

**CERTIFICATE OF AMENDMENT TO
THE DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
OF
RIVER PLACE TOWNHOUSE ASSOCIATION, INC.**

**THE UNDERSIGNED, being the President and Vice President of RIVER PLACE
TOWNHOUSE ASSOCIATION, INC, a Florida non-profit corporation, do hereby
certify**

**and attest, respectively, that the attached Amendment to the Declaration of
Covenants,**

**Easements and Restrictions of River Place, that was originally recorded on April 7
, 2003**

**in the Official Public Records of Lee County, Florida, was duly approved, adopted,
and**

**enacted by the required vote of Members at a Members Meeting held on May 28,
2008, at**

which a quorum was present and for which due notice was given.

**RIVER PLACE TOWNHOUSE ASSOCIATION,
INC.**

(Seal)

Sign: Sheila Gabauer
Print: Sheila Gabauer
Title: President

Attested by:

Sign: David Austin
Print: David Austin
Title: Vice President

**STATE OF FLORIDA
COUNTY OF LEE**

**THE FOREGOING INSTRUMENT was acknowledged before me this 10th
June day of June, 2008, by Sheila Gabauer, as President; and David
Austin, as Vice President, of RIVER PLACE TOWNHOUSE ASSOCIATION, INC. who
are (check one): personally known to me or _____
produced _____
as identification. Nadya C Vantilburg**

**NOTARY PUBLIC-STATE OF FLORIDA
Nadya C. Vantilburg
Commission # DD729203
Expires: OCT. 25, 2011
BONDED THRU ATLANTIC BONDING CO., INC.**

**AMENDMENT TO THE DECLARATION OF COVENANTS,
EASEMENTS, AND RESTRICTIONS
OF
RIVER PLACE TOWNHOUSE ASSOCIATION, INC.**

The Declaration of Covenants, Easements, and Restrictions for River Place Townhouse Association, Inc. Shall be Amended as shown below.

Note: New language is underlined. Language to be deleted is ~~struck through~~.

**Article V
Rules and Regulations (Restrictions)**

Section 5-1. Pet Rules

1. Only usual domestic pets such as dogs, cats, and birds may be kept on premises. Birds must be no larger than a parakeet. Fish, gerbils, and hamsters are also acceptable. Snakes, iguanas, alligators, and other reptiles are not.
2. All owners must comply with Lee County and City of Fort Myers ordinances pertaining to pet controls and health certificates. Any resident willfully disregarding these rules shall remove such pet permanently from the property upon written notice from the Association.
3. Dogs must be on a leash whenever outside a unit. The leash must be adequately secured and hand held.
4. Pet owners are responsible for timely cleanup and disposal of pet feces.
5. Pets may not be kept for breeding or commercial purposes.
6. No animal of an aggressive breed or nature shall be permitted. The following breeds are considered dangerous and will not be acceptable: Pit Bulls, American Staffordshire Terrier, Rottweiler, Akita, Perro de Presa Canarios, Wolf-hybrids, Any dog that has any of these breeds in their lineage.

7. Pets must be prevented from creating a nuisance or unreasonable disturbance. The Board shall have the right to require permanent removal of such a pet if the problem is not corrected.

8. Dangerous dogs are a serious threat to the safety of residents and other pets. A dangerous dog is one that:

a. has aggressively bitten, attacked, endangered, or inflicted injury on a human being or other pet.

b. has, when unprovoked, chased or approached a person or a properly restrained pet on the sidewalk, street, or public grounds in a menacing fashion or apparent attitude of attack, provided that such actions are attested to in a sworn statement by one or more persons and dutifully investigated by the appropriate authority.

Should any dog be deemed dangerous by the Board, the Association shall have the right to require the dog's permanent removal from the complex and shall be entitled to such relief as may be necessary to accomplish this order should the owner fail to remove such a pet after notice from the Association to do so.

