

GRAND OAKS
AT
PANTHER RIDGE

HOMEOWNER ASSOCIATION DOCUMENTS

DECLARATION
OF
PROTECTIVE COVENANTS
FOR
GRAND OAKS AT PANTHER RIDGE

This Declaration is made as of the 12th day of April, 2000, by
PANTHER RIDGE COMMUNITIES, LTD, a Florida limited partnership (the "Declarant")

KNOW ALL MEN BY THESE PRESENTS, that Declarant, the owner of the real property in Manatee County, Florida, described on Exhibit "A," attached hereto and made a part hereof (the "Initial Property"), hereby declares that the Initial Property, as it may be modified pursuant to Article 2, is and shall be held, transferred, sold, conveyed, leased, occupied and used subject to the covenants, restrictions, conditions, easements, limitations, terms, obligations, charges and liens hereinafter set forth.

ARTICLE 1
DEFINITIONS

The recitals contained hereinabove are true and correct and are incorporated herein by reference. The following words and terms, when used in this Declaration or in any amendment or supplement thereto shall, unless the context clearly otherwise indicates, have the following meanings:

1.01. "Architectural Review Board" or "ARB" means the Board, or if the Board so determines, a committee of not less than three (3) persons appointed by the Board, which shall consider and act on applications for Building Review approval pursuant hereto. Notwithstanding the foregoing, Declarant shall act as the Architectural Review Board prior to the Turnover Date, except for any period of time during which Declarant waives the right so to act in writing.

1.02. "Articles" means the Articles of Incorporation of the Association as they may be amended from time to time.

1.03. "Assessment" means a charge levied by the Association in accordance herewith against a Lot and its Owner. The following meanings shall be given to the following types of Assessments:

- (a) "Regular Assessment" means the recurring periodic Assessment for each Owner's share of the Common Expense.
- (b) "Special Assessment" means any Assessment made under the authority of this Declaration other than a Regular Assessment. Special Assessments may

include, but shall not necessarily be limited to, amounts reasonably necessary to supplement Regular Assessments, and amounts reasonably necessary to defray costs of acquiring, maintaining, operating, repairing or replacing Common Property.

1.04. "Association" means Grand Oaks at Panther Ridge Homeowner's Association, Inc., a Florida corporation not-for-profit, its successors and assigns.

1.05. "Board" means the Board of Directors of the Association.

1.06. "Building Review" means the requirements of this Declaration that certain improvements or alterations to Lots or existing improvements must be reviewed and approved, and where the context indicates, the review and approval procedures of Article 10 of this Declaration.

1.07. "Bylaws" means the Bylaws of the Association, as they are amended from time to time.

1.08. "Code" means the Manatee County Land Development Code as it may have been amended effective as of the date this Declaration is recorded.

1.09. "Common Expenses" means the actual and estimated cost of the following:

- (a) Maintenance, repair, replacement, ownership and operation of the Common Property and any other area(s), to the extent the Association is responsible for the maintenance thereof pursuant to this Declaration.
- (b) Obligations of the Association in excess of revenues, whether attributable to unpaid Assessments or Special Charges or otherwise.
- (c) Administration and management of the Association.
- (d) Any insurance obtained by the Association.
- (e) Reasonable reserves as determined in accordance herewith.
- (f) Any other item or items designated herein as a Common Expense, or reasonably or necessarily incurred by the Association, or in furtherance of the purpose of the Association, or a discharge of any obligations expressly or impliedly imposed on the Association by this Declaration, or by law.
- (g) Utility charges and deposits therefore in the carrying out of Association obligations hereunder, which may include electrical service and other charges to maintain and operate street lights within the Subdivision if such lighting is installed by Declarant or by the Association.

1.10. "Common Property" means all real property and interests therein, including easements, licenses and servitudes, owned by or granted or leased to the Association, or the use of which has been granted to the Association, together with all improvements thereto. Common Property may also include any personal property acquired by the Association if designated Common Property.

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1.11. "Completion Date" means the earlier to occur of (a) thirty (30) days after all Lots in all phases of the Subdivision have been conveyed by Declarant, or (b) that date designated by Declarant in writing.

1.12. "County" means Manatee County, Florida, a political subdivision of the State of Florida. (Where County action is contemplated hereby, that action may be taken by the agent, official or other designee as provided by the Code, as it may be amended from time to time.)

1.13. "Declarant" means Panther Ridge Communities, Ltd., a Florida limited partnership, or its successors or assigns as such Declarant.

1.14. "Declaration" means this document, together with all amendments and supplements hereto, and where the context permits, all exhibits hereto.

1.15. "Governmental Approvals" means all and singular those agreements, approvals, orders, authorizations, stipulations, conditions, permits, requirements and other development orders, issued, enacted, adopted or otherwise made applicable by any governmental agency or authority, as they may be amended from time to time, which authorize, permit, approve or otherwise regulate the development and operation of the Property as the Subdivision.

1.16. "Lot" means a discrete lot within the Property that is created and defined by an initial conveyance from Declarant to an Owner. Lots will be subparts of the Property. The description of individual Lots shall be established only by conveyance from the Declarant, and the preliminary Lot descriptions set forth on the Site Plan, as it may be modified by Declarant. For convenience and ease of reference, Declarant may give Lots a numerical designation such as Grand Oaks, Lot 1," or "Lot 1, Grand Oaks." Such designations are for internal use and reference of the Declarant, Owners and the Association only, and such reference is **not the legal description of a Lot**. The legal description is that description referencing the Plat, or containing a metes and bounds description, as applicable, as contained in the initial deed from Declarant to the first Owner of a Lot.

