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**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR

WETAPPO

RISH, GIBSON & SCHOLZ, P.A.
P.O. Box 39
Port St. Joe, Florida 32457

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TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Subject Matter</u>
"A"	Land Initially Submitted
"B"	Initial Use Restrictions
"C"	Articles of Incorporation of Wetappo Preserve Owners' Association, Inc.
"D"	By-Laws of Wetappo Preserve Owners Association, Inc.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

WETAPPO

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 31st day of March, 2005, by Wetappo Preserve, LLC, a Florida limited liability company.

ARTICLE I CREATION OF THE COMMUNITY

1.1. Purpose and Intent

Declarant, as the owner of the real property described in Exhibit "A," records this Declaration to establish a general plan of development for Wetappo Subdivision. This Declaration provides for the Community's overall development, administration, maintenance, and preservation. Wetappo Preserve Owner's Association, Inc., is an association comprised of all property owners within Wetappo Subdivision. Over time, the Association will acquire, own, operate, and maintain various common areas and community improvements and administer and enforce this Declaration and the other Governing Documents. This document does not and is not intended to create a condominium under Florida law.

1.2. Binding Effect

This Declaration governs the property described in Exhibit "A," and any other property submitted to this Declaration in the future. This Declaration shall run with the title to such property and shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

Declarant, the Association, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration shall be effective for a minimum of 25 years from the date it is recorded. After 25 years, this Declaration shall be extended automatically for successive 10 year periods unless at least 75% of the then Owners sign a document stating that the Declaration is terminated and that document is recorded within the year before any extension. In such case, this Declaration shall expire on the date specified in the termination document.

In any event, if any provision of this Declaration would be invalid under the Florida Uniform Statutory Rule Against Perpetuities, that provision shall expire 90 years after this Declaration is recorded. This Section does not permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3. Governing Documents

The Governing Documents create a general development plan for the Community. The Governing Documents include the following:

Declaration – this Declaration which creates obligations binding on the Association, Owners, and the property within the Community.

Supplemental Declaration (if any) – may add property to the Community or impose additional obligations or restrictions on the property.

By-Laws – govern the Association's affairs (the initial By-Laws are attached as Exhibit "D").

Articles of Incorporation – create and establish the Association (the initial Articles of Incorporation are attached Exhibit "C").

Design Guidelines – establish architectural standards for improvements, including dwellings, structures, and landscaping.

Use Restrictions – govern the use of and activities on the Lots and the Common Areas (the initial Use Restrictions are attached as Exhibit "B").

Board Resolutions and Rules – establish rules, policies, and procedures for internal governance and Association activities; regulate operation and use of Common Areas.

The Governing Documents apply to all Owners and any occupants of a Lot. They also apply to tenants, guests, visitors, and invitees. All leases must require that tenants and all occupants of a leased Lot are bound by and obligated to comply with the Governing Documents; provided, the Governing Documents shall apply regardless of whether specifically set forth in a lease.

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ARTICLE II DEFINITIONS

2.1. Defined Terms

The terms used in the Governing Documents are given their ordinary, commonly accepted definitions, unless otherwise specified. Capitalized terms are defined as follows:

Affiliate – Any Person which (either directly or indirectly, through one or more intermediaries) controls, is in common control with, or is controlled by, another Person, and any Person that is a director, trustee, officer, employee, independent contractor, shareholder, manager, member, agent, co-venturer, subsidiary, personal representative, or attorney of any of the foregoing. For the purposes of this definition, the term “control” means the direct or indirect power to direct or cause the direction of an entity’s management or policies, whether through the ownership of voting securities, by contract, or otherwise.

Articles - The Articles of Incorporation of Wetappo Preserve Owner’s Association, Inc., filed with the Florida Department of State, as they may be amended. A copy of the Articles is attached hereto as Exhibit C.”

Association – Wetappo Preserve Owner’s Association, Inc., a Florida nonprofit corporation, its successors or assigns.

Base Assessment – Annual assessments levied to fund Common Expenses for the general benefit of all Lots.

Benefitted Assessment – Assessments charged against a Lot or Lots for Association expenses benefiting only that particular Lot or Lot(s).

Board of Directors or **Board** - The body responsible for the general governance and administration of the Association, selected as provided in the By-Laws.

Builder - Any Person who acquires Lots for the purpose of constructing homes for later sale to consumers or who purchases land within the Community for further subdivision, development, and/or resale in the ordinary course of its business.

By-Laws - The By-Laws of Wetappo Preserve Owner’s Association, Inc. as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit “D.”

Class “B” Control Period - The time period during which the Class “B” Member may appoint a majority of the Board members. The Class “B” Control Period ends when any one of the following occurs:

- (a) three months after 90% of the Lots in all phases of the Community that will ultimately be operated by the Association are owned by Class “A” Members other than Builders; or
- (b) when, in its discretion, the Class “B” Member so determines.

Common Area - All real and personal property, including easements, which the Association owns, leases or otherwise has a right to possess or use for the common use and enjoyment of the Owners.

Common Expenses - The actual and estimated expenses the Association incurs, or expects to incur, for the general benefit of all Owners. Common Expenses include any reserves the Board finds necessary or appropriate.

Common Maintenance Areas – The Common Area, together with any other area for which the Association has or assumes maintenance or other responsibility.

Community or Wetappo Subdivision - The real property described in Exhibit "A," together with such additional property as is subjected to this Declaration.

Community System(s) or System(s) - Any or all of a central telecommunication receiving and distribution system (e.g. cable television, high-speed data/Internet/intranet services, and security monitoring), and its components, including associated infrastructure, equipment, hardware, and software, serving the Community, if any.

Community-Wide Standard - The standard of conduct, maintenance, or other activity generally prevailing throughout the Community, or the minimum standards established pursuant to the Design Guidelines, Use Restrictions, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements, such as matters subject to the Board's or the DRB's discretion. The Community-Wide Standard may or may not be set out in writing. The Community-Wide Standard may evolve as development progresses and as the Community changes.

Declarant - Wetappo Preserve LLC, a Florida limited liability company, or any successor or assign as developer of all or any portion of the Community who is designated as the Declarant in a recorded instrument the immediately preceding Declarant executes.

Design Guidelines - The Community's architectural, design and construction guidelines and review procedures.

Design Review Board or DRB - The committee established to review plans and specifications for the construction or modification of improvements and to administer and enforce architectural controls in the Community.

Development and Sale Period - The period during which Declarant or any Affiliate of Declarant owns real property within the Community or has an unexpired option to unilaterally annex property into the Community.

Governing Documents - This Declaration, the Articles and the By-Laws, and the other documents identified in Section 1.3.

Lot - A portion of the Community, whether improved or unimproved, which may be independently owned and conveyed. The term shall refer to the land which is part of the Lot as well as any improvements on the Lot. The term shall not apply to the Common Area. The boundaries of each Lot shall be shown, described, or referenced on a Plat, recorded survey, restrictive covenants, or deed. A parcel shall be deemed to be a single Lot until such time as a Plat subdivides all or a portion of the parcel or otherwise creates, designates, or describes Lots within a parcel. After a Plat is recorded, the parcel shall contain the number of Lots shown, created, designated, or described on the Plat. A Lot intended for development, use, and occupancy as an attached or detached single family residence is sometimes referred to as a "Residential Lot." Lots 1-188 in the recorded plat of Wetappo Subdivision are designated as Residential Lots. A Lot Declarant approves, if any, for any non-residential purpose (e.g. a Lot reserved for retail use) is sometimes referred to as a "Non-Residential Lot."

Member - Each Lot Owner. There are two membership classes, Class "A" and Class "B."

Mortgage - A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

Owner - The titleholder to any Lot, but excluding, in all cases, any party holding an interest merely as security for the performance of an obligation (e.g., a Mortgagee). If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

Person - An individual, a corporation, a partnership, a trustee, or any other legal entity.

Plat - Any recorded land survey plat for all or any portion of Wetappo Subdivision.

Special Assessment - Assessments charged against all Owners.

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Stormwater Management System – A system which is designed and constructed or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, over drainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges. The term shall also include any stormwater discharge facility and irrigation system servicing the Community.

Supplemental Declaration - A recorded instrument which subjects additional property to this Declaration, identifies Common Area and Limited Common Area, and/or imposes additional restrictions and obligations on the land described.

Use Restrictions – The initial use restrictions, rules, and regulations governing the use of and activities on the Residential Lots and the Common Areas set forth in Exhibit "B," as they may be changed in accordance with Article III or otherwise amended.

