in that certain Declaration of Covenants (the "Master Declaration") originally recorded in Official Records Book 2777, at Page 3027 of the Public Records of Collier County, Florida, as subsequently amended; and
- B. Developer intends to develop on the Property a residential community within the Dunes Project, including certain common areas to be known as the "Grande Preserve at The Dunes" or the "Grande Preserve"; and
- C. Declarant desires to provide for the preservation of property values, and amenities in the Grande Preserve, contribute to the general health, safety and welfare of residents, and provide for the maintenance of the land and improvements thereon, and to this end desires to subject the Grande Preserve to the protective covenants and other provisions hereinafter set forth; and
- D. To provide a means for meeting certain of the purposes and intents herein set forth, the Declarant has incorporated the **GRANDE PRESERVE AT THE DUNES COMMUNITY ASSOCIATION, INC.**, a Florida corporation not for profit (hereinafter the "Community Association"); and

NOW THEREFORE the Declarant, and any other person whose signature appears hereinafter by way of joinder or consent, hereby declare that the land described in Exhibit "A" together with such improvements as may hereafter be made thereto, are and shall be owned, used, and conveyed subject to the easements, covenants, conditions, restrictions, and all other provisions of this Declaration as it may lawfully be amended from time to time, which shall run with the land and be binding on all parties having any right, title or interest in the Grande Preserve or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

1. **DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, unless the context clearly requires another meaning.

1.1. "**Assessment**" means any charge imposed by the Community Association against its Members, including without limitation annual assessments and special assessments, as authorized by the Community Documents.

1.2. "**Association**" or "**Community Association**" or the "**Corporation**" means the Grande Preserve at The Dunes Community Association, Inc., a Florida corporation not for profit, and its successors and assigns.

1.3. "**Board**" means the Board of Directors of the Community Association.

1.4. "**Community Common Areas**" means all the real property to be owned, leased, or maintained by the Community Association and all improvements thereon.

1.5. "**Community Documents**" means this Declaration and all recorded exhibits thereto, as amended from time to time.

1.6. "**Condominium**" means any residential condominium within the Grande Preserve.

1.7. "**County**" means Collier County, Florida.

1.8. "**Declaration**" means this document, entitled "Declaration of Covenants and Easements for the Grande Preserve at The Dunes," as it may be amended from time to time.

1.9. "**Declarant**" or "**Developer**" means Vanderbilt Partners II, Ltd., a Florida limited partnership, and its successors and assigns.

1.10. "**Unit**" means any single or multi-family residence, condominium unit, villa, townhome, detached single family home or other separately owned parcel of real property located in the Grande Preserve.

1.11. "**Master Association**" means The Dunes of Naples Property Owners Association, Inc., a Florida corporation not for Profit, its successors or assigns.

1.12. "**Member**" and "**Member Association**" is defined in Section 5.4, below.

1.13. "**Owner**" and "**Unit Owner**" mean the owner of legal title to any land located within the Grande Preserve.

- 1.14. **“Structure”** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof.” The term includes, without limitation, parking areas, swimming pools, fences, and storage sheds.
- 1.15. **“Grande Preserve”** means the real property described in Exhibit “A” to this Declaration, which may from time to time be amended as provided herein.
- 1.16. **“Corporation Property”** means all real and personal property owned or to be owned by the Community Association or the Corporation.
- 1.17. **“Community Facilities”** means those portions of the Community Common Areas that are developed with recreational or other facilities that are available for use by Owners, including, but not limited, to those facilities located on Community Common Areas not located within or contiguous to the Grande Preserve.

2. **GENERAL PROVISIONS; COVENANTS, RESTRICTIONS AND RESERVATIONS RUN WITH LAND.** The Declarant has organized the Corporation primarily to ensure that the Grande Preserve will be maintained in the manner herein required. The Corporation shall hold title to, and/or will operate, maintain and repair the Community Common Areas, which may include without limitation, Community Facilities, waste disposal facilities, irrigation systems, sidewalks, bikepaths and carpaths, roadways, and parking areas within the Grande Preserve; and shall pay the costs incident to these responsibilities and the costs of street lighting for the Community Common Areas, if any; and take such other action as the Community Association is authorized to take with regard to the Community Common Areas pursuant to the Community Documents. The Community Association shall operate, maintain and repair all property designated by Declarant as Community Common Areas, regardless of whether title to the property has been formally conveyed to the Community Association. The Community Association is responsible for the perpetual maintenance of the Community Common Areas and shall be required to take such action as is necessary to enforce compliance with the terms and conditions hereof.