1.17. "Member" means, at any given time, every person or entity then qualified for membership in the Association. The Association has three (3) types of members:

- (a) "Builder Member" means a builder, contractor or other Owner who has purchased a Lot for the purpose of constructing improvements thereto for resale.
- (b) "Declarant Member" means the Declarant, and its successors or assigns as such Declarant, prior to the Turnover Date.
- (c) "Regular Member" means any Member other than a Builder Member or Declarant Member.

1.18. "Owner" means the single or multiple owner(s) of record of the fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation, and excluding Declarant prior to the Turnover Date.

1.19. "Plat" means the subdivision plat of Pomello City Central Unit as recorded in Plat Book 6, Page 62 of the Public Records.

1.20. "Property" means the Initial Property at the time this Declaration is first recorded, and thereafter at any given time all lands then subject to this Declaration in accordance with

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Article 2.

1.21. "Public Records" means the Public Records of Manatee County, Florida.

1.22. "Site Plan" means that certain graphic depiction of the Subdivision attached hereto as Exhibit "D" and made a part hereof, as it may be supplemented and amended from time to time. The Site Plan sets out, without specific dimensions, the anticipated location and configuration of the Lots Declarant intends to establish and confirm by conveyance in accordance with this Declaration. The Site Plan is for illustrative purposes only, and the actual location and description of Lots and Common Property will be as established by conveyance from Declarant, to the Initial Owner with respect to Lots, and to the Association with respect to Common Property, whether by conveyance in fee or grant of easement.

1.23. "Special Charge" means a charge, other than an Assessment, levied by the Association in accordance herewith against a Lot and its Owner. Special Charges may include the cost of bringing a particular Owner or Lot into compliance with this Declaration, the Bylaws or rules made pursuant thereto, the cost of any service, material or combination thereof obtained by the Association for the use and benefit of such Owner and his Lot, as provided herein, or any fine levied against an Owner in accordance with this Declaration and the Bylaws.

1.24. "Subdivision" means the Property.

1.25. "Surface Water Management System" means those water management areas within the Subdivision, as defined by Rule 40D – 4.021(5), Florida Administrative Code, including but not necessarily limited to that system designed, 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, overdrainage, environmental degradation, and water pollution or otherwise affect the quantity and quality of discharges from the system.

1.26. "Surface Water Management System Facilities" means those facilities that form a part of the Surface Water Management System, and shall include, but not necessarily be limited to, all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands, and any associated buffer areas, and wetland mitigation areas.

1.27. "Turnover Date" means the earlier of the following dates:

- (a) Three (3) months after the date on which ninety (90%) percent of all Lots in all phases of the Subdivision have been conveyed; or
- (b) That date designated by Declarant in writing as the Turnover Date.

Other capitalized terms used in the Declaration shall have the meanings expressly given to them.

**ARTICLE 2
PROPERTY**

2.01. **Property Subject to Declaration.** The Initial Property is subject to this Declaration. Additional land may be subjected to the Declaration, and thereby become a part of the Property, (a) by Declarant, without consent of the Association or anyone else prior to the Turnover Date, or (b) by the owner of such land with the consent of (i) the Declarant prior to the

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Completion Date and (ii) the Association thereafter. Association consent shall require approval by the Owners of sixty-seven (67%) percent of all Lots then in the Subdivision.

2.02. Withdrawal of Property. Any property submitted to this Declaration may be withdrawn therefrom prior to the Completion Date by the Declarant if the Declarant is the owner thereof. Upon withdrawal, such property shall no longer be a part of the Property.

ARTICLE 3 MEMBERSHIP IN ASSOCIATION

3.01. Membership. Membership is appurtenant to the ownership of a Lot and terminates upon the termination of an Owner's interest in a Lot. Each Owner accepts membership and agrees to be bound by this Declaration, the Articles and Bylaws, copies of which are attached hereto as Exhibits B and C, respectively, and the rules and regulations adopted pursuant thereto. There shall be no other Members except the Declarant (prior to the Turnover Date).

3.02. Voting Rights. There are three types of membership, Regular Membership, Builder Membership and Declarant Membership. Regular Members are all Owners other than the Builder Members and the Declarant. Regular Members and Builder Members are entitled to one vote for each Lot in which such Members hold an ownership interest. There is one vote for each Lot. Declarant Members are the Declarant and any successor or assignee of Declarant having an interest in the Subdivision for the purpose of development and sale. The Declarant has three times the total number of votes held by Regular Members and Builder Members, plus one. Declarant Membership shall terminate on the Turnover Date. After the Turnover Date, Declarant Members who then own Lot(s) shall become Builder Members.

3.03. Control of Board. The Declarant shall have the right to designate, appoint and remove all members of the Board prior to the Turnover Date. For all elections for the Board as of the Turnover Date and thereafter, a majority of the Board shall be elected by Members other than Declarant and Builder Members. Of the remaining members of the Board, the Declarant is entitled to elect at least one member of the Board so long as the Declarant holds for sale in the ordinary course of business at least five (5%) percent of the Lots in the Subdivision. Directors designated by Declarant need not be Members.

ARTICLE 4 COMMON PROPERTY

4.01. General Description of Common Property. The Common Property will include such real property and interests therein, with any improvements thereto, including easements, rights of way, licenses, use rights and servitudes, and items of tangible personal property, (a) that are now or may hereinafter be specifically set aside, designated, reserved, granted, assigned, transferred or deeded to the Association, or (b) that some use thereof or right therein is made available to the Association and/or its Members, or (c) that is otherwise established and designated as Common Property by Declarant, or by others with the written consent of Declarant prior to the Completion Date, and with the written consent of the Association thereafter. Common Property may also be acquired by the Association after the Completion Date. Common Property shall include, but is not necessarily limited to, those ownership and other interests, improvements, systems, facilities, items and other things described as Common Property in this Declaration or any Supplemental Declaration or amendment hereto, or so designated in any

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instrument establishing, transferring or creating such interest or right.