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ARTICLE III USE AND CONDUCT

3.1. Initial Use Restrictions

The Governing Documents, including the Initial Use Restrictions set forth in Exhibit "B," establish a framework of covenants, easements, and restrictions which govern the Community. The Initial Use Restrictions shall apply to all of the Community until such time as they are amended, modified, repealed or limited pursuant to this Declaration. Use restrictions for future Non-Residential Lots approved by Declarant, if any, may be subject to different use restrictions. The procedures described in this Article are not intended to apply to reasonable rules and regulations relating to use and operation of the Common Area, which the Board may adopt by resolution, or other administrative rules.

3.2. Restrictions on Use, Occupancy, and Alienation

(a) Residential and Related Uses – Residential Lots shall be used for residential and related purposes. No business shall be conducted in, on, or from any Residential Lot, except that an Owner or another resident of the Lot may conduct business activities on such Lot if the business activity is ancillary to the primary residential occupancy of the Lot and:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with all applicable zoning requirements;
- (iii) does not involve regular visitation of the Lot by clients, customers, suppliers, or other business invitees or door-to-door solicitation within the Community; and
- (iv) is consistent with the residential character of the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of others within the Community, as may be determined in the Board's sole discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required. Leasing a residence is not a "business" within the meaning of this subsection.

This Section shall not apply to or restrict Declarant's activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development and sale of property in the Community. This Section also shall not apply to Non-Residential Lots or to Association activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities.

(b) Leasing – For purposes of this Declaration, "leasing" is the regular, exclusive occupancy of a dwelling by any Person other than the Owner, for which the Owner receives any consideration or benefit, including a fee,

service, or gratuity. The principal dwelling of a Residential Lot may be leased only in its entirety (e.g. separate rooms within the same dwelling may not be separately leased); provided, a detached "in-law suite" or "guest house" may be independently leased.

Tenants are required to comply in all respects with the Governing Documents. In addition to this sub-section (b), the Board may adopt reasonable Use Restrictions and rules regulating leasing and subleasing.

(c) Maximum Occupancy – No more than two persons per bedroom may occupy the same dwelling on or in a Residential Lot on a regular and consistent basis (as the Board determines).

(d) Occupants Bound – Every Owner shall be responsible for occupants of or visitors to his or her Lot complying with the Governing Documents. Owners are responsible for all violations and any damages their Lot's occupants or visitors cause to the Common Maintenance Areas, notwithstanding the fact that such Persons also are responsible for complying and may be sanctioned for any violation.

(e) Subdivision of a Lot and Time-Sharing – Lots may not be subdivided or their boundary lines changed except with the Board's prior written approval; provided, Declarant may subdivide, change the boundary line of, and replat any Lot it or any of its Affiliates owns. During the Development and Sale Period, Declarant may convert Lots into Common Area.

The use of any lot for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among participants in the program on a fixed or floating time schedule over a period of years is prohibited.

A lot may be subdivided in a situation where the subdivision serves to increase the size of two adjacent lots. In such event, side lot set backs will be measured from the newly subdivided lot line.

3.3. Owners' Acknowledgment and Notice to Purchasers

Each Owner, by accepting a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Lot is limited and affected by the Use Restrictions and Board rules, which may change from time to time. All Lot purchasers are on notice that the Association may adopt, or may already have adopted, changes to the Use Restrictions and that such changes may not be set forth in a recorded document. Copies of the current Use Restrictions and Board rules may be obtained from the Association.

3.4. Authority to Amend Use Restrictions

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and the Members, the Board may change (i.e., modify, cancel, limit, create exceptions to, or add to) the Use Restrictions. The Board shall send the Members notice of any proposed change at least five business days before the Board meeting to consider the change. The Members shall have a reasonable opportunity to be heard at such Board meeting.

The proposed change shall be approved unless disapproved at a meeting by Members representing a majority of the Association's Class "A" votes. The Board is not obligated to call a meeting of the Members to consider disapproval unless it receives a petition which meets the By-Laws' requirements for special meetings. If the Board receives such a petition before the effective date of the change, the change shall not become effective until after a meeting is held, and then subject to the outcome of the meeting.

(b) Alternatively, Members representing a majority of the Association's Class "A" votes, at an Association meeting duly called for such purpose, may vote to change the Use Restrictions then in effect.

(c) Before any Use Restriction change becomes effective, the Board shall send a copy of the new or changed Use Restrictions to each Owner. The change does not become effective until 30 days following distribution to the Owners. The Association shall provide to any requesting member or Mortgagee, without cost, a copy of the Use Restrictions then in effect.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Use Restrictions. In the event of a conflict between the Design Guidelines and the Use Restrictions, the Design Guidelines shall control. In the event of a conflict between the Use Restrictions and any provision within this Declaration (exclusive of the Use Restrictions), the Declaration provision shall control.

3.5. Protection of Owners and Others

Except as may be set forth in this Declaration (either initially or by amendment) or in the Initial Use Restrictions set forth in Exhibit "B" the Association's actions with respect to Use Restrictions and rules must comply with the following:

- (a) Similar Treatment - Similarly situated Owners must be treated similarly; however, the Use Restrictions and rules may vary between Lots provided a reasonable basis exists for such different treatment.
- (b) Displays and Signs - An Owner's right to display religious and holiday signs, symbols, and decorations on their Lots of the kinds normally displayed in single family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to such displays. The Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria).
- (c) Household Composition - The Association shall not interfere with the Owner's freedom to determine the composition of his/her household, except that it may enforce the occupancy limits set out in Section 3.2.
- (d) Activities Within Lots - The Association shall not interfere with activities within a dwelling, except it may prohibit activities within Residential Lots not normally associated with residential property, and it may restrict or prohibit any activities within any Lot that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the Lot, or that create an unreasonable source of annoyance.
- (e) Alienation - The Association shall not prohibit leasing or transfer of any Lot, or require the Association's or the Board's consent prior to leasing or transferring a Lot.
- (f) Abriding Existing Rights - The Association may not require an Owner to dispose of personal property that was in or on the Lot in compliance with previous rules. This exemption shall apply only during the period of such Owner's ownership of the Lot and shall not apply to subsequent Owners who take title to the Lot after adoption of the rule.
- (g) Reasonable Rights to Develop - The Association may not impede Declarant's right to develop the Community.
- (h) Interference with Permitted Non-Residential Operations - The Association may not unreasonably interfere with the permitted use or operation of any Non-Residential Lot.

ARTICLE IV ARCHITECTURE AND LANDSCAPING

4.1. General

Except for work done by or on behalf of Declarant or any Affiliate of Declarant, no structure or thing shall be placed, erected, or installed upon any Lot, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations, or planting or removal of landscaping) shall take place within the Community except in compliance with this Article and the Design Guidelines.

Any Owner may remodel, paint or redecorate the interior of any structure on his or her Lot without approval. However, modifications to the interior of screened porches, patios, and any other portions of a Lot visible from

outside a structure are subject to approval.

Each dwelling shall be designed by and built in accordance with the plans and specifications of a licensed architect or qualified residential designer acceptable to Declarant. Dwellings shall be constructed by licensed or certified Builders acceptable to Declarant.

Approval under this Article and the Design Guidelines is not a substitute for any approvals or reviews required by Gulf County, or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters.

This Article shall not apply to the Declarant's activities, or to the Association's activities during the Class "B" Control Period.

No house shall be constructed on any lot with less than 1500 square feet of heated and cooled space. However, a carriage house of not less than 1000 square feet may be constructed on any lot, in addition to the main house.

4.2. Architectural Review

(a) By Declarant - Declarant shall have exclusive authority to administer and enforce architectural controls and to review and act upon all applications for architectural and other improvements within the Community. Declarant's rights under this Article shall continue until all Lots have been conveyed to Class "A" Members other than Builders and have been improved with a dwelling (in the case of a Residential Lot) or other permanent improvement (in the case of a Non-Residential Lot) for which a certificate of occupancy has been issued by Gulf County, unless Declarant earlier terminates its rights in a recorded instrument. Declarant may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, Declarant or its designee acts solely in Declarant's interest and owes no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Design Review Board. Any such delegation shall be in writing, shall specify the delegated responsibilities, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Design Review Board - Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRB, shall assume jurisdiction over architectural matters. When appointed, the DRB shall consist of at least three, but not more than seven, Persons. Members of the DRB need not be members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. The DRB members shall be designated, shall serve, and may be removed and replaced in the Board's discretion.

The Board may create and appoint subcommittees of the DRB. Subcommittees may be established to preside over particular areas of review (e.g., landscape plans) and shall be governed by procedures the Board or the DRB may establish. Any subcommittee's actions are subject to review and approval by Declarant, for as long as Declarant may review the DRB's decisions, and the DRB. Notwithstanding the above, neither the DRB nor Declarant shall be obligated to review all actions of any subcommittee, and the failure to take action in any instance shall not be a waiver of the right to act in the future.

Unless and until such time as Declarant delegates any of its reserved rights to the DRB or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

Declarant and the Association may employ architects, engineers, or other Persons to perform the review required under this Article.

