

IN THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT IN
AND FOR LAKE COUNTY,
FLORIDA

KINGS RIDGE COMMUNITY
ASSOCIATION, INC ; et al ,

CASE NO : 2005-CA-2718

Plaintiffs,

vs

LENNAR LAND PARTNERS; et al ,

Defendants

**ORDER DENYING DEFENDANTS'
MOTION TO STRIKE PLAINTIFFS' REQUEST FOR JURY TRIAL**

THIS CAUSE came before the Court on Defendants' Motion to Strike Plaintiffs' Request for a Jury Trial. A hearing was held on December 7, 2006. The Court has read Defendants' motion and Plaintiffs' response, considered the arguments of counsel, reviewed the file, consulted the relevant authority and has otherwise been fully advised.

Plaintiffs' claims arise from a right to acquire clause contained in the Community Declaration of Restrictive Covenants for Kings Ridge (hereinafter "Declaration"). Plaintiffs generally contend that Defendants violated their vested right of first refusal by entering into a transaction with a third party for sale of the clubhouse property, facilities and facility fee rights. Plaintiffs included a demand for jury trial in the complaint. Thereafter, Defendants filed a Motion to Strike Plaintiffs' Request for a Jury Trial. Defendants argue that two sources exist which indicate Plaintiffs have waived their right to a jury trial: the individual Homeowners' Agreements for

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Purchase and Sale and the Club Covenants which were incorporated by reference in the Declaration. However, Defendants' claim must fail because neither source contains a valid waiver of the jury trial relating to Plaintiffs' causes of action.

First, while the multiple versions of the purchase agreements do contain varying clauses waiving the right to a jury trial, those clauses are not evidence of a valid waiver of the claims in the instant cause of action. Plaintiffs' claims are based upon language contained in the Declaration and the Club Covenants incorporated therein. In Defendants' own motion they explain that "the Declaration governs the parties' rights and responsibilities in this matter." Furthermore, all parties agree that no breach of the purchase agreements has been alleged, or has occurred, and therefore the waiver provisions in those documents were never triggered. As such, the waivers contained in the individual purchase agreements are not evidence of a valid waiver of the Plaintiffs' constitutionally protected right to a jury trial.

Next, Defendants point to the Club Covenants as the source of the jury trial waiver. Section twenty-two (22) of the Club Covenants contains a waiver stating, in pertinent part, that the parties "waive trial by jury in any action, proceeding or counterclaim brought by either of parties hereto against the other relating to any matters whatsoever arising out of or in any way connected with the provisions of the Community Declaration relating to the Club Facilities . . ." See Club Covenants, section 22, attached hereto as Exhibit "A". However, the opening paragraphs of the Club Covenants explain that the rights and duties outlined throughout only become applicable when "the operation and management of the Club Facilities is delegated to the Community Association." Id. Therefore, the delegation by the Club Owner to the Community Association of

the right to operate, manage, maintain and insure the Club Facilities is a condition precedent to the remainder of the duties and rights outlined in the Club Covenants becoming effective. The Club Owner has never delegated such rights to the Community Association, and thus the condition precedent has never been satisfied. Additionally, the language throughout the Club Covenants refers to "both parties" indicating that the Club Covenants were to apply to the Club Owner and the Club Association only. Therefore, even if the condition precedent were satisfied, which it was not, the Club Covenants would be evidence of a waiver of a jury trial by the Association only. As such Defendants' argument that Section twenty-two (22) of the Club Covenants constitutes an effective waiver of jury trial by Plaintiffs must be denied.

In conclusion, even when the individual purchase agreements, Declaration and Club Covenants are read together, as urged by the Defendant, no valid waiver exists. The individual purchase agreements are not applicable, the Declaration contains no waiver provision and the Club Covenants waiver provision was never triggered because the condition precedent was never met. As such Defendants' motion must be DENIED.

ORDERED AND ADJUDGED that Defendants' Motion to Strike Plaintiffs' Request for a Jury Trial is DENIED.