4.02. Uses and Purposes of Common Property. It is anticipated that the Subdivision may contain Common Property committed to the following uses and purposes. This listing shall in no event preclude Common Property, the use or purpose of which is other than listed herein, nor shall it limit the rights of Declarant otherwise set out in this Declaration.

- (a) **Small Parcels.** Certain small parcels of property, of insufficient size or shape for use as a Lot, may be conveyed by Declarant to the Association as Common Property. Such small parcels may also be used for landscaping and irrigation, at the option of Declarant prior to the Turnover Date, and at the option of the Board thereafter. Additionally, portions of the small parcels may contain parts of the Surface Water Management System Facilities.
- (b) **Vacated Areas.** Certain rights of way for streets and alleys, as reflected on the Plat, which Declarant has determined, in its discretion, not to be necessary to provide legal and practical access to the Lots, have been vacated, and all or parts thereof, at Declarant's discretion, may either be incorporated into Lots, or be conveyed to the Association as Common Property. Such vacated rights of way so conveyed to the Association shall be preserved largely in their natural state, and shall serve as a buffer and separation between the Lots abutting such areas. Such areas may be used for underground utilities, and, in the discretion of the Board, for such passive recreational uses, such as walking and hiking, as may be approved by the Board.
- (c) **Surface Water Management System Facilities.** The Surface Water Management facilities are located on land that is designated Common Property pursuant to this Declaration, are located on land that is owned by the Association, or located on land that is subject to an easement in favor of the Association and its successors. All such land, interests in land, and facilities that form a part of the Surface Water Management System shall be Common Property.
- (d) **Entry.** Within and upon other Common Property, or upon any easement over any part of a Lot granted for such purpose, there may be one or more areas with entry features, announcing the entry into the Subdivision. Such areas may contain entry signage, lighting, landscaping, entry walls, fences, posts or other architectural features, electrical and other utility installations and facilities, and irrigation systems. Such areas as so installed initially by the Declarant, and as they may be modified thereafter by the Association, shall be Common Property and maintained by the Association.
- (e) **Drainage Easements and Utility Easements.** Those "Drainage/Landscape Easements" and "Utility Easements" established pursuant to Section 4.03, to the extent of the Association's interest therein, shall be deemed Common Property.
- (f) **Shared Use Rights.** Shared Rights (hereinafter defined) established pursuant to Section 4.07 shall be Common Property.

4.03. Drainage and Utility Easements. There is hereby created and established perpetual, non-exclusive easements over, across, under and through (i) those parts of the Lots lying adjacent to and within twenty-five (25) feet of the right of way of any public street or highway reflected on the Plat (the "Drainage/Landscape Easements"), and (ii) those parts of the Lots

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lying within twelve and one-half (12.5) feet of all Lot boundaries other than those adjacent to a public street or highway as reflected on the Plat (the "Utility Easements"). For the purposes of this Section, Drainage/Landscape Easements shall be established and continue, notwithstanding that certain parts of a street right of way adjacent thereto may have been vacated and subsequently conveyed to the Association as contemplated by Section 4.02(b).

- (a) Both the Drainage/Landscape Easements and the Utility Easements shall be for the purposes of drainage and utilities, and shall be in favor of the Declarant (prior to the Turnover Date), the Association, governments having jurisdiction, Peace River Electric Cooperative, Inc., GTE of Florida, Incorporated, and other suppliers of utility services, as the context may require. Declarant, prior to the Turnover Date, and the Association thereafter, may grant or assign additional non-exclusive easements to governments having jurisdiction and suppliers of utility services for the purpose of confirming rights with respect to the installation, maintenance, repair and replacement of drainage and utility services and facilities within such easements, such grants or consent to be without necessity of approval by the Owners. For the purposes hereof, utilities shall mean potable water supply, sanitary sewer service, irrigation water supply, electric power, gas, telephone, cable TV and other telecommunication services, and other services commonly recognized as utility services or determined by the Board to be a utility service. The purpose of such easements shall include the right to install, maintain, repair, replace and operate such drainage and utility installations and facilities, together with the reasonable right of access associated with carrying out such other purposes.
- (b) The Drainage/Landscape Easements shall also be for the purpose of landscaping, whether such landscaping be furnished and installed by the Declarant, prior to the Turnover Date, or thereafter by the Association with approval by the Owners of sixty-seven (67%) percent of all Lots in the Subdivision. The Association shall maintain, repair and replace all landscaping so installed as a Common Expense. The Declarant, prior to the Turnover Date, and the Association through the Board thereafter, may from time to time enter into agreements with Owners of Lots, under the terms of which portions of such landscaping located within the Drainage/Landscape Easements or any portion of a adjacent right of way or Designated Right of Way may be irrigated by use of a well and pump located on a Lot and maintained by the Owner of such Lot. So long as such agreement or agreements are in effect, the Association shall, as a Common Expense, maintain, repair and replace all irrigation facilities and lines extending to the pump located on such Lot, and shall reimburse the Owner of such Lot(s) such reasonable amounts to defray costs of electricity and maintenance of such pump and well as may be provided in such separate agreements. Nothing contained herein shall obligate the Association to provide such irrigation in the absence of such agreements with the Owners of adjacent Lots, or after such agreements may have expired or been terminated in accordance with their terms.

4.04. Members' Easement of Enjoyment. Every Member shall have a non-exclusive easement for the use and enjoyment of the Common Property for its intended purposes. Said easement is appurtenant to, and passes with such Member's Lot. Any Owner may delegate his right of use of the Common Property to the members of his family, tenants or social guests, subject to this Declaration. No Owner may exempt himself from personal liability for Assessments nor release the Lot owned by him from the liens and charges for such

Assessments by waiver of the use and enjoyment of the Common Property, or the non-use thereof, or by abandonment of his Lot. The rights and easements of enjoyment in the Common Property are subject to reasonable rules and regulations governing the use of the Common Property adopted by the Board pursuant hereto, the terms of this Declaration, and the rights of County.