(c) Reviewer - The entity having jurisdiction in a particular case, whether Declarant or its designee or the

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DRB, shall be referred to as the "Reviewer."

(d) Fees; Assistance - The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. The Board may include the compensation of such Persons in the Association's annual operating budget.

4.3. Guidelines and Procedures

(a) Design Guidelines. Declarant shall prepare the Design Guidelines for the Community, which may contain general provisions applicable to all of the Community as well as specific provisions which vary according to property location and use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee an application's approval.

Declarant shall have sole and full authority to amend the Design Guidelines during the Development and Sale Period. Declarant's right to amend shall continue even if its reviewing authority is delegated to the DRB, unless Declarant also delegates the power to amend to the DRB. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines in accordance with the same procedures for changing Use Restrictions described in Article III.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended. Subject to the Community-Wide Standard, there is no limit to the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in construction within the Community. In the Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures - Unless the Design Guidelines provide otherwise, no construction activities or other activities described in Section 4.1 may begin until a request is submitted to and approved by the Reviewer. The request must be in writing and be accompanied by plans and specifications and other information the Reviewer or the Design Guidelines require. Plans and specifications shall show, as applicable, site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed exterior design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations are not subject to the provisions of Article XIV (Dispute Resolution) nor shall they be subject to judicial review so long as they are made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

During the Development and Sale Period, the DRB shall notify Declarant in writing within three business days of any action (i.e., approval, partial approval, or disapproval) it intends to take under this Article. A copy of the

application and any addition information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any DRB action; provided, Declarant's right to veto must be exercised within 10 business days after it receives notice of the DRB's action. The party submitting the plans for approval shall not be notified of the DRB's action until after the Declarant's right to veto has been exercised or has expired.

The Reviewer shall notify the applicant in writing of a final determination on any application within five days after such determination is made or, with respect to any DRB determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to this Article.

Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

As a part of any approval, the Reviewer may require that approved construction commence within a specified time period. If construction does not commence within the required period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All construction work shall be completed within one year of commencement unless otherwise specified in the notice of approval or the Design Guidelines, or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant.

Declarant or the Board, with Declarant's consent, by resolution, may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution. For example, Builders may be permitted to submit and receive pre-approval of landscaping or other plans for general application. Such pre-approved plans shall not require re-submission prior to use on a particular Lot.

4.4. No Waiver of Future Approvals

Each Owner acknowledges that the people reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may or may not be unreasonable to require that such objectionable features be changed. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications, plans and or other matters subsequently or additionally submitted for approval.

4.5. Variances

The Reviewer may authorize variances from compliance with the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variances shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the Reviewer from denying a variance to any other Lot or Owner. A variance requires Declarant's written consent during the Development and Sale Period, and, thereafter, requires the Board's written consent. No variance shall be granted which would create a violation of the Gulf County Land Development Code unless, prior to the variance request, the Lot Owner receives a variance from the appropriate governmental entity.

4.6. Limitation of Liability

This Article establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of the Community. The standards and procedures do not create any duty to any Person. Review and

approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications; for compliance with building codes and other governmental requirements; for ensuring that every Lot and dwelling complies with every aspect of the Design Guidelines; or for ensuring that every dwelling is of comparable quality, value, or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

Declarant, Declarant's Affiliates, the Association, its officers, the Board, the DRB, the Association's management agent, any committee, or any member of any of the foregoing shall not be held liable for the approval of, disapproval of, or failure to approve or disapprove any plans; soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot. In all matters, the Association shall defend and indemnify the Board, the DRB, the members of each, and the Association officers as provided in Article VII.

4.7. Certificate of Compliance

Any owner may request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. The issuance of a certificate of architectural compliance shall prevent the Association from taking enforcement action against an owner for any condition known to the Association on the date of the certificate.

4.8. Enforcement

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines is subject to enforcement action. Upon written request from the Association or Declarant, an Owner shall, at his/her own cost and expense, and within a reasonable timeframe identified in the request, cure the violation or restore the Lot to substantially the same condition as existed before the violation occurred. Should an Owner fail to cure the problem or otherwise restore the property as required, the Association, Declarant, or their designees shall have the right to enter the property, remove the violation, and restore the property. All costs, together with interest at the rate the Board establishes (not to exceed the maximum rate then allowed by law), may be assessed against the benefitted Lot and collected as a Benefitted Assessment.

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline imposed, Declarant or the Association may, after notifying the Owner and allowing an opportunity to be heard in accordance with the By-Laws, enter upon the Lot and remove or complete any incomplete work and assess all costs incurred against the Lot and its Owner as a Benefitted Assessment.

Any act of any contractor, subcontractor, agent, employee, or other invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Community, subject to the notice and hearing procedures contained in the By-Laws. Declarant, Affiliates of Declarant, the Association, and their respective officers and directors shall not be held liable to any Person for exercising the rights granted by this Section.

The Association shall be primarily responsible for enforcing this Article. If, however, in Declarant's discretion, the Association fails to take appropriate enforcement action within a reasonable time period, Declarant, during the Development and Sale Period, may, but shall not be obligated to, exercise the enforcement rights set forth above. In such event, Declarant may assess and collect Benefitted Assessments against the violating Owner and assert the Association's lien rights pursuant to Article VIII. The Association hereby assigns to Declarant such rights and authority, including the right to all funds collected, and no further assignments shall be required.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the Reviewer's decisions. The alternative dispute resolution provisions set out in Article XIII shall not apply to actions by Declarant or the Association to enforce the provisions of this Article or the Reviewer's decisions.

4.9 Set Backs

There shall be a front set back on all lots of 25 feet from any road right-of-way. Corner lots shall have 25 foot set backs along each road.

There shall be a 35 foot rear set back on each lot. For any lot which includes a portion of the underground utility easement as shown on the plat, the 35 foot set back shall be measured from the edge of the utility easement.

Side lot set backs shall be as follows:

<u>Lot Width</u>	<u>Side Set Back</u>
Up to 149 feet	15 feet
150 feet to 199 feet	20 feet
Over 200 feet	25 feet

It is the intent of the developer that side and rear set back contribute to the green space within the subdivision; therefore, no lot owner shall be allowed to cut any tree within side and rear set backs without the approval of the DRB.

In the event that an owner owns two (2) adjacent lots and elects to build in such a manner as to use both lots, side set back requirements at the common lot line shall not apply.

ARTICLE V MAINTENANCE AND REPAIR

5.1. Maintenance of Lots

Each Owner must maintain his or her Lot, including all structures, landscaping, and other improvements comprising the Lot, in a manner consistent with the Governing Documents, the Community-Wide Standard and any other applicable covenants, unless, such maintenance responsibility is otherwise assumed by the Association or assigned to the Association under any Supplemental Declaration, additional covenants applicable to such Lot, or by law.

5.2. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance includes responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless the Association carries such insurance (which it may, but is not obligated to do). If the Association assumes responsibility for insuring a Lot, the insurance premiums shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner.

Within three months of any damage to or destruction of a structure on a Lot, the Owner shall repair or reconstruct the structure in a manner consistent with the original construction or other plans and specifications approved in accordance with Article IV; provided, under special circumstances, the Board in its discretion, may extend such time period. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive condition consistent with the Community-Wide Standard. The Owner shall pay any costs insurance proceeds do not cover.

Inq: 0020053459 Date: 05/02/2005 Time: 10:36
610 DC, Rebecca L. Morris, GULF County B-315 P-935

ARTICLE VI THE ASSOCIATION AND ITS MEMBERS

6.1. Function of Association

The Association is the entity responsible for management, maintenance, operation and control of the Common Maintenance Areas, including the Stormwater Management System. Unless otherwise specified in the Governing Documents, the Association has primary responsibility for administering and enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Florida law. The Board shall be responsible for management for the Association and, as the Governing Documents permit, may contract with a community association manager or management company for such purposes. The Board is appointed or elected as provided in the By-Laws.

6.2. Membership

Every Owner is a Member of the Association; provided there is only one membership per Lot. If a Lot is owned by more than one Person, each co-Owner shares the privileges of the membership, subject to reasonable Board regulation and the voting restrictions described in this Article and in the By-Laws. Co-Owners are jointly and severally obligated to perform the responsibilities of an Owner. The membership rights of an Owner which is not an individual (e.g., a corporation) may be exercised by any officer, director, partner, trustee, or other individual the Owner designates from time to time in a written instrument provided to the Association's Secretary.

The Association shall have two classes of membership.