PREPARED BY:
Susan M. McLaughlin, Esq.
Condo & HOA Law Group, LLC
2030 McGregor Boulevard
Fort Myers, FL 33901
239-333-2992

INSTR # 2008000084952, Pages 4
Doc Type RES, Recorded 04/01/2008 at 08:54 AM,
Charlie Green, Lee County Clerk of Circuit Court
Rec. Fee \$35.50
Deputy Clerk JMILLER
#1

**CERTIFICATE OF AMENDMENT TO
THE DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIIONS
OF
RIVER PLACE TOWNHOUSE ASSOCIATION, INC.**

THE UNDERSIGNED, being the President and Secretary of RIVER PLACE TOWNHOUSE ASSOCIATION, INC, a Florida non-profit corporation, do hereby certify and attest, respectively, that the attached Amendment to the Declaration of Covenants, Easements and Restrictions of River Place Townhouse Association, Inc., that was originally recorded on April 7, 2003, in Official Records Book 03893, at Page 4136, *et seq.*, in the Public Records of Lee County, Florida, was duly approved, adopted, and enacted by the required vote of Members at a Members Meeting held on Dec. 5, 2007, ~~2008~~, at which a quorum was present and for which due notice was given.

RIVER PLACE TOWNHOUSE
ASSOCIATION, INC.

(Seal)

Sign: *Ingeborg Appleton*
Print: Ingeborg Appleton
Title: President

Attested by:

Sign: *Nancy Singer*
Print: Nancy Singer
Title: Secretary

STATE OF FLORIDA
COUNTY OF LEE

THE FOREGOING INSTRUMENT was acknowledged before me this 31 day of March, 2008, by Ingeborg Appleton, as President; and Nancy Singer, as Secretary, of RIVER PLACE TOWNHOUSE ASSOCIATION, INC. who are (check one):
 personally known to me or _____ produced _____
as identification.

(SEAL/STAMP)



Signed: *Lisa K. Meo*
Print: Lisa K. Meo
Notary Public -- State of Florida
Serial Number: DD 716322
My Commission Expires: 9/18/2011

**AMENDMENT TO THE
DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
OF
RIVER PLACE TOWNHOUSE ASSOCIATION, INC.**

The Declaration of Covenants, Easements and Restrictions of River Place Townhouse Association, Inc., shall be amended as shown below.

Note: New language is underlined. Language to be deleted is ~~struck through~~.

**Article I
Definitions**

Section 1-10. "Limited Common Element" shall mean those common areas that are reserved for the use of a certain Townhouse Parcel Owner or Owners, to the exclusion of some or all other Townhouse Parcel Owners, as specified in the Declaration.

**Article VII
Maintenance Responsibilities**

Section 7-1. Association. The Association shall maintain, repair, and replace the common elements and improvements thereon including recreational facilities except for the boat slips, which shall be privately and separately owned as limited common elements by the parcel owners purchasing same as provided in Article XI, Section 11-2. The Association upon its determination shall supervise the replacement of the roofs and the repainting and replacement of the exterior surfaces of the townhouses and other improvements on the townhouse parcels in order to maintain uniformity of appearance and quality in the community. The Association shall have the power and authority to collect reserves toward same in addition to such collections for repair and maintenance of common areas and improvements thereon. In addition, the Association shall have a lien on each Townhouse Parcel and its improvements for unpaid maintenance fees, unpaid reserves for the repair and replacement of common areas and improvements thereon, and unpaid reserves for the repainting and replacement of exterior surfaces on each Townhouse Parcel (including its roof) as set forth above.

**Article XI
Recreational Areas**

~~Section 11.2. Pier. Declarant may construct but is not obligated to construct a pier extending into the Caloosahatchee River. If the pier is constructed, Declarant may construct and attach thereto such boat slips as may be permitted by the appropriate governmental agencies. The pier, if constructed, shall be part of the common property of the Association for the use and benefit of parcel owners, however, the boat slips appurtenant thereto shall not be part of the common areas (unless specifically transferred to the Association by Declarant or his successors in ownership), but rather, each boat slip shall be sold to an individual owner of a Townhouse parcel and shall be usable exclusively by such owner, his family and guests. Such boat slips shall~~

bear no portion of the common expenses except as specifically provided elsewhere.

Section 11.2. Boat Slips and Pier.