DONE AND ORDERED in chambers at Tavares, Lake County, Florida this 18 day of DECEMBER

2006



Don F. Briggs, Circuit Judge

Certificate of Service

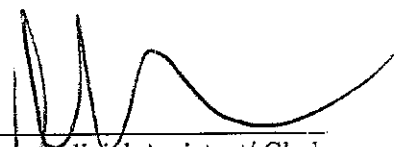
I hereby certify that a true and correct copy of the foregoing Order and any attachments have been sent via U.S. Mail this 11 day of Dec 2006 to the following:

Phil A. D'Aniello, Esq.
FASSETT, ANTHONY & TAYLOR, P.A.
1325 W. Colonial Dr.
Orlando, FL 32804

Charles Cacciabeve, Esq.
Michael Sampson, Esq.
Charlotte Warren, Esq.
CARLTON FIELDS, P.A.
CNL Center at City Commons
450 S. Orange Ave, Suite 500
Orlando, FL 32801

Philip S. Smith, Esq.
MCLIN & BURNS, P.A.
P.O. Box 491357
Leesburg, FL 34749

Don H. Lester, Esq.
LESTER & MITCHELL, P.A.
1035 LaSalle Street
Jacksonville, FL 32207



Judicial Assistant/ Clerk

EXHIBIT

A

CLUB COVENANTS

OPERATION. Until the Community Completion Date, or earlier as determined by the Club Owner, in its sole discretion, the Club Facilities shall be managed, operated, insured and maintained by the Club Owner, or its designee, as it deems appropriate in its sole discretion including all powers (but not necessarily imposing all duties) herein enumerated. The Club Facilities shall, during such period, be under the complete supervision and control of the Club Owner. The Club Owner may retain a Management Firm to exercise such rights and perform such duties as herein reserved to the Club Owner. The Management Firm may, or may not, be an affiliate of the Club Owner and/or Declarant. All charges and expenses associated with the Club Facilities, including, but not limited to, a reasonable management fee, shall, at all times, be borne by the Club Members, as provided in the Community Declaration.

The Club Owner may, at its sole discretion, and at any time as determined by the Club Owner, delegate to the Community Association the right and obligation to operate, manage, maintain and insure, etc. the Club Facilities strictly in accordance with the provisions of these Club Covenants and the Community Declaration. The Community Association shall be obligated to accept such delegation without conditions or claims.

During the time the operation and management of the Club Facilities is delegated to the Community Association, the Community Association shall have all powers and duties set forth herein and the charges and expenses incurred in connection therewith shall be borne by the Club Members as provided in the Community Declaration, as follows:

1. Duties The Community Association covenants throughout the term of these Covenants, and any renewals or extensions hereof, at the sole cost and expense of the Club Members, to operate, manage, insure, maintain and take good care of the land, the Club Facilities and landscaping and buildings and improvements now or at any time erected thereon and all apparatus, fixtures and building service equipment used or procured for use in connection with the operation thereof and to repair and maintain them in the same condition as when new, reasonable wear and tear excepted. The Community Association also covenants to keep the same in good order and condition, excepting reasonable wear and tear, and promptly make all necessary repairs, both to the interior and exterior thereto, including replacements or renewals when necessary, and all such repairs, replacements and renewals shall be at least equal in quality and class to the original work. In connection therewith, the Community Association shall have, by way of illustration and not limitation, the following powers and duties:

a. Cause to be hired, paid and supervised, and/or discharged, all necessary persons, firms or corporations.

b. Take such action as may be necessary to comply with all laws, statutes, ordinances, rules and regulations of all appropriate governmental and quasi-governmental authority and the rules and regulations of the National Board of Fire Underwriters, or in the event it shall terminate its present functions, those of any other body exercising similar functions.

c. Enter into contracts for all services necessary for the operation, maintenance, insurance, upkeep, repair, refurbishment, replacement and preservation of the Club Facilities

d. Purchase equipment, tools, vehicles, appliances, goods, supplies and materials as may be necessary.

e. Cause to be placed and kept in force and perform all obligations relating to all insurance required by the terms of these Covenants.

f. Maintain financial record books, accounts and other records as concerns the Club Facilities, issue certificates of account to Club Members, their mortgagees and lienors, as required, without liability for errors unless as a result of gross negligence.