- (a) Class "A" - Class "A" Members are all Owners except the Class "B" Members.
- (b) Class "B" - The Class "B" Members, collectively, shall be Declarant and any Affiliate of Declarant which owns a Lot. The Class "B" membership terminates upon the earlier of (i) when 95% of the Lots are issued certificates of occupancy and are owned by Class "A" Members other than Builders; or (ii) when, in its discretion, Declarant declares in a recorded instrument.

6.3. Voting

- (a) Class "A" - Class "A" Members have one equal vote for each Lot they own, except that there is only one vote per Lot. No vote shall be exercised for any property which is exempt from assessment under Article VIII.
- (b) Class "B" - The Class "B" Member shall not vote, but may appoint a majority of the Board members during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights specified throughout the Governing Documents. Unless Declarant delegates such authority, Declarant shall act on behalf of and as the Class "B" Member on all matters.

Upon termination of the Class "B" membership, Declarant and Declarant's Affiliates shall be Class "A" Members entitled to one Class "A" vote for each Lot they own.

- (c) Exercise of Voting Rights - Each Owner may personally cast the vote for his or her Lot on any issue requiring a membership vote. If there is more than one Owner of a Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

ARTICLE VII ASSOCIATION POWERS AND RESPONSIBILITIES

7.1. Acceptance and Control of Association Property

- (a) The Association may acquire, hold, mortgage and otherwise encumber, lease (as landlord or tenant) operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements, for payment or no payment, as the Board deems appropriate, permitting use of portions of the Common Area by others.

(b) Declarant or its designees may transfer to the Association, and the Association shall accept, personal property and/or fee title or other property interests in any improved or unimproved real property described in Exhibit "A", including title to the 50 foot Florida Gas Transmission Line and other property not included within the description in Exhibit "A" so long as it meets the requirements of Article IX. Upon Declarant's written request, the Association shall transfer back to Declarant any unimproved real property originally conveyed to the Association for no payment, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property taxes.

(c) The Association is responsible for management, operation and control of the Common Area, subject to any covenants, easements, or restrictions set forth in the deed or other instrument transferring the property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate. The Association may enter into a community association or property management agreement with any Person, including Declarant or any Affiliate of Declarant.

7.2. Maintenance of Common Maintenance Areas

The Association shall maintain the Common Maintenance Areas in accordance with the Community-Wide Standard. The Common Maintenance Areas shall include, but are not limited to:

- (a) the Common Area, including landscaping, structures, and other improvements;
- (b) such portions of any additional property as may be dictated by Declarant, this Declaration, any Supplemental Declaration, any Plat, or any contract or agreement for maintenance entered into by, or for the benefit of, the Association;
- (c) the Stormwater Management System, including all ponds, streams and/or wetlands located within the Community which serve as part of the Community's stormwater drainage system, and associated improvements and equipment. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or stormwater management capabilities.
- (d) any docks extending from the Common Area into the body of water known as Wetappo Creek. One or more docks may extend from the Common Areas into the body of water known as Wetappo Creek for the use and enjoyment of the Owners and occupants of the Lots. Regardless of whether the Association owns all or any part of the body of water known as Wetappo Creek, the Association shall maintain, repair, replace, and insure such docks as a Common Expense. The Association may regulate recreational use of the body of water known as Wetappo Creek, and any Association maintained docks. The Association may elect to undertake maintenance of the body of water known as Wetappo Creek, if in the discretion of the Board, such maintenance is necessary or desirable.

Without limiting the generality of the foregoing, the Association shall assume all of Declarant's (and Declarant's Affiliates') responsibilities to the State of Florida, Gulf County, and their governmental or quasi-governmental subdivisions, any state and federal agencies, and similar entities of any kind with respect to the Common Area and the Stormwater Management System, and shall indemnify and hold Declarant and its Affiliates harmless with respect to such assumed responsibilities. In addition, the Association shall comply with governmental or quasi-governmental permits, approvals, or regulations concerning the Community.

The Association may maintain other property which it does not own, including, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and the property owner consents. Specifically, the Association shall maintain the walking paths and landscaping located in the public right of way.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Common Maintenance Areas in continuous

operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs, unless the Board and Members representing 75% of the Class "A" votes in the Association agree in writing to discontinue such operation (which may include closing and/or demolishing such facilities or equipment). Notwithstanding the above, the Common Maintenance Areas may not be reduced, nor shall operation of its facilities and equipment be discontinued, without Declarant's prior written approval during the Development and Sale Period.

The costs associated with maintenance, repair and replacement of the Common Maintenance Areas shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Common Maintenance Areas pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements.

Unless Declarant expressly agrees in writing with the Association to pay the costs of maintaining any portion of the Common Maintenance Areas, Declarant shall have no such obligation, regardless of any inferences which may be drawn from promotional or other materials.

7.3. Insurance

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within other portions of the Common Maintenance Areas to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at a reasonable cost, then "broad form" coverage may be substituted. All Association property insurance policies shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;
- (ii) Commercial general liability insurance on the Common Maintenance Areas, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at a reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence and in the aggregate with respect to bodily injury, personal injury, and property damage;
- (iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;
- (iv) Directors and officers liability coverage;
- (v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits.

- (b) Insurance Premiums - Premiums for Common Maintenance Area insurance shall be a Common Expense.
- (c) Policy Requirements - The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Gulf County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association, and upon request, to each Member insured.

The policies may contain a reasonable deductible which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be assessed in the same manner as the premiums for the applicable insurance coverage. However, if

the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots as a Benefitted Assessment.

To the extent available at reasonable cost and terms, all insurance coverage obtained by the Board shall:

- (i) be written with a company authorized to do business in Florida which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
- (ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by individual Owners, their Mortgagees, or any occupants of a Lot;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member).
- (vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
- (viii) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against Declarant, Declarant's Affiliates, the Association, or their respective directors, officers, employees, and agents, or the Owners and their tenants, servants, agents, and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;
- (iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
- (v) a cross liability provision; and
- (vi) a provision vesting in the Board exclusive authority to adjust losses; provided, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(d) Restoring Damaged Improvements - In the event of damage to or destruction of Common Area or other property which the Association is obligated to maintain and/or insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 75% of the total Class "A" votes in the Association decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagees shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. During the Development and Sale Period, Declarant must consent

to any decision not to repair or reconstruct.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain in a reserve fund for capital items any insurance proceeds remaining after paying the costs of repair or reconstruction, or after an agreed-upon settlement. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

7.4. Compliance and Enforcement

(a) The Board may impose sanctions for Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Governing Documents. The Board may establish a range of penalties for different violations, with violations of the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws (provided only a single notice and hearing is required for continuing violations):

- (i) imposing reasonable monetary fines, not to exceed \$100.00 per violation (or per day in the case of a continuing violation), which shall constitute a lien upon the violator's Lot. Fines may be imposed within a graduated range. There is no limit on the aggregate amount of any fine for a continuing violation;
- (ii) suspending an Owner's right to vote for the nonpayment of regular annual assessments that are delinquent in excess of 90 days;
- (iii) suspending any Person's right to use Common Area amenities (except that no hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed the Association); provided, the Board may not impair an Owner or occupant's access to his or her Lot;
- (iv) suspending any services the Association provides (except that no hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association);
- (v) exercising self-help or taking action to abate any violation of the Governing Documents occurring on a Lot in a non-emergency situation (including removing personal property that violates the Governing Documents); and
- (vi) levying Benefitted Assessments to cover costs the Association incurs to bring a Lot into compliance with the Governing Documents.

In addition, the Board may take the following enforcement actions to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in the By-Laws:

- (i) exercising self-help or taking action to abate a violation on a Lot in an emergency situation (including, without limitation, towing vehicles that are in violation of parking rules and regulations);
- (ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or
- (iii) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may record a notice of violation or perform the required maintenance and assess its costs against the Lot and the Owner as a Benefitted Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

The above sanctions shall not apply to Declarant or any Affiliate of Declarant or to any Lot owned by Declarant or any of its Affiliates. All sanctions and remedies set forth in the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party may recover all of its costs incurred in the action, including, without limitation, court costs and reasonable attorneys' fees.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action;
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

By contract or other agreement, the Association may enforce applicable city and county ordinances. In addition, Gulf County, and other governmental authorities having jurisdiction may enforce their ordinances within the Community.

7.5. Implied Rights; Board Authority

The Association may exercise any right or privilege given to it expressly or by reasonable implication of the Governing Documents, and may take any action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise all of the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute any litigation or other proceeding on behalf of or in the name of the Association or the Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

7.6. Indemnification of Officers, Directors, and Others

The officers, directors, and committee members, acting in such capacity, shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability for any contract or other commitment made or action taken in good faith on the Association's behalf.

Subject to Florida law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including legal fees and costs, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which the indemnitee's personal liability is

limited under this Section.