4.05. Title to Common Property. Declarant agrees that it will transfer the Common Property to the Association no later than ninety (90) days after the Turnover Date, such transfer to be free and clear of all liens and encumbrances, except ad valorem taxes for the year in which the transfer takes place, the provisions of this Declaration, and easements, other rights and reservations of record, none of which shall unreasonably interfere with the use of the Common Property for its intended purpose. Any conveyance shall be by fee simple deed, and the Association agrees to accept such deed. Declarant shall not be obligated to provide any title insurance or a survey of the Common Property. Prior to such transfer, Declarant may retain ownership of any and all parts of the Common Property, subject to the Members' easement of enjoyment, and may encumber all or any part thereof by such mortgages as Declarant may determine. Notwithstanding retained ownership by Declarant, the Association shall be required to carry out its maintenance and other responsibilities with respect to such parts of the Common Property as have been made available for the use of the Members.

4.06. Easements for Surface Water Management System. The Surface Water Management System shall include perpetual, non-exclusive easements over all parts of the Subdivision forming a part of the Surface Water Management System, including any area included within or supporting Surface Water Management System Facilities. Easements for the establishment, maintenance, inspection, monitoring, existence and operation of the Surface Water Management System are hereby established, created, reserved and granted in favor of Declarant (prior to the Completion Date), the Association, government agencies having jurisdiction, and the Owners of all Lots served or benefited thereby. Each such easement shall include the reasonable right of access for the purposes of carrying out any maintenance or other obligations with respect to the Surface Water Management System.

4.07. Shared Rights. Declarant hereby grants to the Residents (hereinafter defined) of this Subdivision, the right to use certain Shared Facilities (hereinafter defined) located and to be located in The Preserve at Panther Ridge (the "Preserve"), on the terms and conditions set forth in this Section 4.06.

- (a) **Definitions.** For the purposes of this Section 4.06, the following terms have the following meanings:
- (i) **"Participating Association"** means an Association responsible for operating a Participating Subdivision.
 - (ii) **"Participating Subdivision"** means a community whose Residents have Shared Rights in a Shared Facility.
 - (iii) **"Preserve Association"** means the Preserve Community Association, Inc., the Association responsible for administering the Preserve in accordance with the Preserve Declaration.
 - (iv) **"Preserve Declaration"** means the Declaration of Protective Covenants for The Preserve at Panther Ridge, recorded in O.R. Book 1585, Page 1541, of the Public Records, as it has been or may be amended or

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supplemented from time to time.

- (v) **"Prorata Share"** means, with respect to each Shared Facility and Participating Association, a fraction, the numerator of which is the number of Lots in the Participating Subdivision administered by such Participating Association, and the denominator of which shall be the total number of lots in all Participating Subdivisions.
 - (vi) **"Residents"** means the owner of any Lot (which term shall, for the purposes of this Section, include a lot, condominium, or cooperative unit or other residential parcel) within a Participating Subdivision, or such owner's tenant if his lot is leased and the members of such person's family, and their respective invited guests.
 - (vii) **"Shared Expense"** means the total cost and expense of operating, administering and maintaining a Shared Facility.
 - (viii) **"Shared Facility"** means a designated recreational or other facility or amenity located in a Participating Subdivision, in which Shared Rights are granted to Residents of other Participating Subdivisions.
 - (ix) **"Shared Rights"** means the right of Residents of Participating Subdivisions to use, in common with Residents of other Participating Subdivisions, a Shared Facility.
- (b) **Shared Facilities in Preserve.** The Residents of this Subdivision are hereby granted Shared Rights in the Community Park, all Neighborhood Parks, and the Rail Trail, as located and to be located in the Preserve, and as defined and described in the Preserve Declaration. The Community Park, Neighborhood Parks and Rail Trail are Shared Facilities, this Subdivision is a Participating Subdivision with respect thereto, and the Association is a Participating Association with respect thereto. Likewise, the Preserve is a Participating Subdivision and the Preserve Association is a Participating Association. Declarant has reserved, pursuant to the Preserve Declaration, the right to grant additional Shared Rights in such Shared Facilities.
- (c) **Conditions of Shared Use.** The Shared Rights in the above described Shared Facilities shall be subject to the terms and conditions of the Preserve Declaration, and reasonable rules and regulations promulgated from time to time by the Preserve Association, provided same are not discriminatory against Residents of this Subdivision.
- (d) **Payment of Prorata Share.** The Association shall be responsible for a Prorata Share of the Shared Expense with respect to the Shared Facilities described herein. Such Prorata Share shall be a Common Expense of this Association. The Preserve Association will include in its annual budget its estimate of the Shared Expense with respect to the Community Park, all Neighborhood Parks and the Rail Trail. The Preserve Association shall certify to the Association the budget amount of the Shared Expense. In preparing and adopting its budget, the Association shall include its Prorata Share of the estimated Shared Expense. Should the actual expense of operation, administration and management of the Shared Facilities be less than such budget amount, then the excess Prorata

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Share paid by the Association shall be a credit against the Association's liability for the next year. Should the actual expense of operation, administration and management of the Shared Facilities exceed such amount, then the Association is responsible for its Prorata Share of such excess. The Preserve Association shall certify to the Association whenever the actual Shared Expense exceeds the estimated and budgeted amount, and the Association shall remit its Prorata Share of such excess to the Preserve Association within a reasonable time after such certification, not to exceed thirty (30) days. Likewise, the Association will remit to the Preserve Association its Prorata Share of the estimated Shared Expense as reflected in the Preserve Association's budget prior to March 1st of each fiscal year. If the Association fails or refuses to pay to the Preserve Association any amount for which the Association is responsible, then such amount shall bear interest at the maximum rate permitted by law from the due date thereof until paid. Should it become necessary for the Preserve Association to engage the services of an attorney in order to collect funds from the Association hereunder, then the Preserve Association shall be entitled to recover from the Association all costs of such collection, including reasonable attorney's fees, whether collected by suit or otherwise. The Prorata Share attributable to the Association, together with any other amounts payable by the Association pursuant to this Section 4.07, shall be a Common Expense.