g. Maintain books and records sufficient to describe its services hereunder in accordance with prevailing accounting standards to identify the source of all funds collected by it, and the disbursement thereof.

h. Adopt a budget which provides for funds needed for all expenses and reserves, including the Club Charges and the Club Fee, within the budgetary year.

i. Collect all Club Charges and to enforce, with all due diligence, the provisions of the Community Declaration relating thereto. The Club Charges due from each Club Member may, at the Community Association's discretion, be payable to such firm or entity as it shall direct. All sums due to the Club Owner under the terms of the Community Declaration, if collected by the Community Association, shall immediately be delivered to the Club Owner.

j. Make and collect special charges against Club Members subject to the provisions of the Community Declaration.

k. Promulgate, adopt and amend Rules and Regulations as it deems advisable in its sole discretion for the use of the Club Facilities, and to enforce same in its own name

l. Retain and employ such professionals and other experts

whose services may be reasonably required to effectively perform its duties and exercise its powers hereunder and to employ same on such basis as it deems most beneficial.

2. FINANCIAL MANAGEMENT.

a. From the Club Charges received by the Community Association, the Community Association agrees and covenants to pay and discharge, in a timely fashion, first, to all Club Fees, and then to all Club Operating Costs including charges or any nature whatsoever relating to the ownership, operation and management of the Club Facilities.

The Community Association shall, upon payment of any sums required to be paid, and within fifteen (15) days thereafter, furnish to the Club Owner satisfactory proof of payment thereof, if requested.

Should the Community Association desire to contest any tax, assessment or charge required to be paid, the Community Association may do so, PROVIDED, HOWEVER, the Community Association shall make reasonable provisions for the payment of all such tax, assessment or charge and such sums as required to the end that there can exist no lien, claim or lien or charge against the Club Facilities, including any penalties or interest that may be imposed for the unsuccessful conclusion of such litigation or otherwise against the Club Facilities, the improvements now or hereafter thereon or the Club Owners' interest therein.

b. The Community Association shall assess, and collect with all due diligence from, each Club Member for those items of cost and expenses as set forth in the Community Declaration and in these Covenants.

The Community Association, during the terms of these Covenants, may, and shall, if requested by the Club Owner, file a lien against an Club Member's Homēsite should that Club Member fail to pay Club Charges to the extent that Club Owner may do so, and take such other action as appropriate, either in its name or, with the prior consent of the Club Owner, in the name of or as agent of the Club Owner.

c. The Club Owner shall have the power, at any time and from time to time, to review, audit, inspect, copy, etc., and seek accountings of, all books and records maintained by the Community Association in connection with its obligations hereunder.

3 Insurance.

(a) The Community Association covenants that it will not

mit the Club Facilities to used for any purpose that violates any of the policies of insurance now or hereafter written covering the Club Facilities or which may violate any of the directives of the Southeast Underwriters Insurance Underwriters.

(b) The Community Association shall provide and keep in force, at all times, policies of insurance, in form and content satisfactory to Club Facilities and its mortgagee, if any, as follows:

(i) Comprehensive general public liability insurance against claims for personal injury, death or property damage occurring on, in or about the Club Facilities, contractual, products and completed operations, liquor liability and automobile liability including non-owned and hired. Such insurance shall afford minimum protection of not less than One Million Dollars (\$1,000,000.00), per occurrence, for bodily injury and property damage, inclusive.

(ii) With respect to all improvements which are a part of the Club Facilities and all personal property which may be brought or maintained upon the Club Facilities, insurance against loss or damage by fire, Extended Coverage against leakage (if there shall be a sprinkler system) and such other casualties as are customarily covered under a Difference In Conditions Endorsement. Such insurance shall be in an amount not less than full replacement cost as determined, from time to time, by Club Owner. The insurance shall be written so that the insured shall not be a co-insurer

(iii) In the event of partial or total destruction by fire, windstorm or any other casualty for which insurance shall be payable, any insurance proceeds shall be paid to Club-Owner. The proceeds shall be available for the purpose of reconstruction or repair of the Club Facilities. There shall be no abatement in payments of Club Charges, including the Club Fee, during casualty or reconstruction. The reconstruction or repair, when completed, shall, to the extent legally possible, restore the property to the condition in which it existed before the damage or destruction took place. If, after all reconstruction and repairs have been made, there are any excess insurance proceeds, then, and in that event, such excess shall be the sole property of Club Owner.