This right to indemnification shall not be exclusive of any other rights which any present or former officer, director, or committee member may have. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7. Provision of Services, Activities, and Programs

The Association may provide, or provide for, services, activities, and programs (collectively, "services") for all or any of the Members and their Lots, and may enter into contracts or agreements with other entities, including Declarant or its Affiliates, to provide such services. The Board may charge use or service fees for any such services, or may include the costs, including the cost of personnel employed to facilitate or administer such services, in the Association's budget as a Common Expense and assess it as part of the Base Assessment, if provided to all Lots. If provided to less than all Lots, the Association may assess such costs as a Benefitted Assessment against only those Lots being provided such service.

By way of example, such services might include, without limitation, landscape maintenance; pest control service; cable television service; telephone; internet access; security monitoring; caretaker; transportation; fire protection; utilities; trash collection and recycling; and other similar services, activities, or programs.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, subject to the contract terms, the Board may modify or cancel existing contracts for services, activities, or programs in its discretion, unless the services are otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties

The Association may enter into contractual agreements or covenants to share costs with neighboring properties to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.9. Relationship with Governmental and Tax-Exempt Organizations

The Association may enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to state or local governments, public utility providers, and non-profit, tax-exempt organizations for the benefit of the Community, the Association, and the Members. The Association may contribute money, real property (including Common Area), personal property, or services to any such entity. Any such contribution shall be a Common Expense and included as a line item in the Association's annual budget.

7.10. Use of Technology

The Association may, as a Common Expense, make use of computers and other technological opportunities. For example, to the extent Florida law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic or telephonic means; send and collect assessments and other invoices over the computer; maintain an "online" newsletter or bulletin board; and provide funding for any of the above purposes.

7.11. Bulk Rate Service Agreements

The Association may enter into contracts, including bulk rate service agreements, with providers of Community Systems components and other utilities and with other Persons for the maintenance, management, administration, upgrading, modification, and operation of the Systems and utilities. The Association's expenses in connection with any such bulk rate contracts shall be a Common Expense to be included in the Base Assessment; provided, if particular or additional services or benefits are provided to particular Lots, the benefitted Owner(s) shall pay the service provider directly for such services, or the Association may assess the costs as a Benefitted Assessment.

The terms of any Association contract for Community Systems or other utilities may obligate individual Owners or occupants to execute subscription agreements or other contracts directly with the Persons providing components or services prior to gaining access to the System or utility, or in the alternative, the Association may execute a subscription agreement or contract on behalf of all Owners. Such subscription agreements or other contracts may contain terms and conditions relating to use and access to the Community System or utility which, if violated by the Owner or occupant of a Lot, may result in services to such Owner or occupant's Lot being terminated by the System or utility provider or by the Association. The termination of service for such a violation shall not relieve the Owner of the continuing obligation to pay that portion of assessments or other Association charges pertaining to the Community Systems or common utilities.

The Association shall have no obligation to utilize any particular provider or providers; provided, except for cause (as defined under a written agreement with the provider), the Association may not, without Declarant's consent, terminate or refuse to renew any contract entered into during the Class "B" Control Period.

ARTICLE VIII ASSOCIATION FINANCES

8.1. Budgeting and Allocating Common Expenses

The general categories of Association funds, income and expenses include the following:

- Association Funds
 - General Operating Fund
 - Reserve Fund for Repair, Replacement, or Improvement of Capital Items
- Primary Sources of Income
 - Base Assessments
 - Special Assessments
- Secondary Sources of Income
 - Benefitted Assessments
 - Interest on Reserves and Delinquent Assessments
 - Late Charges

The Association is authorized to levy Base Assessments against all Lots subject to assessment under Section 8.6 to fund the Common Expenses. The amount of the Base Assessment shall be the same for each Lot. Before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year and any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall reflect the sources and estimated amounts of funds to cover such expenses, including any prior year's surplus or deficit, any non-assessment income, and anticipated assessment income. In determining the Base Assessment, the Board may consider any assessment income expected to be generated from any property reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment to each Owner at least 30 days before the fiscal year begins. The budget shall not be subject to Owner approval and there shall be no obligation to call an Owner's meeting to consider the budget. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6(b)), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. The payment of such subsidy in any year shall not obligate Declarant to continue paying a subsidy in future years.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to Section 8.8 and the notice requirements set forth above and in Florida law.

8.2. Budgeting for Reserves

The Board may include in the Common Expense budget a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. So long as the Board exercises business judgment in determining the amount or necessity of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. During the Development and Sale Period, neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent. The Board may enter into agreements with Declarant, on negotiated terms, under which Declarant may obligate itself to provide or contribute to reserve funds as needed on a "cash basis" in lieu of funding reserves on an accrual basis. The Board has no duty to fund reserves during any period that Declarant is funding Association budget deficits.

8.3. Special Assessments

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. The amount of any Special Assessment shall be the same for each Lot. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of a majority of the Members. Special Assessments shall be payable in such manner and at such times as the Board determines, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.4. Benefitted Assessments

The Association may levy Benefitted Assessments against one or more particular Lots as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services which an Owner requests pursuant to any menu of special services which the Association may offer (which might include the items listed in Section 7.7) or which the Association otherwise provides to less than all Owners in accordance with this Declaration or any Supplemental Declaration. Benefitted Assessments for special services may be levied in advance of the provision of the requested service; and
- (b) to cover costs incurred in bringing a Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Benefitted Assessment under this subsection.

Lots which Declarant or any Affiliate of Declarant owns are exempt from Benefitted Assessments.

8.5. Commencement of Assessment Obligation: Time of Payment

The obligation to pay assessments commences as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The initial annual assessment levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance of the first day of each fiscal year. If the Board so elects, assessments may be paid in quarterly or monthly installments. If any Owner is delinquent in paying any assessments or other charges levied on

his Lot, the Board may require that the outstanding balance of all assessments be paid in full immediately.

8.6. Obligation for Assessments

(a) Personal Obligation - Each Owner, by accepting a deed or entering into a recorded contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents for each Lot owned. All assessments, together with interest (computed from the assessment's due date at a rate of at least 10% per annum or such higher rate as the Board may establish, subject to Florida law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No reduction or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from making repairs or improvements, or from any other reason.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Declarant's Option to Fund Budget Deficits - During the Class "B" Control Period, Declarant may satisfy the obligation for assessments on Lots which it or any Affiliate of Declarant owns either by paying assessments in the same manner as any other Owner or by funding the budget deficit. The budget deficit is the difference between the amount of assessments levied on all Class "A" Member-owned Lots, plus any other income received during the fiscal year, and the amount of the Association's actual expenditures during the fiscal year, but excluding expenses exclusively for capital improvement costs and reserves. Unless Declarant otherwise notifies the Board in writing at least 30 days before the beginning of the fiscal year, Declarant shall continue paying on the same basis as during the previous fiscal year.

Regardless of Declarant's election, Declarant's assessment obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the "Class B" Control Period, except with respect to Benefitted Assessments, Declarant shall pay assessments on Lots which it or its Affiliates own in the same manner as any other Owner.

8.7. Lien for Assessments

The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to Florida law), and costs of collection (including attorneys' fees). The Association's general assessment lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; and (c) to the extent Florida law permits, the Association's lien for any "Capital Improvement Assessment," as described below.

Notwithstanding the above, and subject to Florida law, any lien for Association assessments or charges levied solely for the purpose of acquisition, development, or construction of infrastructure or capital improvements serving the Community (or to pay the cost to underwrite, service, and repay any debt incurred to finance any such acquisition, development, or construction) may be designated by the Board as a "Capital Improvement Assessment" which shall

be superior to (a) the Association's lien for other Common Expenses, and (b) all other liens except those deemed superior under Florida law and which may not be made subordinate by this provision.

The Association's liens may be enforced by suit, judgment, and foreclosure in accordance with Florida law. The Association may acquire a Lot in connection with foreclosing its lien and, in such case, may hold, lease, mortgage, and convey the Lot. The Association may also sue for unpaid assessments and other charges without foreclosing or waiving its assessment lien.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to amounts due after the recording of the first Mortgage and prior to the Mortgagee's foreclosure, except that the foreclosure of the first Mortgage shall not extinguish the lien for amounts due under any Capital Improvement Assessment. The purchaser of a foreclosed Lot shall not be personally liable for assessments, other than any Capital Improvement Assessment, on such Lot due prior to the foreclosure sale. Such unpaid assessments shall be a Common Expense collectible from Owners of all Lots subject to assessment, including such purchaser, its successors and assigns.

Notwithstanding the above, while the Association owns a Lot: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association.