ARTICLE 5 ASSESSMENTS

5.01. Personal Obligation and Lien for Assessments. Each Owner covenants and agrees to pay to the Association all Assessments levied with respect to each Lot in which such Owner has an ownership interest. Each Assessment, together with Delinquency Charges (hereinafter defined) levied with respect thereto, is the personal obligation of the Owner of a Lot at the time when the Assessment is due and shall remain the personal obligation of such Owner notwithstanding that such Owner may no longer own the Lot. Additionally, an Owner is jointly and severally liable with the previous Owner of a Lot for all unpaid Assessments (and applicable Delinquency Charges) that come due up to the time of transfer of title to the Lot. This liability is without prejudice to any rights and obligations the successive Owners may have for the ultimate allocation of liability between them in accordance with any agreements they may have. All Assessments, together with Delinquency Charges, shall also be a charge on the land and a continuing lien upon the Lot with respect to which such Assessment is levied. The Association may record in the Public Records a "Notice of Lien" setting forth amounts claimed due the Association as to any one or more Lots. The execution and recording of such notice is not required in order for the continuing lien for Assessments to be valid.

5.02. Purposes of Assessments. Assessments levied by the Association shall be used only for the purposes set forth in this Declaration, the Articles and Bylaws.

5.03. Budget. For each fiscal year, the Board shall prepare and adopt an annual budget reflecting the estimated revenues and expenses for the fiscal year and the estimated surplus or deficit as of the end of the year immediately preceding the fiscal year. The budget shall include any amounts established for reserves and may include reasonable contingency funds. Each Member shall be provided either with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member. Such copy must be provided within 10 business days after receipt of a written request by the Association. The budget shall be adopted not later than thirty (30) days prior to the beginning of each fiscal year.

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Estimated revenues shall include the proposed Regular Assessments. Failure of the Board to prepare, submit or adopt a budget in a timely manner or as otherwise provided herein shall not affect the validity of the budget once adopted, nor any Assessment adopted by the Board.

5.04. Regular Assessments. Upon adoption of the annual budget, the Board shall levy an annual Regular Assessment against each Lot subject to assessment in the amount reflected in the budget. The Board shall also determine the time and manner of payment of the Regular Assessment. Written notice of the Regular Assessment shall be sent to every Owner. Each Owner shall thereafter pay the Regular Assessment to the Association at such times and in such installments as may be established by the Board and set forth in such notice. If the Regular Assessment is payable in installments, it shall not be necessary to send a notice to each Owner for each installment, a single notice being sufficient.

5.05. Special Assessments. In addition to the recurring Regular Assessment, the Association may levy such Special Assessments as are determined to be necessary or desirable in carrying out its responsibilities and duties under this Declaration. The amount and purpose of all Special Assessments shall be established by the Board, unless otherwise provided. All Special Assessments shall be due and payable at such times and in such installments as may be determined by the Board. No Special Assessment for improvements to, rather than maintenance of, the Common Property may be levied unless approved by two-thirds vote of the Owners. The Declarant shall not be liable for any Special Assessment prior to the Completion Date, unless the Declarant consents thereto in writing.

5.06. Sharing of Common Expense. Lots shall each bear an equal share of the Common Expense. All Assessments for Common Expenses shall be levied in the proportion by which the Lots share the Common Expense, each Lot bearing an equal share.

5.07. Commencement of Regular Assessments. Regular Assessments shall commence effective as of the first day of the month immediately following the month in which the Declaration is recorded in the Public Records.

5.08. Special Charges. Special Charges shall be levied by the Board against a Lot and its Owner in the following circumstances: (a) to reimburse the Association for costs incurred in bringing the Owner of such Lot into compliance with this Declaration, the Bylaws or Rules and Regulations promulgated pursuant thereto, (b) if the Association provides materials or services that benefit individual Lots, but which can be accepted or not by the Owner, then the amount paid or incurred by the Association on behalf of an Owner accepting or subscribing to such material or service shall be a Special Charge against such Owner and his Lot, and (c) any fine approved and assessed pursuant to the Bylaws shall be a Special Charge with respect to the Owner against whom such fine is levied. Each Owner covenants and agrees to pay to the Association all Special Charges levied with respect to each Lot in which such Owner has an ownership interest. Each Special Charge, together with Delinquency Charges with respect thereto, is the personal obligation of the Owner of a Lot at the time a Special Charge is due, and remains the personal obligation of such Owner notwithstanding that such Owner may no longer own a Lot. An Owner is jointly and severally liable with the previous Owner for unpaid Special Charges (and applicable Delinquency Charges) that came due prior to the transfer of title. Special Charges shall be a charge on the land and a continuing lien upon the Lot with respect to which Special Charge was levied, in the same manner as provided generally for liability for, and the lien of, Assessments as set forth in Section 5.01. Likewise, the Association may record a "Notice of Lien" with respect to Special Charges in the same manner as provided for Assessments in Section 5.01.

5.09. Certificate of Payment. The Association shall, upon request, furnish to any Owner a certificate in writing signed by an officer or authorized agent setting forth whether the Assessments and Special Charges on a specified Lot have been paid, and the date and amount, if known, of the next Assessments or installments coming due, together with the amount of any Delinquency Charges. Such certificate shall be conclusive evidence of payment of any Assessment and Special Charge therein stated to have been paid as to third parties without notice of facts to the contrary.