(iv) Worker's compensation insurance required by law.

(c) All insurance provided by the Community Association as required by this Article shall be carried in favor of the Community Association, Club Owner, Declarant, and such other named insureds as may be designated by Club Owner, and shall be payable jointly to

such parties as their respective interests may appear. All policies shall be written as primary policies, not contributing with and not in excess of coverage which Club Owner may carry. All policies shall be written by responsible companies, licensed to do business in the State of Florida, and shall be subject to approval of the Club Owner. Certificates and/or certified copies of such policies shall at all times be held by Club Owner or by other named insureds as may be designated by Club Owner. If certificates are held by other named insureds, certified copies of the policies or certificates of such insurance shall be delivered to Club Owner. All policies shall be non-assessable and shall require not less than thirty (30) days notice by registered mail to Club Owner of any cancellation thereof or change affecting coverage thereunder.

4. Destruction or Partial Destruction. In case the Club Facilities, or any part thereof, shall at any time be destroyed or damaged by fire or other elements so as to be unfit for occupancy or use, then, and in that event, Club Owner shall, subject to, and after receipt of adequate proceeds of the insurance maintained by the Community Association, and unless the Club Owner desires to cause the Club Facilities to be rebuilt or repaired, make such proceeds available to the Community Association, to repair and rebuild the Club Facilities, within a reasonable time, on terms acceptable to Club Owner.

5. Risk of Loss. Club Owner shall not be liable for, and the Club Members and Community Association assume all risks that may occur by reason of, any condition or occurrence, including, but not limited to, damage to the Club Facilities on account of casualty, water or the bursting or leaking of any pipes or waste water about the Club Facilities, or from any act of negligence of any other person, or fire, or hurricane, or other act of God, or from any cause whatsoever, occurring after the date of recording the Community Declaration. Neither the Community Association or any Club Member shall be entitled to cancel these Covenants or any abatement in Club Charges on account of any such occurrence.

6. Compliance with Laws. The Club Facilities shall be operated, maintained and repaired so as to comply with, and suffer no default under, all applicable laws, ordinances, rules, regulations, insurance policies and/or guidelines, mortgages and/or encumbrances, relating to the Club Facilities or the use thereof now or hereafter in effect.

7. Hazardous Materials. The Community Association: (a) shall not permit any activity to be conducted in, on or about the Club Facilities which would have the effect of polluting or in any way cause the Club Facilities to be detrimentally affected by pollutants (including elevated radon levels), toxic materials, petroleum oil and/or waste oil, or any "hazardous substance or

waste". The Club Facilities shall not be used for the handling, storage, treatment, generation, transportation or disposal of pollutants, toxic materials, petroleum oil and/or waste oil, any hazardous substance or any hazardous waste, including, but not limited to, solid, liquid, gaseous or thermal irritant or contaminant, such as smoke, vapor, soot, fumes, acids, alkalis, chemicals or waste (including materials to be recycled, reconditioned or reclaimed) (b) shall not install, use or dispose of, on or incorporate into, the Club Facilities any asbestos or asbestos containing material (c) except for tanks installed by the Club Owner, shall not locate or remove or fill any underground storage tanks on the Club Facilities (d) shall at all times be in compliance with all applicable federal, state, county and local statutes, laws and regulations concerning or related to environmental protection and regulation.

8. Mechanic's Lien. The Community Association shall not subject the Club Facilities to, or permit the Club Facilities to be subject to, any lien, charge, cost or expense including, but not limited to, a mechanic's lien as contemplated by the Mechanic's Lien Law of the State of Florida. Should any lien or claim of lien be filed, or should any suit or other judicial or quasi-judicial proceeding be instituted for which Club Owner or the Club Facilities may be encumbered, liable or accountable, then in that event the Community Association shall be in default of this Agreement, unless within ten (10) days thereafter, the Community Association shall furnish a bond, transferring the Lien to bond, in compliance with law.