8.8. Limitation on Assessment Increases

Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations, after termination of the Class "B" Control Period, any Base Assessment that is more than 10% greater than such assessments for the immediately preceding fiscal year is subject to disapproval at a meeting by at least 75% of the Class "A" Members subject to such assessment. There shall be no obligation to call a meeting for the purpose of considering the disapproval of any budget except on petition of the Members subject to assessment under the budget, as provided for special meetings in the By-Laws. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

An emergency situation is any one of the following:

- (a) an extraordinary expense required by an order of a court;
- (b) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible where a threat to personal safety is discovered;
- (c) an extraordinary expense necessary to repair or maintain any portion of the Community for which the Association is responsible and which could not reasonably have been foreseen by the Board in preparing and distributing the pro forma budget pursuant to Section 8.1 or Section 8.2. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Notice of the Board meeting at which such resolution is to be considered, explaining the nature of the assessment proposed, shall be provided to the Members along with the notice of such assessment; or
- (d) to defend itself in litigation, arbitration, or other legal or administrative actions brought against it.

8.9. Exempt Property

The following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) All Common Areas and other portions of the Community which are not Lots; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

8.10. Capitalization of Association

Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant, a contribution of \$500.00 shall be made by or on behalf of the purchaser to the working capital of the Association. There shall also be collected at closing an initial homeowner's annual base assessment of \$600.00.

ARTICLE IX EXPANSION OF THE COMMUNITY**9.1. Annexation by Declarant**

Declarant may, from time to time, subject to this Declaration any property owned by Declarant located within one (1) mile of the property described in Exhibit "A" by a recorded Supplemental Declaration which describes the property being subjected. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to annex property pursuant to this Section expires ten (10) years after the recordation of this Declaration.

9.2. Annexation by the Association

The Association also may annex property to the provisions of this Declaration by a recorded Supplemental Declaration which describes the additional property. Annexation by the Association shall require the affirmative vote or written consent of Members representing more than 50% of the Class "A" votes and the consent of the owner of the property to be annexed. In addition, during the Development and Sale Period, Declarant's consent is required. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property, and by Declarant, if Declarant's consent is required.

9.3. Additional Covenants and Easements

By Supplemental Declaration, Declarant may impose additional covenants and easements on all or portions of the Community, including covenants obligating the Association to maintain and insure specific property. If someone other than Declarant owns the property, then such owner's consent and execution of the Supplemental Declaration is required. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4. Effect of Filing Supplemental Declaration

Unless otherwise specified, a Supplemental Declaration shall be effective upon the earlier of (a) notice to the Persons who are affected by such Supplemental Declaration; or (b) recording. The Lots subjected to this Declaration by Supplemental Declaration shall have equal voting rights in the Association and equal pro rata liability for Base Assessments with all other Lots.

9.5. Right of Developer to Build Road

Developer reserves the right to build a road over one (1) lot located between Lots 15 and 19, inclusive, and one (1) lot located between Lots 29 and 33, inclusive, and over the 66 foot right of way and the Association's access parcel shown on the Plat and located between Lots 97 and 98. The purpose of any such road so constructed will be to provide access to property annexed pursuant to this Article or for such other purpose as the Developer may deem appropriate. This right shall terminate upon the transfer of all of the lots described above to any person unrelated to the Developer.

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ARTICLE X ADDITIONAL RIGHTS RESERVED TO DECLARANT

10.1. Withdrawal of Property

Declarant reserves the right to amend this Declaration during the Development and Sale Period to remove any unimproved portion of the Community from the coverage of this Declaration. "Unimproved" means that no permanent structure has yet been built on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if other than Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, Declarant, its Affiliates, and Builders, may construct and maintain upon portions of the Common Area and other property they own, and may use such facilities, activities, and things as, in Declarant's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Lots. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, marketing and sales materials, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Declarant's Affiliates and Builders, may park vehicles in areas other than garages or driveways, including on streets. Builder's activities under this Section are subject to Declarant's approval.

10.3. Right to Approve Changes in the Community Standards

During the Development and Sale Period, no amendment to or modification of any of the Use Restrictions, rules, or the Design Guidelines shall be effective without Declarant's prior written approval.

10.4. Community Systems

Declarant reserves for itself, its Affiliates, successors, and assigns, a perpetual right and easement to install and operate within the Community such Community Systems as Declarant, in its discretion, deems appropriate to service the buildings and the structures within any Lot or other portion of the Community. Such right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region, and to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

10.5. Rights to Use Names

No Person shall use the name "Wetappo" for advertising or any other purpose in any promotional material, whether printed, audio, video, or otherwise, on any sign, or in any logo or depiction without the prior written consent of Declarant.

Notwithstanding the above, Owners may use the name "Wetappo" where such term is used solely to specify that particular property is located within the Community (subject to such terms and conditions as Declarant may impose in order to protect its trade names and service marks). Subject to applicable licensing agreements, the Association may use the words "Wetappo" in its name. Other use by the Association or any Owner is subject to the restrictions set out in this Section or otherwise imposed by Declarant.

10.6. Right to Use Common Area for Special Events

During the Development and Sale Period, Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;

(b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special event.

Declarant's rights to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

10.7. Easement to Inspect and Right to Correct

Declarant reserves for itself and others it may designate the right, but not the obligation, to inspect, monitor, test, redesign, and correct any structure, improvement, or condition on any portion of the Community, including Lots, and a nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Declarant's rights and easement in this regard shall not in any way assign or diminish an Owner's responsibility for the maintenance and care of his or her Lot.

Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling or other structure on a Lot shall be permitted without the Owner's consent, which consent shall not unreasonably be withheld, conditioned or delayed. The failure or refusal to permit reasonable access to the Lot for the purposes contemplated under this paragraph shall excuse Declarant or its designee from responsibility for repair or damages relating to defective workmanship or materials. The Person exercising this easement shall promptly repair, and pay for, any resulting damage.

10.8. Right to Notice of Design or Construction Claims

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Community in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Declarant and any Builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the property Owner and conduct an inspection.

10.9. Right to Transfer or Assign Declarant Rights

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by Declarant. However, Declarant may allow other Persons to exercise, on a one-time or limited basis, any Declarant right without transferring the entire right. In such case, a recorded instrument is not required.

10.10. Termination of Rights

Declarant's rights granted under this Article shall terminate upon the earlier of (a) the period specified in the particular Section; (b) 40 years from the date this Declaration is recorded; or (c) Declarant's recording of a statement that all sales activity has ceased. Thereafter, Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas. Notwithstanding the above, Declarant reserves for itself and its Affiliates a perpetual, non-exclusive easement of access to and use of the Common Areas in connection with the marketing and sale of other properties in order to show the Community as an example of Declarant's projects. This Article shall not be amended without Declarant's written consent.

10.11. Exclusion of Declarant's Other Properties

By accepting a deed to a Lot, each Owner, specifically acknowledges that nothing contained in this Declaration shall in any way, either expressly or by implication, restrict, limit, or otherwise affect the use or disposition by Declarant

or any Affiliate of Declarant of any property they own, whether contained within or contiguous to the Community. Declarant and its Affiliates shall have full, free, and unrestricted use of its other lands, notwithstanding any incompatibility of such use with restrictions this Declaration imposes upon the Lots. By accepting a deed to a Lot, each Owner, specifically and expressly disclaims any reciprocal negative easement in any property Declarant or any Affiliate of Declarant owns.

ARTICLE XI EASEMENTS

11.1. Easements in Common Area

Declarant grants to each Owner a right and easement of use, access and enjoyment in and to the Common Area, including an easement of ingress and egress to and from Owner's Lot over private streets which are a part of the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying the property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating Common Area use, including rules limiting the number of guests who may use the Common Area, and charge use fees for such use;
 - (ii) suspend the right of an Owner to use any Common Area amenity (A) for any period during which an assessment or other charge against the Owner's Lot remains delinquent, and (B) for a period not to exceed 30 days for a single violation, or for a longer period in the case of any continuing violation, of the Governing Documents; provided the Board may not impair an Owner or occupant's access to his or her Lot;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to any approval requirements set forth in this Declaration; and
 - (iv) mortgage, pledge, or hypothecate any or all of the Common Area as security for money borrowed or debts incurred.

Any Owner may extend his or her right to use the Common Area to the members of his or her family, tenants, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the tenants of such Lot for the lease term.

Notwithstanding the above, the guests, patrons, or employees of Non-Residential Lots, if any, shall not have a right or easement to use the Common Area recreational facilities (including, without limitation, any beach-related facility, or any swim facility the Association owns). Such Persons may use these facilities only with the Association's express permission, which it shall not be required to give.

Any Person's use and enjoyment of the Common Area is subject to the Board's authority to promulgate and enforce the Use Restrictions and reasonable rules and regulations governing such use as provided for in this Declaration. The rules and regulations may be different for different classifications of users, including, but not limited to, Owners of Residential Lots, guests or social invitees unaccompanied by Owners, or otherwise. The posting of rules and regulations and fees in a conspicuous manner and location within the Community or the publication in a community newsletter of general circulation within the Community shall be deemed sufficient notice to all permitted users; provided, the Board, in its discretion, may provide notice of rules, regulations, and fees by other means or methods.