2.1 **Right to Use Community Common Areas.** The right to use the Community Common Areas shall be appurtenant to and shall run with ownership and with the right to use Units and other real property located within the Grande Preserve, subject to this Declaration and to the rules and regulations of the Community Association.

2.2 **Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to Owners and Members and persons to whom an Owner or Member has delegated his right of use in and to the Community Common Areas, but also to any occupants by permission or invitation of the Owner or his tenants, express or implied, licensees, invitees or guests. Failure of

an Owner to notify any person of the existence of the easements, covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of Declarant or Community Association of enforcement of these provisions and, in addition, the Owner shall be responsible for any and all violations of these provisions by his tenants, delegates, licensees, invitees or guests, and by his guests, licensees and invitees of his tenants at any time.

2.3 **Members' Rights and Easements.**

Every Owner shall have a non-exclusive right and easement of enjoyment and use in and to the Community Common Areas. The right and easement shall be appurtenant to and shall pass with the title to all real property subject to any limitation set forth in this Declaration including, without limitation:

- (1) The right and power of the Community Association to determine the annual assessments to be paid by the Members;
- (2) The right and power of the Community Association to dedicate or transfer all or any part of the Community Common Areas to any governmental agency, public authority, or utility;
- (3) The right and power of the Community Association to grant easements over, across, or through the Community Common Areas or any part thereof.
- (4) The right and power of the Community Association to borrow money for the purpose of improving the Community Common Areas, and in aid thereof, to mortgage the Community Common Areas;
- (5) The right and power to take such steps as are reasonably necessary to protect Community Common Areas against foreclosure; and
- (6) The Articles of Incorporation and Bylaws of the Community Association; and any rules and regulations governing use and enjoyment of the Community Common Areas adopted by the Community Association.
- (7) The power of the Community Association and of the Declarant to designate portions of the Grande Preserve as Community Common Areas, and Community Facilities, and to restrict usage thereof in accordance herewith.
- (8) The right and power of the Community Association to control, regulate and restrict usage of the Community Common Areas, to manage the Community Common Areas, and to adopt rules and regulations with respect thereto that bind each Owner and his Unit and all Members.

2.4 **Delegation of Rights.** An Owner may temporarily delegate his right of use in and to the Community Common Areas to his non-owner guests (if the guests are accompanied by a member) or to tenants who lease the property of the Owner, but only to the extent

and subject to conditions, limitations and restrictions as may be provided for in the Bylaws and the Community Association's rules and regulations. Each Owner shall be financially and legally responsible for the actions of any person to whom the Owner has delegated his right to use the Community Common Areas.

2.5 Conveyance and Use.

- (A) Any real property conveyed, leased, or the use of which has been granted by Declarant or any third party to the Community Association as Community Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of Owners.
- (B) Declarant may at any time, but is not obligated to, convey any property it owns in the Grande Preserve to the Community Association in either an improved or an unimproved condition, whether or not such property is initially part of the Community Common Areas as described herein, with or without any specific restrictions on its use, subject to any existing encumbrances and the Community Association must accept such property. The Community Association shall not accept the conveyance of real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant, so long as Declarant owns any property in the Grande Preserve.

2.6 Community Association's Rights and Powers.

- (A) Subject to this Declaration and any other applicable recorded instrument, the Community Association's Articles and Bylaws, the Community Association shall have the right, and the power, to develop, promulgate and enforce reasonable rules and regulations for the use and enjoyment of Community Common Areas.
- (B) No Community Common Areas shall be used in violation of any rule or regulation or other requirement of the Community Association established pursuant to the provisions of this Declaration or the Bylaws or the Community Association.

3. USE RESTRICTIONS. The following restrictions, in addition to the rules and regulations hereafter promulgated by the Community Association, shall govern the use of land in the Grande Preserve and the conduct of the users.

- 3.1 **Compliance with Laws: Nuisance.** The use of the Grande Preserve shall be consistent with existing law and the Community Documents. No obnoxious, unpleasant or offensive activity shall be carried on, nor any activity which would be disturbing or a reasonable source of nuisance or annoyance to residents of the Grande Preserve. The improvements within the Grande Preserve shall not be

obstructed, littered, defaced or misused in any manner. In the event the Community Association corrects any such undesirable conditions, the cost thereof shall be charged to the responsible Owner or Member, and payment may be enforced by a lien against the Unit with the same force and effect as if the charge were part of the Community Association's assessments.