- A. **Initial Construction:** As soon as twelve (12) Townhouse Parcel Owners desiring to own boat slips have pledged, with security acceptable to the Board of Directors, to fund the cost of construction and all costs associated with construction, the Association may, but is not required to, build a pier with twelve (12) boat slips, that number being the maximum number of boat slips that can be constructed under existing regulatory limitations. Each owner who has committed to the project will be assessed for one-twelfth (1/12) of the costs of the project as the funds are needed. The assessments shall be payable on demand by the Board of Directors. If, for any reason, the Association is unable to complete the construction project, the owners who have contributed or pledged funds shall have no recourse against the Association except to have any funds that have been collected for the project but not spent returned to them. Upon completion of construction, the Association will assign the exclusive right to use the boat slips to the twelve (12) owners who have funded the construction.
- B. **Limited Common Elements/Expense:** Each boat slip shall be a limited common element for the exclusive use of the Townhouse Parcel Owner to whom it has been conveyed and the pier will be a common element and may be used by any Townhouse Parcel Owner and their families and guests for non-boating related activities including but not limited to fishing from the pier. The Association will maintain, repair, replace and use its best efforts to insure, the boat slips and the pier, but all costs and any other costs related to the boat slips shall be assessed in one-twelfth (1/12) shares to the boat slip owners. All expenses related to the boat slips shall constitute limited common assessments, secured by a lien and subject to collection in the same manner and fashion as regular assessments provided elsewhere herein. In the event of major damage or total destruction of any boat slip or boat slips or the pier, the Association will not be obligated to rebuild or to make repairs to the boat slips unless sufficient funds are provided by the boat slip owners or are available from insurance. All boat slip owners shall be responsible for any damages to boat slips, the pier, and other boats caused by their activities, whether or not they were negligent. All boat slip owners shall also be responsible for the actions of their family members and guests. The Board shall establish a reserve account for the replacement of the boat slips and pier. The reserves for the boat slips shall also be a limited common expense and shall be funded solely from the assessments against the boat slip owners. Funding of the reserves for the boat slips may only be waived by a majority vote of the boat slip owners.
- C. **Use Restrictions/Expansion/Alterations:** The Board may make reasonable rules and regulations regarding the use of the boat slips and pier. No boat slip owner may construct a boat house, boatlift, boat cover, cabana, storage box or locker, or any similar structure, or attach anything to the boat slip or pier or make any alteration to the boat slip or pier without prior written consent of the Board. The boat slip owners

may cover their boats with fitted fabric slipcovers. The boats themselves, the fabric slipcovers, and all appurtenances must be well maintained and the Board may order the removal of any unsightly boat, slipcover, or other item that becomes unsightly. In the future, and without consent of the original boat slip owners, the Association may build additional boat slips that do not unreasonably interfere with the use of existing boat slips on the existing pier or may enlarge or extend the existing pier and add additional boat slips. The prospective owners of the new boat slips shall fund the expense of construction of any additional boat slips. In the event new boat slips are added, then the limited common assessments for the boat slip owners described in Section 11.2.B shall be recalculated by dividing it by the number of boat slips so that each boat slip owner will pay an equal share of the limited common expenses relating to the boat slips.

~~Section 11.3. Boat Slips. Each boat slip shall be owned by the owner of a Townhouse Parcel who has purchased same from Declarant that the Association may acquire boat slips for use as part of the common property. A parcel owner may transfer his boat slip to another parcel owner but a boat slip may never be sold, transferred or rented except to a Townhouse Parcel owner or to the Declarant or to the Association. The owner of each boat slip shall be responsible at the owner's sole expense for the cost to maintain, repair or replace all components of the boat slip and to protect the other slip owners, other users of the pier and the pier itself from injury resulting from his use of the pier. The Association shall never have any obligation to rebuild the pier in the event of its destruction, but if the Association does so rebuild then provision shall be made for the boat slip owner to have the use of their slips or comparable slips on the new pier.~~

Section 11.3. Sale or Leasing of Boat Slips and Pier. Boat slips shall only be conveyed to or leased to Townhouse Parcel Owners. Once conveyed, a boat slip shall be appurtenant to the Townhouse Parcel and shall automatically pass with the Townhouse Parcel, whether separately described in the instrument of conveyance or not. Boat slip owners may also sell or lease their boat slips separately from the Townhouse Parcel, but then only to other Townhouse Parcel Owners. The Association itself may also retain or acquire the boat slips.