11.2. Easements of Encroachment

Declarant grants easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots. A permitted encroachment is a structure or fixture which extends unintentionally from one Person's property onto another's a distance of less than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the

knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance – Declarant reserves for itself during the Development and Sale Period, and grants to the Association and utility providers, including Gulf Coast Electric Cooperative, Inc. (which shall be the supplier of electric power to the Community), perpetual, non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary to:

- (i) install utilities and infrastructure to serve the Community, cable and other systems for sending and receiving data and/or other electronic signals, other Community Systems, drainage systems, and security and similar systems, specifically including, but not limited to, an easement between all road right of ways and the adjacent set back line of each adjoining Lot for the purpose of installing electric and other utility systems;
- (ii) install walkways, pathways and trails, street lights, landscaped areas, and signs on property which Declarant or the Association owns or within rights-of-way or easements reserved for such purpose on a Plat;
- (iii) inspect, maintain, repair, and replace the utilities, infrastructure, walking paths and other improvements described above, and
- (iv) access and read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) Specific Easements – Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in Declarant's sole discretion, to develop the property described in Exhibit "A". The location of the easements shall be subject to the written approval of the burdened property Owner, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) Minimal Interference – All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the work. The exercise of these easements shall not extend to permitting entry into structures on a Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

11.4. Easements to Serve Additional Property

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for enjoyment, use, access, and development of the property described in Article IX, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for (a) making, constructing, and installing improvements (within the Common Area and elsewhere), as it deems appropriate in its discretion, (b) construction of roads, and (c) connecting and installing utilities.

If the above easement grants permanent access to any property which is not submitted to this Declaration, Declarant, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefitted property.

11.5. Easements for Maintenance, Emergency, and Enforcement

Declarant grants to the Association easements over the Community as necessary for the Association to fulfill its maintenance responsibilities. The Association shall also have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring

compliance with and enforcing the Governing Documents. Any member of the Board, and its duly authorized agents and assignees, including committee members, and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

Declarant grants to the Association, subject to any required notice, an easement and right to enter a Lot to abate a Governing Document violation and/or to remove any structure, thing, or condition which violates the Governing Documents. Any costs incurred, including reasonable attorneys' fees, shall be assessed against the Lot Owner as a Benefitted Assessment.

11.6. Easements for Cross-Drainage

All portions of the Community shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to increase materially the drainage of stormwater onto adjacent portions of the Community without the consent of the Owner(s) of the affected property, the Board, and, during the Development and Sale Period, Declarant.

11.7. Common Driveway Easement

Declarant retains ownership of timber located on any lot for a period of one (1) year from the date of recording of this Declaration and reserves an easement over any Lot for access to thin or cut trees located thereon. This easement shall expire one (1) year from the date of the recording of this Declaration.

11.8. Easements for Lake and Pond Maintenance and Flood Water

The Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams, and wetlands located within the Area of Common Responsibility to (a) install, keep, maintain, and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams, or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within fifty feet of lake beds, ponds, streams and wetlands within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Properties; (b) fill, drain, dredge, deepen, clean, fertilize, dye, and generally maintain the lakes, ponds, streams, and wetlands within the Area of Common Responsibility; (c) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams, and wetlands; and (d) enter upon and across such portions of the Properties for the purpose of exercising their rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the exercise of such easements.

ARTICLE XII DISPUTE RESOLUTION

12.1. Disputes Subject to Mandatory Arbitration or Mediation

When required by Florida law, a dispute relating to Association matters shall be submitted to the Department of Business and Professional Regulation for mandatory mediation or arbitration. The remaining provisions of this Article shall apply to all other disputes.

12.2. Agreement to Encourage Resolution of Disputes Without Litigation

Declarant, the Association, and its officers, directors, and committee members, all Persons subject to this

Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to, directly or indirectly, file a law suit for a Claim described in subsection (b), without first submitting the Claim to the alternative dispute resolution procedures described in Section 12.2.

(b) As used in this article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents;
- (iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Article IV, which shall not be subject to review; or
- (iv) trespass, nuisance, property damage, enforcement of laws, codes, or ordinances within the Community.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

- (i) any Association action to collect assessments or other amounts due from any Owner;
- (ii) any Association action to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles III and IV of this Declaration (relating to creation and maintenance of community standards);
- (iii) any suit which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 12.2; and
- (iv) any suit as to which the applicable statute of limitations would expire within 180 days of giving the notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article.

12.3. Dispute Resolution Procedures

(a) Notice - The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent, and to the Board, stating plainly and concisely:

- (i) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (iii) the Claimant's proposed resolution or remedy; and
- (iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation - The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiating a resolution to the Claim.

(c) Mediation - If the Bound Parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with a Person designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Gulf County area or other mediator. Each Bound Party shall present the mediator with a written summary of the Claim.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to Claimant (but not to third parties) on account of such Claim.

If the Bound Parties do not settle the Claim within 30 days after submitting the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse, and the date that mediation was terminated. Except as provided in Section 12.2(e), the Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including the attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement – Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the Bound Parties. If any Bound Party thereafter fails to abide by the terms of such agreement, then any other Bound Party to the agreement may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Bound Party taking action to enforce the agreement shall, upon prevailing, be entitled to recover from the non-complying Bound Party (or each one in equal proportions) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(e) Actions Involving Declarant - Final and Binding Arbitration – Any dispute between an Owner or the Association and Declarant or any Affiliate of Declarant, including Claims which remain after the conclusion of the dispute resolution procedures described in Section 12.2, shall be resolved by final and binding arbitration in accordance with this subsection 12.2(e). Such disputes shall not be submitted as a lawsuit or other proceeding in any state or federal court. Notwithstanding the above, disputes affecting the material rights or obligations of a third party who is not a party to or bound by such arbitration shall not be subject to this subsection.

This subsection is an agreement to arbitrate and is specifically enforceable under Florida law. Judgment may be entered upon the arbitration award in any court of competent jurisdiction to the fullest extent permitted under Florida law.

The Owner, the Association, Declarant, or an Affiliate of Declarant, as applicable, shall have until expiration of the applicable statute of limitations under Florida law (as would apply to the same claim being brought in a Florida or federal court) to submit the dispute to the American Arbitration Association for arbitration in Gulf County. The American Arbitration Association shall appoint one neutral arbitrator to conduct the arbitration in accordance with its rules, unless all of the parties to such dispute agree to a greater number of arbitrators. The arbitrator(s) shall render a written judgment accompanied by findings of fact and conclusions of law.

If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to the Claimant arising out of the dispute. The parties shall share equally the costs of conducting the arbitration until a prevailing party is determined; provided, the prevailing party shall be entitled to recover all of its costs incurred in the action, including, without limitation, reasonable attorneys' fees.

12.4. Initiation of Litigation by Association

After the Class "B" Control Period, the Association shall not initiate any judicial or administrative proceeding, including arbitration, which is reasonably expected to cost at least \$100,000.00 in legal fees to prosecute to completion without Board approval upon the specific recommendation of the Dispute Resolution Committee (which shall be created as provided in the By-Laws). The Dispute Resolution Committee's recommendation must be in writing and must be accompanied by a feasibility analysis including an explanation of the issues, a budget for legal and related expenses, the amount in controversy, the expectation of success, and a copy of bids from a minimum of three qualified law firms.

ARTICLE XIII MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions

contained therein.

13.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates) (an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed with respect to a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any Association insurance policy; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

13.2. No Priority

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. Notice to Association

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering the Owner's Lot.

13.4. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

ARTICLE XIV DISCLOSURES AND WAIVERS

14.1. Construction Activities

Owners, occupants, and users of Lots are hereby placed on notice that Declarant, Declarant's Affiliates, and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Community. By the acceptance of a deed or other conveyance or mortgage, leasehold, license or other interest, and by using any portion of a Lot or the Community generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree: (a) that such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot or area where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant, any Affiliate of Declarant, and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) that this acknowledgment and

agreement is a material inducement to Declarant or its Affiliates to sell, convey, lease, and/or allow the use of Lots within the Community.

14.2. Liability for Association Operations

The Association shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Declarant (including its successors and assigns) from and against any and all losses, claims, demands, damages, costs, and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and costs at all tribunal levels and whether or not suit is instituted, including those incurred in establishing the right to be indemnified, defended, and held harmless pursuant hereto) which relate to or arise out of Association management and operations, including, without limitation, improvement, maintenance, and operation of amenities and other portions of the Common Maintenance Areas and the collection of assessments.