9. Alterations. The Community Association will not make any alterations or changes in the Club Facilities without the prior written consent of Club Owner, which may be withheld or denied in Club Owner's sole discretion. In the event consent is given:

(a) The Community Association shall submit complete plans to Club Owner for approval, prior to commencement.

(b) All work shall be performed, in a good and workmanlike manner, by a licensed general contractor reasonably acceptable to Club Owner.

(c) The Community Association shall, within ten (10) days after termination of the Community Associations' right to operate and maintain the Club Facilities, if the Club Owner so elects, restore the Club Facilities to the configuration and condition as it exists immediately prior to such termination.

(d) The Club Owner shall be given a complete set of "as built" of construction plans for the work.

(e) The construction shall be paid for in full.

10. Improvements. All additions, fixtures and any and all other improvements excepting the Community Associations equipment, office furniture and movable trade fixtures that are readily removed without injury to the Club Facilities, shall be, and remain a part of the Club Facilities.

11. Right of Entry. Club Owner, or its agents, may enter, inspect, and view the Club Facilities at any reasonable time.

12. Defaults and Remedies. The occurrence of any one or more of the following events shall constitute a material default and breach of these Covenants:

(a) The vacation or abandonment of the Club Facilities by the Community Association or Members.

(b) The failure by the Community Association to make any payment required to be made hereunder, within ten (10) days after the same is due.

(c) The failure of the Community Association to observe or perform any of the covenants in respect of assignment or subletting set forth herein.

(d) The failure of the Community Association to observe or perform any other covenant, condition or provision of the Community Declaration relating to the Club Facilities or these Covenants to be observed or performed by the Community Association, unless the same is cured by the Community Association within twenty (20) days after notice, provided, however, that notice shall not be required if the failure of the Community Association shall be of such a nature as to expose the Club Owner, or the Club Facilities, to irreparable injury or material and adverse risk.

(e) The making by the Community Association of any general assignment for the benefit of creditors, the filing by or against the Community Association of a petition to have the Community Association adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in case of a petition filed against the Community Association, the same is dismissed within thirty (30) days), the appointment of a trustee or receiver to take possession of substantially all of the Community Association's assets, or the attachment, execution or other judicial seizure of substantially all or any material part of the Community Association's assets.

In the event of any such default or breach by the Community Association, Club Owner may at any time thereafter, with or without notice or demand, and without limiting Club Owner in the exercise of any other right or remedy which Club Owner may have, at law or

equity, exercise any one or more of the following additional remedies:

(i) Club Owner may immediately terminate the Community Associations rights to operate and manage the Club Facilities and may re-assume the sole right to operate and manage same. Upon receipt of such notice the license granted to the Community Association to occupy the Club Facilities for the purposes herein set forth shall forthwith terminate, provided, however the Community Association shall remain liable to Club Owner as hereinafter provided. Thereafter, all payments of Club Charges shall be made directly by the Club Members, to the Club Owner, or its designee

(ii) In the case of any such default, re-entry, expiration or dispossession, all sums then due hereunder, shall bear interest thereon at the highest rate allowed by law, until paid.

(iii) All damages, costs, etc. suffered by the Club Owner due to a default by the Community Association, shall be, at the direction of the Club Owner, be collected from the Community Association as a separate entity, or, in the alternative, from the Club Members as part of the Club Charges, or a combination thereof.

(iv) The specific remedies of Club Owner under the terms of these Covenants are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any breach or threatened breach by the Community Association of any provisions of this Agreement. In addition to the other remedies provided in this Agreement, Club Owner shall be entitled to enjoin, without bond, the violation or attempted or threatened violation of any of the provisions of these Covenants or specific performance of any such provisions. The Community Association hereby stipulates that such violation or attempts or threatened violation constitutes irreparable injury to Club Owner.