- 3.2 **Litter.** No garbage, trash, refuse or rubbish shall be deposited, dumped or kept upon the Grande Preserve except in closed containers, dumpsters or other garbage collection facilities deemed approved by the Board. All containers, dumpsters and other garbage collection facilities shall be kept in designated areas and kept in a clean condition with no noxious or offensive odors emanating therefrom.
- 3.3 **Correction of Health and Safety Hazards.** Any conditions which are deemed by the Community Association to be a hazard to the public health or safety may be corrected immediately as an emergency matter by the Community Association and the cost thereof shall be charged to the responsible Owner or Association, and payment may be enforced by a lien against the Unit with the same force and effect as if the charge were part of the Community Association's assessments.
- 3.4 **Lighting.** All exterior lighting shall be accomplished in accordance with lighting plans approved in writing by Declarant.
- 3.5 **Alterations of Community Common Areas.** No Owner or occupant shall make any alteration or improvement of Community Common Areas, except as authorized, in writing, by the majority of the Board of Directors.
- 3.6 **Outdoor Cooking.** No barbecuing or outdoor cooking of any type shall be permitted on the Community Common Areas, except where the Corporation designates a place or provides facilities for such type of cooking, and then such activity may be undertaken only in conformity with the rules established for the use of such facilities.
- 3.7 **Sidewalks.** Declarant may construct sidewalks in the Community Commons Area which thereafter shall be maintained by the Community Association.

4 EASEMENTS.

4.1 **Access, Utility and Other Easements.**

- (A) Declarant hereby declares that a non-exclusive easement for access, ingress and egress and utility service shall exist over all portions of the Grande Preserve which are subsequently developed and improved as such for the purpose of utilities, common parking areas, streets, water management and drainage, driveways, ingress and egress, so that the integrity of the Grande Preserve shall be maintained. Such easements shall exist for the benefit of each Owner (and their respective mortgagees, heirs, successors and assigns) within the Grande Preserve. The easements

hereby created shall run to the benefit of any properties encumbered by this declaration, the Owners and their servants, tenants, visitors, and licensees in common with all persons having a like, nonexclusive, perpetual right of ingress and egress over and across the properties in such areas as are subsequently developed and improved for utilities, common parking areas, streets, water management and drainage, driveways, walkways, ingress and egress.

(B) Declarant reserves the right, so long as Declarant owns any or property within the Grande Preserve to create easements for the purpose of installing, operating and maintaining governmental, public or private utility facilities, and for other purposes incidental to the development of the Grande Preserve, and there are also reserved such easements and rights-of-way for any other purposes as Declarant in its sole discretion may in the future determine.

(C) Declarant and the Community Association hereby grant and declare that an easement is created and reserved over, across and upon the Community Common Areas to and for the benefit of the Members and Owners for and to the extent that any structure or building or appurtenance thereto, such as, but not limited to, sidewalks or staircases, constructed upon Association property encroaches upon any properties of the Community Association. This easement shall exist to the extent of any such encroachment as long as the encroachment exists and is a covenant running with the land and may not be revoked. Any lien encumbering these easements shall automatically be subordinate to such easements.

4.1 **Service Easement.** Declarant hereby grants to delivery, pickup and fire protection services, police and other authorities of the law, United States mail carriers, representatives of electrical, telephone, cable television and other utilities that service the Grande Preserve, and to such other persons as the Declarant or Community Association may from time to time designate, the nonexclusive, perpetual right of ingress and egress over and across the Grande Preserve for the sole purpose of performing their authorized services.

4.2 **Easement for Construction, Maintenance.** Declarant (including its designees and contractors) shall have the right to enter any part of the Community Common Areas and take any action reasonably necessary or convenient for the purpose of completing the construction of any improvements within the Grande Preserve, or any part thereon, and for repair, replacement and maintenance purposes provided such activity does not prevent or unreasonably interfere with the use or enjoyment of the facilities.

4.3 **Easement for Water Management, Lake Management and Drainage.** Declarant hereby grants to the Master Association a non-exclusive easement over and across the Grande Preserve for the purpose of the Master Association

performing its water management and lake maintenance obligations as provided in the Master Declaration.