5.10. Reserves. The Board may establish reserve accounts funded from Regular Assessments in reasonable amounts for such purposes and in such categories as are determined by the Board.

5.11. No Offsets. All Assessments and Special Charges shall be payable in the amount specified and no offsets shall be permitted for any reason, including without limitation, a claim that the Association is not properly exercising its authorities and carrying out its responsibilities as provided in this Declaration.

5.12. Rights of Mortgagees. Assessments and Special Charges against a Lot accruing prior to the recordation of a mortgage or after the acquisition of title as a result of foreclosure or conveyance in lieu of foreclosure shall be a lien against such Lot in the manner generally provided for herein. The lien of all Assessments and Special Charges provided for herein which accrue and become due and payable with respect to any Lot after a first mortgage is recorded with respect thereto, but prior to the transfer or conveyance of title as a result of a foreclosure or a conveyance in lieu of such foreclosure, shall be subordinate to the lien of such first mortgage, except for any such Assessments or Special Charges that are secured by a Notice of Lien recorded in the Public Records prior to the recordation of such first mortgage. As to mortgages other than first mortgages of record, the lien of the Association for Assessments and Special Charges is superior to the lien of such mortgage.

5.13. Delinquency Charges. All Assessments, Special Charges and other amounts due the Association pursuant to this Declaration that are not paid within 15 days of the due date shall thereafter bear interest at the highest rate permitted by law then in effect, or such lower rate as the Board may from time to time determine. Further, if any Assessment or Special Charge is not paid within 15 days of its due date, then a late charge shall be levied. The initial late charge shall be \$10.00. The Board may from time to time increase the amount of the late charge authorized hereby, taking into consideration the declining purchasing power of the United States dollar, the costs reasonably expected to be incurred by the Association as a result of following up such delinquency, and the effectiveness of such late charge in assuring prompt and timely payment of Assessments and Special Charges. The liens in favor of the Association shall secure the amount of the Assessment or Special Charge, as applicable, all interest accruing thereon, late charges and all costs incident to the collection thereof including a reasonable attorney's fee, whether enforced by suit or otherwise and, if by suit, whether at trial or any appellate level, and including fees for paralegals. The Association shall be entitled to recover such interest, late charges, costs and fees from any Owner personally liable for the Assessment or Special Charge as to which they apply. Such late charges, interest, costs and fees shall be collectively referred to as "Delinquency Charges."

5.14. Remedies of Association Upon Non-Payment. If any Assessment or Special Charge or installment thereof is not paid within 15 days after the due date specified by the Board, then such Assessment or Special Charge (including the full amount of any such Assessment or Special Charge accelerated by the Board in accordance with the Bylaws) shall be delinquent and shall, together with Delinquency Charges with respect thereto, be a continuing lien on the Lot

against which such Assessment or Special Charge was levied, binding the Owner thereof, his heirs, personal representatives, tenants, successors and assigns. Prior to bringing an action for foreclosure of a lien, the Association shall record a Notice of Lien among the Public Records unless in the opinion of the Board recording such notice is contrary to or prohibited by any then existing court order, statute or rule. A copy of such notice, whether recorded or not, shall be sent to the then Owner by United States mail, either certified or registered, return receipt requested at the Owner's address on the Association's records. Failure of the Association to obtain a receipt shall not prevent enforcement of a lien. If such Assessments or Special Charges, together with Delinquency Charges with respect thereto, are not paid in full within thirty (30) days after the date such notice is deposited in the United States mails, then thereafter the Association may institute suit to foreclose its lien. The recorded Notice shall secure not only the Assessments, Special Charges and Delinquency Charges reflected therein, but all unpaid Assessments and Special Charges, and Delinquency Charges with respect to all such amounts, which may accrue subsequent to the recordation of such Notice and prior to the entry of a final judgment of foreclosure. The Association may at any time bring an action at law with respect to any Assessments or Special Charges and Delinquency Charges then due and payable but which have not been paid. Upon the timely payment or other satisfaction of all amounts specified in a Notice of Lien and all other Assessments, Special Charges and amounts which have become due and payable with respect to such Lot as to which such notice was recorded, together with Delinquency Charges as may be applicable, the Association shall furnish a release of such notice in recordable form, but shall not be responsible for the cost of recording.

5.15. Declarant Assessment. Declarant is obligated to pay any operating expenses incurred by the Association which exceed the sum of (a) Assessments receivable from Members other than Declarant, and (b) other income of the Association, which may include Capital Contributions (the "Deficiency"). Notwithstanding any provision of this Declaration, the Articles or Bylaws to the contrary, Declarant shall not be obligated for, nor subject to, any Assessment for any Lot that it may own, for the period of time beginning on the date of recording of the Declaration and ending when the Declarant's obligation to fund the Deficiency is withdrawn or deemed withdrawn hereunder. Declarant's obligation to pay the Deficiency may be withdrawn by Declarant at any time, and if not sooner withdrawn, shall be deemed withdrawn on the Completion Date. In no event shall Declarant be liable for any Special Charge with respect to any Lot it owns prior to the Completion Date, except with respect to any materials or services which Declarant agrees in writing to secure through the Association.

5.16. Capital Contribution. At the time legal title to a Lot is conveyed by Declarant to an Owner, there shall be a one time contribution in the amount of \$300.00 (the "Capital Contribution") payable to the Association by such Owner. Capital Contributions may be expended for regular Common Expenses, added to reserves, or set aside for improvements, contingency for other purposes as may be determined by the Board.