Article XII Rights of Declarant

~~Section 12.2. As used in this Article XII, the words "its successors" specifically exclude a purchaser of parcels improved with completed residences.~~

Section 12.2. Any powers or rights granted to the Developer or its successor in this Declaration shall belong to the Association after turnover.

**DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS
OF
RIVER PLACE**

ANDREW S. MESSICK, JR. and AUDRONE MESSICK, husband and wife, herein called Declarant, is the owner in fee simple of certain real property described in Exhibit A and located in the City of Fort Myers, Lee County, Florida.

For the purpose of enhancing and protecting the value, attractiveness and desirability of the real property and for the mutual benefit of all parcels now or hereafter constituting RIVER PLACE, a planned unit development, Declarant declares that all of the real property described on Exhibit A attached hereto and any additional parcels hereafter declared by Declarant to be subject to this declaration, shall be held, sold, and conveyed only subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each owner thereof.

**Article I.
Definitions**

All words and phrases used herein shall have their common meaning except as specifically defined in sections 720.301 through 720.312, Florida Statutes, or in this declaration.

Section 1-1. "Association" shall mean and refer to RIVER PLACE TOWNHOUSE ASSOCIATION, INC., a Florida corporation not for profit, its successors and assigns.

Section 1-2. "Common area" shall mean all real property interests owned or leased by the Association or dedicated by Declarant for the use or maintenance by the Association or its members regardless of whether title has been conveyed to the Association. No common area or areas shall be owned by the association at the time of conveyance of the first parcel to an Owner.

Section 1-3. "Declarant" shall mean ANDREW S MESSICK, JR and AUDRONE MESSICK, husband and wife, and their successors, and assigns provided such successors and assigns acquire more than one parcel from Declarant for the purpose of development in a transaction in which such successor acquires substantially all the rights and property held by the previous Declarant.

Section 1-4. "Townhouse Parcel" shall mean an unplatted lot or other subdivision of real property submitted to this Declaration for the purpose of having a townhouse dwelling unit constructed thereon; which said parcel shall be capable of separate conveyance; and of which the parcel owner is obligated by this declaration to be a member of the Association, and to pay to the Association assessments that, if not paid, may result in a lien.

Section 1-5. "Maintenance" shall mean the provision of services and materials to keep buildings, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden management practices necessary to promote a healthy, reasonably weed-free environment for plant growth.

Section 1-6. "Mortgage" shall mean any instrument executed by a legal or equitable owner of a parcel which retains title, grants title or imposes a lien to secure a financial obligation.

Section 1-7. "Mortgagee" shall mean a holder of a mortgage.

Section 1-8. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any parcel which is a part of the property, and shall also include those entitled to possession under assumable contracts for deed, but shall not include those holding title merely as security for performance of an obligation.

Section 1-9. "Community" means the real property that is or will be subject to this declaration.

**Article II.
Membership in Association; Voting Rights**

Section 2-1. Every owner of a Townhouse Parcel shall be a member of the Association; membership shall be appurtenant to and may not be separated from ownership of such parcel.

Section 2-2. The association shall have two classes of voting members as follows:

Class A. Class A members shall be owners other than the Declarant. Each Class A member shall be entitled to one vote for each parcel owned. When more than one person or entity holds an interest in a given parcel, all such persons or entities shall be members and the vote for such parcel shall be exercised as they may determine among themselves. Each entity shall designate the person to exercise its vote. In no event shall more than one vote be cast with respect to any parcel owned by Class A members.

Class B. Class B member shall be Declarant, who shall be entitled to exercise three (3) votes for each parcel owned. Class B membership shall cease and be converted to Class A membership three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the Association have been conveyed to members other than the Declarant.