5 **ASSOCIATION.** The operation of the Community Common Areas is by the Grande Preserve at The Dunes Community Association, Inc. which shall perform its function pursuant to the following:

- 5.1 **Articles of Incorporation.** A copy of the Articles of Incorporation of the Community Association is attached as Exhibit "B".
- 5.2 **Bylaws.** The Bylaws of the Community Association shall be the Bylaws attached as Exhibit "C", as they may be amended from time to time.
- 5.3 **Delegation of Management.** The Community Association may contract for the management and maintenance of the Community Common Areas and employ a licensed manager or management company to assist the Community 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, repair and replacement of the common elements with funds made available by the Community Association for such purposes.
- 5.4 **Membership.** The Members ("Members") of the Community Association shall be all the Florida non-profit corporations ("Member Associations") which are actually created for the purpose of operating condominiums or other developments or improved areas within the Grande Preserve. The Owners are not Members. In the event of any Member's voluntarily dissolution, that Member's right to membership shall be transferred to its successors and/or assigns which shall have and exercise such Member's membership rights, obligations and privileges as long as the Community Association exists.
- 5.5 **Acts of the Community Association.** Unless the approval or affirmative vote of the Members is specifically made necessary by some provision of the law or the Community Documents, all approvals or actions permitted or required to be given or taken by the Community Association may be given or taken by its Board of Directors. The officers and Directors of the Community Association have a fiduciary relationship to the Owners. An Owner does not have the authority to act for the Community Association by reason of being an Owner.
- 5.6 **Powers and Duties.** The powers and duties of the Community Association include those powers and duties set forth in Chapter 617, Florida Statutes, and the Community Documents. The Community 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 Community Association include, but are not limited to, the maintenance, management, and operation of the Community Common Areas. The Community Association may impose reasonable fees for the

use of Corporation Property. The Community Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory or use interests in lands or facilities, regardless of whether the lands or facilities are contiguous to the Community Common Areas. The Community Association has the power to adopt and enforce rules and regulations applicable to the Grande Preserve in accord herewith and to enforce compliance with this Declaration, the Community Documents.

- 5.7 **Official Records.** The Community 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.
- 5.8 **Acquisition of Property.** The Community Association has the power to acquire property, both real and personal. The Community Association may acquire additional real property that is contiguous to the Grande Preserve or additional real property that is not contiguous to the Grande Preserve. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval by at least a majority of the voting interests.
- 5.9 **Disposition of Property.** Any property owned by the Community Association, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 5.8, above.
- 5.10 **Limitation on Liability.** Notwithstanding its duty to maintain and repair the Community Common Areas, the Community Association shall not be liable to individual Owners for personal injury or property damage caused by any latent condition of the Community Common Areas, or caused by the elements or unit owners or other persons.
- 5.11 **Maintenance.** The Community Association shall be responsible for the maintenance, repair, replacement and control of all Community Common Areas, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times.
- 5.12 **Partition Prohibited.** There shall be no judicial partition of the Community Common Areas, except as expressly provided elsewhere herein, nor shall Declarant, or any Owner or any other person acquiring any interest in the Grande Preserve, or any part thereof, seek judicial partition thereof except in connection with a dissolution of the Community Association.

6 ASSESSMENTS, LIENS AND FEES.

- 6.1 **Method of Establishing Assessments.** In accordance with Section 6.5 of the Bylaws, before the first day of December each year, the Board of Directors shall consider and adopt an annual operating budget sufficient to enable the Corporation to perform its functions for the ensuing year. The Board of Directors shall assess against each Member Association its proportionate share of the budget, such proportionate share being determined by the ratio which the number of units operated by the particular Member Association bears to the total number of units proposed or existing in the Grande Preserve. During the period of Developer control, the total number of units managed by Member Associations in the Grande Preserve shall be presumed to be 640, however the Developer may amend this Section to reflect a change in the number of units to be built in the Grande Preserve and such number may increase or decrease at the sole discretion of the Developer. Each Member Association's share shall, as provided for in the Declaration of Condominium or other governing documents pertaining to such Member, become part of the common expenses of any Member Association. In addition, the Community Association may levy special assessments against the Member for capital expenses and for unusual, non-recurring or unbudgeted common expenses. Member Associations and all Owners are liable for paying their proportionate share of Community Association assessments as provided for herein.
- 6.2 **Payment of Annual Assessments.** Annual assessments shall be billed in quarterly installments, payable in advance on the first (1st) day of January, April, July and October of each year.
- 6.3 **Limitation on Changes in Assessments.** The Board of Directors may not increase a Member's annual assessment by more than fifteen percent (15%) over and above the respective member's annual assessment for the preceding year without the approval of at least seventy-five percent (75%) of the members of the Board of Directors of the Corporation.
- 6.4 **Collection of Assessments.** The Board of Directors may adopt and promulgate rules and regulations for the collection of all assessments, and the determination and collection of assessments against the Members shall be subject to the following provisions:
- (A) Assessments or installments thereof remaining unpaid longer than ten (10) days after the due date shall bear interest from the due date at the highest rate allowed by law; all payments on account shall be first applied to interest and then to the assessment payment first due.
 - (B) No Member may exempt itself from liability for its assessment hereunder by waiver of the use and enjoyment of any of the Community Common Areas or Community Facilities.