14.3 Water Bodies

ANY PERSON USING THE WATERS OF ANY LAKE, STREAM OR CREEK OR OTHER WETLANDS WITHIN OR ADJACENT TO THE COMMUNITY, INCLUDING ANY DOCK OR PEDESTRIAN BRIDGE EXTENDING INTO OR OVER SAID BODIES OF WATER, SHALL BE RESPONSIBLE FOR HIS OR HER OWN PERSONAL SAFETY IN CONNECTION WITH SUCH USE AND SHALL ASSUME ALL RISKS OF PERSONAL INJURY, INCLUDING DEATH, RELATING TO SUCH USE. DECLARANT, ASSOCIATION, AND ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUB-CONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL NOT IN ANY WAY BE A GUARDIAN OR INSURER OF SAFETY IN CONNECTION WITH THE PRESENCE OR USE OF SAID BODIES OF WATER OR ANY OTHER WATER FEATURES WITHIN OR ADJACENT TO THE COMMUNITY AND SHALL NOT BE HELD LIABLE OR RESPONSIBLE FOR ANY PERSONAL INJURY OR DEATH, PROPERTY DAMAGE, OR ANY OTHER LOSS DUE TO, ARISING OUT OF, OR RELATED TO USE OF SUCH WATER FEATURES FOR RECREATIONAL OR OTHER PURPOSES.

EACH OWNER ACKNOWLEDGES AND AGREES THAT ANY OF THE WATERS OF ANY LAKE, STREAM OR CREEK AND OTHER WETLANDS WITHIN OR ADJACENT TO THE COMMUNITY ARE NOT DESIGNED AS AESTHETIC FEATURES AND DUE TO FLUCTUATIONS IN WATER ELEVATIONS WITHIN THE IMMEDIATE AREA, WATER LEVELS WILL RISE AND FALL. EACH OWNER FURTHER ACKNOWLEDGES AND AGREES THAT THE LISTED PARTIES HAVE NO CONTROL OVER SUCH ELEVATIONS. THEREFORE, THE LISTED PARTIES SHALL NOT BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, CANAL, CREEK, STREAM OR OTHER WATER BODY ADJACENT TO OR WITHIN THE COMMUNITY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR AUTHORITY. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE COMMUNITY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID WATER BODIES SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF THE DEED TO OR USE OF, SUCH LOT OR PROPERTY, TO HAVE AGREED TO RELEASE, DISCHARGE, AND HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LOSSES, CLAIMS, DEMANDS, DAMAGES, COSTS, AND EXPENSES OF WHATEVER NATURE OR KIND, INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS AT ALL TRIBUNAL LEVELS RELATING TO ANY AND ALL CHANGES AND FLUCTUATIONS IN THE QUALITY, LEVEL, AND ELEVATION OF THE WATER IN SUCH WATER BODIES.

NOTHING HEREIN SHALL BE CONSTRUED TO MAKE THE LISTED PARTIES LIABLE FOR DAMAGE RESULTING FROM FLOODING DUE TO HURRICANES, HEAVY RAINFALL, OR OTHER NATURAL OCCURRENCES.

OWNERS SHALL NOT ALTER, MODIFY, EXPAND, OR FILL ANY LAKE, STREAM OR CREEK OR OTHER WETLANDS LOCATED WITHIN, ADJACENT TO, OR IN THE VICINITY OF THE COMMUNITY WITHOUT THE PRIOR WRITTEN APPROVAL OF DECLARANT, ASSOCIATION, AND ANY LOCAL, STATE, OR FEDERAL REGULATORY OR PERMITTING AUTHORITIES AS MAY HAVE RELEVANT

JURISDICTION OVER SUCH MATTERS.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS, POISONOUS SNAKES, AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES AND NATURAL AREAS WITHIN OR ADJACENT TO THE COMMUNITY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST ANY DEATH, INJURY, OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT THE BANKS AND SLOPES OF LAKES, STREAMS AND CREEKS WITHIN CERTAIN AREAS OF THE COMMUNITY MAY BE STEEP, THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY, THAT SOME AREAS WITHIN WATER BODIES MAY BE SHALLOW OR CONTAIN STUMPS WHICH MAKE DIVING OR SWIMMING DANGEROUS. BY ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT OR OTHER PORTION OF THE COMMUNITY, ALL OWNERS AND USERS OF THE COMMUNITY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ANY AND ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY BANKS, SLOPES OR BOTTOMS OF ANY LAKE, STREAM OR CREEK WITHIN OR ADJACENT TO THE COMMUNITY.

ARTICLE XV CHANGES IN OWNERSHIP OF LOTS

Any Owner, other than Declarant or any Affiliate of Declarant, desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14 days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date upon which the Board, notwithstanding the transfer of title, receives such notice.

ARTICLE XVI CHANGES IN COMMON AREA

16.1. Condemnation

Whenever any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall determine, in the exercise of its business judgment, whether each Owner is entitled to notice. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable, unless, within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibit "A" of this Declaration, and at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans the Board approves. The provisions of Section 7.3 regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any Common Area improvements, or if a decision is made not to repair or restore, or if net funds remain after such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

16.2. Partition

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

Inst: 0820033459 Date: 05/02/2005 Time: 10:56
 R.D. Dr. Rebecca L. Morris, GOLDF County B:373 P:957

16.3. Transfer or Dedication of Common Area

The Association may convey, dedicate, or otherwise transfer portions of the Common Area to Gulf County, or to any other local, state, or federal governmental or quasi-governmental entity, subject to any specific approval requirements in this Declaration.

ARTICLE XVII GENERAL PROVISIONS

17.1. Amendment of Declaration

(a) By Declarant

Subject to any specific amendment rights granted elsewhere in this Declaration, during the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose.

Thereafter, to the extent permitted by law, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA, to make, purchase, insure or guarantee mortgage loans on the Lots; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

(b) By the Members

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 75% of the Association's total Class "A" votes. In addition, during the Development and Sale Period, Declarant's written consent is required for any amendment.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). Additionally, no amendment may specifically remove, revoke, or materially adversely affect the right of a Non-Residential Lot Owner to continue operating a permitted business within a Non-Residential Lot or, by design, materially adversely impact a Non-Residential Lot Owner's permitted operations, without the consent of such Non-Residential Lot Owner.

17.2. Severability

If any court determines that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or other applications of the provision.

17.3. Conflict or Ambiguity in Documents

If there are conflicts between Florida law, the Declaration, the Articles, and the By-Laws, then Florida law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

17.4. Titles

The addition of titles to the various sections of this Declaration are for convenience and identification only and the

use of such titles shall not be construed to limit, enlarge, change, or otherwise modify any of the provisions hereof, each and all of which shall be construed as if not entitled.

17.5. Usage and Interpretation

Unless the context expressly requires otherwise: (i) use of the singular includes the plural and vice versa; (ii) the use of one gender includes all genders; (iii) the use of the terms "including" or "include" is without limitation; and (iv) the words "must," "should," and "will" have the same legal effect as the word "shall." This Declaration should be interpreted, construed, applied and enforced in a reasonable, practical manner to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Lots by providing for a plan for the development, operation and enjoyment of the Community.

17.6. Exhibits

Exhibits "A" (Land Initially Submitted), and Exhibit "B" (Initial Use Restrictions) attached to this Declaration are incorporated by this reference and this Article shall govern amendment of Exhibit "A" and the amendment of Exhibit "B" shall be governed by Article III, above. Exhibits "C" (Articles) and "D" (By-Laws) are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to the By-Laws or Articles.

17.7. Effective Date

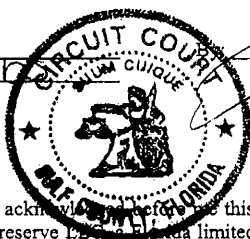
This Declaration shall become effective upon its recordation in the public records of Gulf County, Florida.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration the date and year first written above

Paul W. Groom II
Printed Name: Paul W. Groom II

WETAPPO PRESERVE LLC
a Florida limited liability company

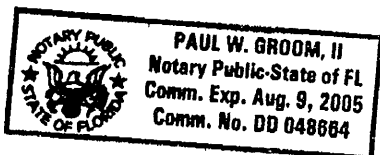
Robin Combs
Printed Name: Robin Combs



William J. Rish, Jr.
Its: Manager

STATE OF FLORIDA
COUNTY OF GULF

The foregoing instrument was acknowledged before me this 31st day of March, 2005, by William J. Rish, Jr. as the Manager of Wetapppo Preserve LLC, a Florida limited liability company, on behalf of said company, who is personally known to me.



Paul W. Groom II
NOTARY PUBLIC - STATE OF FLORIDA
My Commission Expires:

Inst: 0020053459 Date: 05/07/2005 Time: 10:56
Doc: DC, Rebecca L. Norris, GULF County B:315 P:959