22.5 units

Section 2-3. Each member and the member's tenants, guests, and invitees, and the Association, are governed by, and must comply with, Chapter 720 of the Statutes of Florida, the governing documents of the community, and the rules of the Association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the Association or by any member against: (a) the Association; (b) a member; (c) any director or officer of the Association who willfully and knowingly fails to comply with these provisions; and (d) any tenants, guests, or invitees occupying a parcel or using the common areas. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

Article III. Assessments

Section 3-1. Assessments; Lien and Personal Obligation. Declarant covenants for each parcel within RIVER PLACE, and each owner is hereby deemed to covenant by acceptance of the deed for her parcel, whether or not it shall be so expressed in the deed, to pay to the Association (1) annual assessments and (2) special assessments for special purposes. Such assessments shall be established and collected as provided in the by-laws. The annual and special assessments, together with interest, costs, and reasonable attorney fees, shall be a charge on the land and a continuing lien on each parcel against which such an assessment is made. Each such assessment, together with interest, costs, and reasonable attorney fees shall also be the personal obligation of the person or persons who owned the parcel at the time the assessment fell due, but such personal liability shall not pass to the successors in title to such person or persons unless expressly assumed by them.

Section 3-2. Assessable Parcel; Manner in which Assessments are Shared. An assessable parcel is one that has a townhouse or other residence on it or a vacant parcel not for sale in the ordinary course of business. The proportionate share of the annual budget or a special purpose budget to be assessed against each parcel is determined by dividing the budget by the number of assessable parcels in RIVER PLACE from time to time (The assessment "a" is determined by dividing the budget "b" by the number of assessable parcels "n" [$a=b \div n$]).

a. It is planned that RIVER PLACE shall consist of twenty-five (25) assessable parcels when completed. However, if additional land is added to RIVER PLACE, then the number of assessable parcels sharing in the budget could increase and the proportionate share attributed to each assessable parcel decrease.

b. In the event Declarant or Declarant's successors should (1) fail to construct townhouses on all twenty-five parcels and (2) conveys title to the Association of the vacant parcels, then only those parcels with townhouses shall be assessable for the annual or special budget. Any additional parcels created because of the inclusion of additional land shall be shared in the annual or special budget in the same manner as the original parcels.

Section 3-3. Subordination of assessment lien to mortgages. The assessment lien provided for herein shall be subordinate to the lien of any first mortgage to a bank, life insurance company, mortgage company, credit union, thrift institution, savings and loan, or other institutional lender. A sale or transfer of any parcel shall not affect the assessment lien. However, the sale or transfer of any parcel pursuant to a final judgment of foreclosure of such a first institutional mortgage, or any deed to such an institution in lieu of foreclosure, shall extinguish the assessment lien for payments that became due after recording such mortgage but prior to such sale or transfer. No sale or transfer shall relieve such parcel from liability for any assessments thereafter becoming due or from the lien thereof.

Article IV.
Property Rights

Section 4-1. Owner's Easements of Enjoyment. Every owner of a parcel shall have a right and easement of enjoyment in and to the common areas located on the land subject to the provisions of this declaration, which right shall be appurtenant to and shall pass with the title to such parcel, subject to the following rights of the Association:

- a. The right to charge reasonable admission and other fees for the use of any recreational facility situated within the common area;
- b. The right to suspend an owner's, and his tenants', guests', and invitees', right to use common areas and facilities for periods during which any assessments against the parcel are delinquent;
- c. The right to suspend an owner's voting rights for the nonpayment of regular annual assessments that are delinquent in excess of 90 days;
- d. The right to levy reasonable fines, not to exceed \$100 per violation, against any owner or any tenant, guest, or invitee for failure to comply with Chapter 720 of the Statutes of Florida, the governing documents of the community, and the rules of the Association. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$1,000 in the aggregate;
- e. The right to dedicate or convey easements over, upon or under any part of the common areas to any municipality, public agency, authority, or utility for utility, drainage, street or other similar purposes and subject to such conditions as may be required by the Association.

Section 4-2. A fine or suspension may not be imposed without notice of at least 14 days to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed.

Section 4-3. Delegation of Use. Subject to such limitations as may be imposed by the Association, each owner may delegate the right of enjoyment in and to common areas and facilities to the members of the owner's family, and to guests, tenants, and invitees subject however to the right of the Association to charge fees for the use of recreational facilities located on any common area.