(v) In case of a default by the Community Association if it becomes necessary for the Club Owner to enforce these Covenants or collect the charges or otherwise seek damages from the Community Association utilizing the services of an attorney, the Community Association will pay the Club Owner all reasonable attorney's and paralegal fees incurred, including appellate and bankruptcy proceedings and collection efforts together with all costs and charges associated therewith

(vi) Club Owner may, but is not obligated to, cure any breach hereof by the Community Association, the expense of which, together with interest at the highest rate allowed by law, shall be paid by Club Members as part of the Club Charges, upon demand Any such

charge against the Community Association shall be considered as charges and shall be included in any lien for charges due and unpaid

13. Security for Agreements. To further secure payment and performance of all of the Community Association's obligations hereunder, the Community Association gives, grants, pledges with and assigns to Club Owner a first lien and charge upon all furniture and fixtures, goods and chattels of the Community Association, which may be brought or put on the Club Facilities. The Community Association agrees that such lien for the payment of the charges may be enforced by distress, foreclosure or otherwise, at the option of Club Owner.

14. Possession. If the Community Association shall continue to occupy the Club Facilities with or without the consent of the Club Owner after the expiration of, or breach and termination of the Community Association's rights pursuant to these Covenants, and payment of charges is accepted from the Community Association by Club Owner, such occupancy and payment shall be construed as an extension of these Covenants for the term of one month only from the date of such expiration and occupancy and shall thereafter operate to extend these Covenants from month to month only from the date of such expiration unless other terms of such extension are made in writing and signed by the parties hereto.

15. Claims. The Community Association shall, and does hereby, indemnify and save harmless Club Owner and Declarant from and against any and all claims, suits, actions, damages and/or causes of action arising for any personal injury, loss of life and/or damage to property sustained in or about the Club Facilities, by reason or as a result of the Community Association's operation, management, occupancy or operations therein, and from and against any orders, judgments, and/or decrees which may be entered thereon, and from and against all costs, counsel fees, expenses and liabilities incurred in and about the defense of any such claim and the investigation thereof. The Community Association shall immediately give Club Owner notice in writing that the same are about to be incurred and Club Owner shall have the option to make the necessary investigation and employ, at the expense of the Club Members, counsel of Club Owner's own selection for the defense of any such claims and expenses, etc. This indemnification shall survive termination of this Agreement.

16. Subordination/Estoppel. These Covenants and the rights of the Community Association and Club Members to utilize the Club Facilities is and shall be subject and subordinate to: (i) any ground lease, mortgage, deed of trust, and encumbrance or renewals, modifications and extensions thereof, now or hereafter placed on the Club Facilities by the Club Owner. This provision shall be

self-operative. The Community Association, in its own name and, if authorized, as agent for all Club Members, shall sign any documents confirming this subordination promptly upon request of Club Owner; and (ii) easements, restrictions, limitations, conditions of record, land use and/or zoning and other conditions of governmental authorities.

The Community Association shall, from time to time, upon not less than ten (10) days' prior written notice from Club Owner, execute, acknowledge and deliver a written statement: (i) certifying that these Covenants are unmodified and in full force and effect (or, if modified, stating the nature of such modification, listing the instruments of modification, and certifying that these Covenants, as so modified, are in full force and effect) and the date to which the Club Charges are paid, if any; and (ii) acknowledging that there are not, to the Community Association's knowledge, any uncured defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser of Club Owner's interest or mortgagee of Club Owner's interest or assignee of any mortgage upon Club Owner's interest in the Club Facilities.

The Community Association's failure to deliver such statement within such time shall be conclusive evidence: (i) that these Covenants are in full force and effect, without modification except as may be represented, in good faith, by Club Owner; and (ii) that there are no uncured defaults; and (iii) that the Club Charges have been paid as stated by Club Owner.

17. Appointment Prior to, or during the period which the Community Association is operating the Club Facilities, the Club Members appoint the Community Association as their Attorney-in-Fact, to execute on their behalf, any modifications to these Covenants or provisions of the Community Declaration relating to the Club Facilities. After the rights of the Community Association to occupy and operate the Club Facilities has been terminated, then amendments to the provisions of the Community Declaration relating to the Club Facilities and/or these Covenants may, subject to Declarant's paramount right to modify the Community Declaration, be agreed to by the Club Owner and a majority of Club Members and all Club Members shall be bound thereby.