ARTICLE 6 DUTIES AND POWERS OF ASSOCIATION

6.01. General Duties and Powers. In addition to the duties and powers enumerated herein and under the Articles and Bylaws, and without limiting the generality thereof, the Association shall:

- (a) levy and enforce Assessments and Special Charges and otherwise enforce this Declaration, the Articles, Bylaws and rules and regulations adopted pursuant thereto by appropriate means and carry out the duties and authority of the

Association hereunder;

- (b) contract for and maintain such policy or policies of insurance as may be required hereunder or as the Board deems necessary or desirable;
- (c) have the power of entry upon any Lot as reasonably necessary in connection with the carrying out of Association responsibilities hereunder;
- (d) have the power to negotiate and contract for such materials and services for the benefit of Owners who subscribe to or elect to accept such materials or services, with payment for same to be (i) separately billed to the Owners or (ii) advanced by the Association with the cost thereof assessed against the Owner(s) who subscribe to or accept such materials or services as a Special Charge;
- (e) maintain, own, regulate and otherwise manage and operate the Common Property;
- (f) have the power and authority to grant easements with respect to the Common Property, or to transfer Common Property or any interest therein to any public authority or utility in connection with exercise of the right of eminent domain, or to transfer maintenance responsibilities to governmental authorities as contemplated hereby, all without the consent or joinder of any Member.
- (g) have the authority, duty and responsibility for the operation and maintenance of the Surface Water Management System Facilities. Operation and maintenance and reinspection reporting shall be performed in accordance with the terms and conditions of the Environmental Resource Permit (the "ERP") issued with respect to the Subdivision by the Southwest Florida Water Management District (the "District").
- (h) have the authority to acquire or accept land, interests in land, and personal property as Common Property, and to maintain, repair, improve, replace, operate and manage any such property as required by this Declaration or as determined by the Board in a manner not inconsistent with this Declaration.
- (i) have the authority to maintain, or supplement the maintenance of, any landscaping, irrigation or other improvements, within or adjacent to any street or road within or adjacent to the Subdivision, or the improvements to such street or road, to the extent that same is not maintained by public authorities at an acceptable level, as determined by the Board.
- (j) have the authority, in the discretion of the Board, to maintain, or participate in the maintenance of, swales located within rights of way and/or Lots. This authority shall not relieve Owners of the primary responsibility for maintenance of swales under Section 8.12 hereof, except to the extent and during the times that the Board may so determine.
- (k) have the power and authority to interpret and construe the provisions of the Declaration and the Bylaws in circumstances in which there is an apparent inconsistency, or such provisions fail to provide clear guidance with respect to specific matters.

6.02. Implied Powers of the Association. The Association shall have all the power and authority reasonably necessary for it to carry out its duties and rights set forth in this Declaration, the Articles or Bylaws, including any right or power reasonably to be inferred from the existence of any other right, power, duty or obligation given to it or reasonably necessary to effectuate its duties hereunder.

6.03. Indemnification by Association. The Association shall indemnify and hold harmless each Owner with respect to all claims, demands, damages and causes of action against such Owner, but only with respect to the following circumstances:

- (a) Any claim of personal injury or property damage arising out of the carrying out by the Association of its right or duty to maintain, repair or replace any improvements, installations or facilities within any easement in favor of the Association located upon such Lot.
- (b) Any lien or claim for payment for services, materials or both with respect to the carrying out of such right or duty of maintenance, repair or replacement by the Association with respect to any such easement in favor of the Association located within such Lot.
- (c) Any other claims for personal injury or property damage arising out the Association carrying out any right or duty pursuant to the Declaration upon or within the Lot of such Owner.

The indemnification provided for herein shall not extend to nor include claims against an Owner based up on the negligence or willful conduct of such Owner or those for whom he is responsible hereunder. Such indemnification shall, however, include the reasonable costs incurred by such Owner in defending any claim to which indemnification is applicable pursuant hereto.

6.04. Dissolution of Association. If the Association is permanently dissolved, as provided in the Articles, the control or right of access to the property containing the Surface Water Management System Facilities shall be conveyed or dedicated to an appropriate governmental unit or public utility, and if not accepted, then the Surface Water Management System Facilities shall be conveyed to a not-for-profit corporation similar to the Association. If the Association is permanently dissolved, all owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of the ERP, unless and until an alternate entity assumes responsibility in accordance with this Section and the provisions of the Articles.

6.05. Certain Provisions With Respect to the Surface Water Management System.

- (a) The District has the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities.
- (b) If the Subdivision has on-site wetland mitigation, as defined by the District, which requires ongoing monitoring and maintenance, the Association shall allocate sufficient funds in its annual budget for monitoring and maintenance of the wetland mitigation area(s) each year until the District determines that the area(s) is/are successful in accordance with the ERP issued by the District with respect to the Subdivision.

ARTICLE 7 INSURANCE AND RECONSTRUCTION

7.01. Insurance by Association. The Association shall obtain and continue in effect such insurance in such amounts and coverages as the Board shall from time to time determine to be appropriate, necessary or desirable. All costs associated with such insurance shall be a Common Expense.

7.02. Owner's Insurance. Each Owner shall be responsible for obtaining and maintaining in effect all such casualty, liability and other insurance with respect to such Owner and such Owner's Lot as the Owner may from time to time determine. The Association shall not obtain any such insurance on behalf of an Owner, nor shall the Association insure the Lots or improvements thereto in any manner.

7.03. Destruction of Improvements. If any structure upon a Lot is substantially damaged or destroyed, the Owner thereof shall, within a reasonable time after such casualty, remove all debris and portions of the improvements that cannot be preserved for incorporation into the replacement structure. Dangerous conditions shall be addressed and neutralized immediately. The Owner shall either repair, rebuild or reconstruct the improvements as soon after such casualty as may be practical, or raze and remove such damaged structure. If an Owner fails to comply the Association shall have the right to do so on behalf of such Owner pursuant to Section 8.13, and the cost thereof shall be levied against such Owner and his Lot as a Special Charge.