Section 4-4. Easements of Encroachment. There shall exist reciprocal appurtenant easements as between adjacent parcels and between each parcel and any portion or portions of a common area adjacent thereto for any encroachment due to the unintentional erroneous placement of improvements, settling, or shifting of the improvements constructed, reconstructed, or altered thereon, provided such construction, reconstruction, or alteration is otherwise in accordance with the terms of this declaration. Such easement shall exist to a distance of not more than one foot from any common boundary between adjacent parcels, and the boundary between a parcel and any adjacent portion of a common area.

Section 4-5. Other Easements.

a. Easements for installation and maintenance of utilities and drainage facilities shall exist over all common areas where utilities may be installed and where shown on the map or plot plan attached to this declaration, or in amendments to this declaration or in grants of easements and deeds. Within such easements, no structure, planting, or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may damage, interfere with, or change the direction of flow of drainage facilities in the easements. The easement area, to the extent included in a Townhouse Parcel, and all improvements thereto shall be continuously maintained by the owner of such parcel, except for improvements for maintenance of which a public authority or utility company is responsible.

b. No parcel owner shall build any structure of any kind which obstructs or interferes with the operation or maintenance of any such easement, reservation, or right of way, and such easements, reservations, and rights of way shall at all times be open and accessible to public and quasi-public utility corporations, their employees and contractors, and shall also be open and accessible to Declarant, its successors and assigns, all of whom shall have the right and privilege of doing whatever may be necessary in, on, under, and above such locations to carry out any of the purposes for which such easements, reservations, and rights of way are reserved.

c. The city of Fort Myers shall have an easements for access to the private streets within RIVER PLACE for the use of city personnel and equipment for emergencies and for city business.

Section 4-6. Right of Entry. The association, through its authorized employees and contractors, shall have the right after reasonable notice to the owner thereof, to enter any parcel at any reasonable hour on any day to perform such maintenance as may be authorized herein or otherwise reasonably necessary for community purposes.

Section 4-7. No Partition. There shall be no judicial partition of the common areas. Neither Declarant nor any present or future owner shall seek judicial partition of RIVER PLACE or any part thereof. However, nothing contained herein shall be construed to prevent judicial partition of any parcel owned in co-tenancy.

Section 4-8. Right to Peaceably Assemble. All common areas and recreational facilities serving the Association shall be available to parcel owners in the Association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The Association may adopt reasonable rules and regulations pertaining to the use of such areas. No entity or entities shall unreasonably restrict any parcel owner's right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities. Any owner prevented from exercising these rights may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in the Association's document or rule that operates to deprive the owner of such rights.

Article V. Rules and Regulations (Restrictions)

RIVER PLACE shall be owned and occupied only in accordance with this declaration as it may be amended and in accordance with the rules and regulation appearing in the bylaws and such additional rules and regulations as may be adopted by the board of directors of the Association or the members. Any rule or regulation adopted by the board of directors may be deleted, modified, or a new rule or regulation adopted by a majority of the voting interests in the Association at a meeting of members with notice provided that such rule or regulation does not violate sections 720.301 through 720.312, Florida Statutes, this declaration or other applicable law.

Article VI. Party Walls

Section 6-1. General Rules of Law to Apply. Each wall built as a part of the original construction of the townhouses within RIVER PLACE and placed on the dividing line between two parcels and the townhouses thereon shall constitute a party wall and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 6-2. Sharing Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall, other than the decorative finish on each respective owner's inner side, shall be shared equally by the two parcel owners that share the wall.

Section 6-3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, either parcel owner sharing the wall may restore it, and the other parcel owner shall pay one-half (1/2) of the cost of restoration. If the other parcel owner shall fail to promptly pay his one-half (1/2) the cost of restoring the party wall, then after restoration the non-contributing parcel owner shall be personally liable for such one-half (1/2) of the cost plus interest at the highest rate of interest allowable by law until paid plus the reasonable costs and attorney's fees for enforcing the right to contribution. This right of contribution shall be without prejudice to any right to call for a larger contribution under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6-4. Right to Contribution to Run With Land. The right of any owner to contribution from any other owner under this article shall run with the land, and shall pass to each owner's successors in title.