18. Redelivery At the expiration of termination of these Covenants, the Community Association shall quietly and peaceably deliver the Club Facilities to Club Owner in the same repair and condition in which they were received, and improved after the effective date hereof, ordinary wear and tear excepted.

19. No Waiver The failure of Club Owner in one or more instances to insist upon strict performance or observance of one or more of

the covenants or conditions hereof or to exercise any remedy, privilege or option herein conferred upon or reserved to Club Owner, shall not operate or be construed as a relinquishment or waiver of such covenant or condition or of the right to enforce the same or to exercise such privilege, option or remedy, but the same shall continue in full force and effect. The receipt by Club Owner of any payment required to be made by the Club Member, or any part thereof, shall not be a waiver of any other payment then due, nor shall such receipt, though with knowledge of the breach of any covenant or condition hereof, operate as, or be deemed to be a waiver of such breach. No waiver of Club Facilities by the Community Association shall be deemed to have been made unless made by Club Owner in writing. No surrender of operation and management of the Club Facilities by the Community Association shall be valid unless accepted by Club Owner in writing.

20. Eminent Domain. If, during the operation of these Covenants, an eminent domain proceeding is commenced affecting the Club Facilities, then in that event, the parties agree as follows:

(a) If the whole or any material part of the Club Facilities is taken under the power of eminent domain, Club Owner may terminate these Covenants and the provisions of the Community Declaration relating to the Recreation Facilities, by written notice given to the Community Association. Should such notice be given, these Covenants or the Community Declaration shall be terminated. All damages awarded in relation to the taking shall be the sole property of Club Owner. Nothing in these Covenants shall be construed to prevent the Community Association from claiming, in a separate action, the value of fixtures owned by the Community Association and moving costs to the extent allowable by law.

(b) Should a portion of the Club Facilities be taken in an eminent domain proceeding which requires the partial demolition of any of the improvements located on the Club Facilities, then, in such event, Club Owner shall, to the extent legally usable, utilize, or in its discretion, provide the funds to the Community Association to utilize, the proceeds of such taking for the restoration, repair or remodeling of the remaining improvements to the Club Facilities

21. Conveyance. Should Club Owner, in its sole discretion, at any time and without being obligated to do so, desire to convey the Club Facilities to the Community Association, it may do so by Special Warranty Deed, reserving unto itself, without set off or deduction, the continuing right to receive the total of all Club Facilities Fees. The continuous payment of such Club Facilities Fees shall be secured by a mortgage and pledge of such Club Facilities Fees and the continuation of the lien rights for collection thereof. The conveyance shall be subject to easements,

restrictions, reservations, conditions, limitation and declarations of record, real estate taxes for the year of conveyance, zoning and land use regulations and facts shown by an accurate survey. The Community Association shall be deemed to have assumed and agreed to pay all service and similar contracts relating to the ownership, operation and administration of the conveyed Club Facilities. The Community Association shall, and does hereby, indemnify and hold Club Owner harmless on account thereof. The Community Association shall be obligated to accept such conveyance(s) without setoff, condition, or qualification of any nature. The Club Facilities personal property and equipment thereon and appurtenances thereto shall be conveyed in "as is, where is" condition WITHOUT ANY REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, IN FACT OR BY LAW, AS TO THE CONDITION, FITNESS OR MERCHANTABILITY OF THE COMMON AREA BEING CONVEYED. The Community Association shall pay all costs associated with the conveyance(s)

22. Consent to Trial by Court. The respective parties hereto shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other relating to any matters whatsoever arising out of or in any way connected with the provisions of the Community Declaration relating to the Club Facilities, these Covenants or the Club Members or the Community Association's use or occupancy of the Club Facilities

23. Savings Clause. Should any part, term, sentence, clause or provision of this Agreement be declared by the courts to be invalid, the validity of the remaining portions shall not be affected thereby.