- 6.5 **Subsidy of Association Expenses.** During the period of Developer control or until any date earlier, at the election of the Developer, the Developer will fund the negative difference, if any, between Association revenues from all sources and the actual expenses incurred. The foregoing shall not, however, obligate the Developer to contribute to the funding of any reserve account for capital expenditures or deferred maintenance.
- 6.6 **Liens.** The Association has a lien on each Unit or other land that is owned by an Owner that is a member of a Member Association securing payment of assessments that are due from it, including interest and reasonable attorney's fees and costs and expenses of litigation incurred by the Association incident to the collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. If a Member fails to pay assessments, the Association may record and enforce its lien against all Units of the applicable Member Association. If an Owner fails to pay assessments, the Association may record and enforce its lien against the particular Unit owned by such Owner. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the Unit(s), the name(s) of the record owner(s), the name and address of the Association, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments and charges coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.
- 6.7 **Priority of Lien.** The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of any recorded first mortgage unless the Association's Claim of Lien was recorded before the mortgage, but shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise provided by law. A lease of a Unit shall be subordinate and inferior to the Claim of Lien of the Association, regardless of when the lease was executed.
- 6.8 **Foreclosure of Lien.** The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in Florida Statutes Chapter 718 for foreclosure of liens for unpaid condominium assessments, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

7 **INSURANCE: RECONSTRUCTION AFTER CASUALTY.**

- 7.1 **Required Coverage.** The Community Association shall obtain and maintain at all times the insurance listed below. The named insured on all insurance policies upon the Community Common Areas shall be the Community Association, individually and as agent for each Member and their respective unit owners, without naming them.

- (A) **Liability Insurance:** Public liability insurance covering all of the Community Common Areas and insuring the Corporation, the Members, and their respective Owners as their interests appear, in such amounts as the Board of Directors may determine from time to time, provided that the minimum amount of coverage shall be one million dollars. Premiums for such insurance are chargeable as an expense of the Corporation, and shall be assessed against and paid for by each of the Members as provided for in Section 6, above. The Corporation shall not be responsible for purchasing liability insurance to cover accidents occurring outside the Community Commons Area.
- (B) **Property Insurance:** Insurance against vandalism, malicious mischief, fire, windstorm and other perils normally covered by a standard "all-risk" property contract, insuring all of the insurable improvements upon the land owned and to be owned by the Corporation and all personal property included as Corporation Property, for a minimum of eighty percent (80%) of the full replacement value, together with such other insurance as the Corporation may deem necessary. Premiums for such insurance shall be chargeable as an expense of the Corporation and shall be assessed against and paid by each of the members as provided for in Section 6 hereof. The Corporation shall annually make an analysis to determine replacement costs for insurance purposes for all of the then existing improvements for the ensuing year. Said insurance shall not insure against damage to property other than Corporation Property.
- (C) Such other insurance as the Board of Directors shall determine from time to time to be desirable, such as fidelity bonds or officers' and directors' liability insurance. Premiums for such insurance shall be an expense of the Corporation and shall be assessed against and paid by each of the members as provided for in Section 6 hereof.

7.2 **Distribution of Proceeds.** If a loss occurs for which the proceeds of insurance policies are received, payments under the policies shall be disbursed and expended in the following manner:

- (A) If the damage for which the proceeds are paid is to be repaired or reconstructed, the Corporation shall pay the proceeds to defray the costs thereof as elsewhere provided. Any proceeds remaining after the defraying of such costs shall become part of the common surplus.
- (B) If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall become part of the common surplus of the Community Association.