Article VII Maintenance Responsibilities

Section 7-1. Association. The Association shall maintain, repair, and replace the common areas and improvements thereon including recreational facilities except for the boat slips, which shall be privately and separately owned by the parcel owners purchasing same. The Association

upon its determination shall supervise the replacement of the roofs and the repainting and replacement of the exterior surfaces of the townhouses and other improvements on the townhouse parcels in order to maintain uniformity of appearance and quality in the community. The Association shall have the power and authority to collect reserves toward same in addition to such collections for repair and maintenance of common areas and improvements thereon. In addition, the Association shall have a lien on each Townhouse Parcel and its improvements for unpaid maintenance fees, unpaid reserves for the repair and replacement of common areas and improvements thereon, and unpaid reserves for the repainting and replacement of exterior surfaces on each Townhouse Parcel (including its roof) as set forth above.

Section 7-2. Parcel Owners. Each Townhouse Parcel owner is responsible for the cleaning, repair of leaks, corrosion, casualty damage, wear and other maintenance of all components of his parcel and the improvements thereon including the roof and other exterior surfaces, notwithstanding that the Association may and does collect reserves for and repaint and replace the roof and other exterior surfaces. Each Townhouse Parcel owner shall maintain, repair and replace at his own expense the following which are part of or serve such parcel:

- a. The roof, exterior surfaces of the townhouse thereon, walkways, parking space(s) and driveways located on or specifically serving his townhouse parcel.
- b. The plumbing and drainage system for his parcel and townhouse to and from the water meter and sewer pipe serving that parcel and townhouse to include but not limited to water heaters, filters, valves, sinks, commodes, and pipes.
- c. Electrical systems to include but not limited to wires, meters, switches, plugs, transformers, and other components from the meter or other entry point at which the systems enter the parcel even though components thereof may be physically located outside the parcel.
- d. The doors, windows, window screens, locks, and partitions and the inner surface of the party wall.
- e. The general cleaning, sweeping and policing of the walkway and driveway serving the parcel and the exterior surfaces of the townhouse thereon.
- f. The air conditioning unit, compressor, condenser, air handler, ducts, blowers, and all other components of the air conditioning system serving the individual parcel and townhouse regardless of whether portions thereof are physically located outside the parcel.

Section 7-3. In addition thereto; any damage to that portion of the common areas and improvements thereon caused intentionally or as the result of a negligent act or omission to act of the parcel owner, his family, guests or tenants shall be repaired or replaced by the Association and the parcel owner shall promptly reimburse the Association. The Association shall have a lien on the Townhouse Parcel of such owner in order to collect same.

Section 7-4. Any parcel owner who also owns a boat slip shall repair any damage to the pier caused by his boat or the operation thereof. No additions or improvements shall be made to the pier or his boat slip by a boat slip owner or anyone else except as may be approved by the Association in writing.

Article VIII Insurance and Owner's Obligation to Rebuild

Section 8-1. Insurance. Every owner shall maintain homeowners insurance on his residence at all times.

Section 8-2. Obligation to Rebuild. If all or any portion of a residence is damaged or destroyed by fire or other casualty, it shall be the duty of the owner, with all due diligence, to rebuild, repair, or reconstruct such residence in a manner which will substantially restore it to its appearance and condition prior to the casualty. Reconstruction shall be undertaken within two months after the damage occurs, and shall be completed within five months after the damage occurs.

Article IX Addition of Property To RIVER PLACE

Declarant reserves the absolute right to add additional property to the property shown on Exhibit "A" as the area to be developed as RIVER PLACE subject to this declaration.

Article X
General Provisions

Section 10-1. Enforcement. Declarant, the association, or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this declaration. Failure by Declarant, the association, or by 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.

Section 10-2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 10-3. Amendments. The governing documents of this community may be amended by Declarant alone by his executing and recording any such amendment to this declaration in the Public Records of Lee County, Florida, before the date three months after 90 percent of the parcels in all phases of the community that will ultimately be operated by the Association have been conveyed to members

Section 10-4. Subordination. No breach of any of the conditions herein contained nor any reentry by reason of such breach shall defeat or render invalid the lien of any mortgage on a Townhouse Parcel or its share of the common areas made in good faith and for value.

Section 10-5. Duration. The covenants and restrictions of this declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association or any member thereof for a period of ten (10) years from the date hereof, and thereafter shall continue automatically in effect for additional periods of ten (10) years each, unless the then owners of at least three-quarters (3/4) of the parcels subject to this declaration execute an instrument in recordable form revoking this declaration and record it in the Public Records of Lee County, Florida.

Article XI
Recreational Areas

Section 11-1. Tennis Court and Swimming Pool. Declarant shall construct a tennis court and a swimming pool with a toilet facility on the common areas for the use of parcel owners, which said facilities shall be cleaned, maintained, repaired and replaced by the Association at common expense.

Section 11-2. Pier. Declarant may construct but is not obligated to construct a pier extending into the Caloosahatchee River. If the pier is constructed, Declarant may construct and attach thereto such boat slips as may be permitted by the appropriate governmental agencies. The pier, if constructed, shall be part of the common property of the Association for the use and benefit of parcel owners, however, the boat slips appurtenant thereto shall not be part of the common areas (unless specifically transferred to the Association by Declarant or his successors in ownership), but rather, each boat slip shall be sold to an individual owner of a Townhouse parcel and shall be usable exclusively by such owner, his family and guests. Such boat slips shall bear no portion of the common expenses except as specifically provided elsewhere.

Section 11-3. Boat Slips. Each boat slip shall be owned by the owner of a Townhouse Parcel who has purchased same from Declarant that the Association may acquire boat slips for use as part of the common property. A parcel owner may transfer his boat slip to another parcel owner but a boat slip may never be sold, transferred or rented except to a Townhouse Parcel owner or to the Declarant or to the Association. The owner of each boat slip shall be responsible at the owner's sole expense for the cost to maintain, repair or replace all components of the boat slip and to protect the other slip owners, other users of the pier and the pier itself from injury resulting from his use of the pier. The Association shall never have any obligation to rebuild the pier in the event of its destruction, but if the Association does so rebuild then provision shall be made for the boat slip owners to have the use of their slips or comparable slips on the new pier.

Article XII
Rights of Declarant

Section 12-1. Declarant intends to undertake the work of developing all parcels included within RIVER PLACE. The completion of that work, and the sale, rental, or other disposal of

residential units is essential to the establishment and welfare of RIVER PLACE as an ongoing residential community. In order that such work may be completed and RIVER PLACE be established as a fully occupied residential community as soon as possible nothing in this declaration shall be understood or construed to:

a. Prevent Declarant, Declarant's successors, or the employees, contractors, or subcontractors of Declarant or Declarant's successors from constructing and maintaining structures, conducting business, displaying signs, or performing any other act on any part or parts of RIVER PLACE owned or controlled by Declarant, his successors, their representatives, or the Association that they determine to be reasonably necessary or advisable in connection with the completion of such work, the establishment of RIVER PLACE as a residential community, and the disposition of parcels by sale, lease, or otherwise;

b. Prevent Declarant or his successors from constructing a pier, if permitted, and building or attaching thereto such boat slips as may be permitted by the appropriate governmental agencies having jurisdiction and to sell such boat slips to individual Townhouse Parcel owners for their exclusive use.

Section 12-2. As used in this Article XII, the words "its successors" specifically exclude a purchaser of parcels improved with completed residences.

Executed at Fort Myers, Florida, on this ____ day of February, 2003.

Signed, sealed and delivered in the our presence:

signature of first witness to both

printed name of first witness

ANDREW S MESSICK, JR

signature of second witness to both

printed name of second witness

AUDRONE MESSICK

STATE OF FLORIDA

COUNTY OF LEE

The foregoing instrument was acknowledged before me this ____ day of February, 2003, by ANDREW S MESSICK, JR and AUDRONE MESSICK, husband and wife, who are personally known to me or who have produced the following as identification:

NOTARY PUBLIC:

sign _____
print _____
State of Florida at Large (Seal)