ARTICLE 8 USE RESTRICTIONS

The following restrictions, conditions and agreements are hereby imposed upon the Subdivision and shall apply to all Owners and their tenants and their respective guests, families, invitees, agents, employees, contractors, licensees and all other persons occupying such Lots or in actual or constructive possession or control thereof.

8.01. Residential Use. Each Lot shall be used for single family residential purposes only in accordance with applicable zoning and governmental land use regulations and this Declaration. No dwelling structure shall be occupied by more than one family, its domestic employees, and guests.

8.02. Vehicles. The following provisions shall govern the parking of vehicles within the Subdivision.

- (a) Passenger vehicles, including cars, station wagons, passenger vans, passenger minivans, sport utility vehicles and pickup trucks providing primary transportation for one or more residents of a Lot, and other vehicles primarily intended and used to provide transportation for passengers, may be parked and kept within any Lot in numbers not deemed unreasonable by the Board.
- (b) Tractor trailers, oversized trucks and other commercial vehicles shall not be kept or parked within the Subdivision, except for temporary loading and unloading.

Recognizing that classification and use of vehicles evolves over time, and that on occasion it may be difficult to determine if a specific vehicle or vehicle type is permitted, restricted or prohibited by this Section, it is the intent of this Section that standard size vehicles, the purpose

and use of which is predominantly for personal transportation, are permitted under Subsection (a), notwithstanding that such vehicle may have lettering or a sign attached to or painted on the side of such vehicle announcing a commercial enterprise or that the vehicle may also be used for transportation of passengers carrying out commercial enterprises. Vehicles prohibited under Subsection (b) are those which by design, nature, use or appearance are clearly commercial vehicles of significant size, the parking of which within the Subdivision would tend to degrade the appearance and values of the Subdivision. The Board shall have the authority from time to time to adopt and amend standards of interpretation of this Section, providing in more detail for the delineation of different vehicles and different vehicle types, and the Board may further determine which category is applicable to a specific vehicle. In making such decisions, the Board may take into consideration the general condition and appearance of the vehicle in question. All such determinations and standards adopted by the Board shall be conclusive for all purposes hereunder.

8.03. Recreational Vehicles. No trailer, camper, motor home, boat, boat trailer, canoe, motorcycle or other recreational vehicle shall be permitted to remain upon a Lot other than for temporary parking, unless parked or stored either within an enclosed garage, or behind the primary residential structure on the Lot and between the side setback lines. Such storage areas shall be fenced, buffered or otherwise shielded as may be required by the ARB. For the purposes hereof, temporary parking shall mean no more than 24 hours, whether consecutive or not, out of any consecutive seven day period. In no event shall any such vehicle be used to provide living or sleeping accommodations while parked within the Subdivision. -

8.04. Inoperative Vehicles. No inoperative vehicle may be kept on any Lot unless kept within an enclosed garage.

8.05. Animals. The keeping of any animals, other than domestic cats and dogs, tropical fish and caged birds, is prohibited throughout the Subdivision. No animals shall be kept within the Subdivision for any commercial purpose, or in such a manner as to cause noxious odors to escape to nearby Lots. The Association may require the removal of any dog whose barking creates an unreasonable disturbance or annoyance to any occupant of the Subdivision in a sustained, recurring or persistent manner.

8.06. Trash. Weeds, trash, rubbish, garbage, debris and other unsightly material shall not be allowed to accumulate on any Lot and shall promptly and regularly be removed therefrom. All garbage, trash, refuse and rubbish shall be deposited and kept in enclosed containers appropriate to their contents. Such containers shall be maintained in a clean and sanitary condition.

8.07. Nuisances. No noxious or offensive activity shall be carried out on any Lot, nor shall anything be done or placed thereon that is or may become a nuisance, or cause unreasonable disturbance or annoyance to any occupant of the Subdivision, or cause unreasonable interference with the peaceful enjoyment of any Lot.

8.08. Temporary Structures and Mobile Homes. No structure of a temporary nature and no mobile home may be kept within the Subdivision.

8.09. Signs. No sign shall be permitted upon any Lot within the Subdivision, other than the following:

- (a) One sign of a reasonable size, as approved by the Architectural Review Board, containing the names of the residents, street address or both.

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- (b) One sign announcing that the Lot is "For Sale," including usual or customary information provided in such signs, provided that such sign (including all component parts thereof other than supports) shall not exceed 10 square feet in area.
- (c) During the period of construction activity only, one sign announcing the name of the contractor, not to exceed a total area (exclusive of supports) of ten (10) square feet. Such sign shall be removed promptly upon completion of construction activity, and in all events, within ten (10) days thereof.
- (d) Political signs of reasonable size and numbers, espousing candidates or issues on local ballots during the period of campaigning, all such signs to be removed within seven (7) days of the final election with respect to such candidate or issue.

The Architectural Review Board may, in its discretion, grant approval for additional temporary signs and displays not contemplated hereby, including signs for model homes. In calculating sign area, only one side of the sign shall be considered.

8.10. Commercial Activities Prohibited. The Subdivision is a residential community, and no commercial structures or activities are permitted within the Subdivision.

8.11. Miscellaneous Visual Restrictions. No clothes lines or clothes poles shall be erected, and no outside clothes drying is permitted. The personal property of residents shall be kept inside the dwelling or other structure, or within a fenced or walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be kept in a neat and good condition.

8.12. Maintenance of Lots. Each Owner shall maintain his Lot and the Improvements located thereon in a good condition and state of repair. Once a Lot is cleared, the lawns and landscaped areas thereof shall be maintained in good condition, including that area located within any right of way adjacent to the Lot between the Lot line and the improved street. An Owner's liability for maintenance shall also include mowing and other maintenance of any adjacent swales, whether it upon his Lot or within such unimproved road right of way adjacent to such Lot.

8.13. Right of Association to Maintain. If an Owner fails to maintain his Lot, or any adjacent property such as, but not limited to, swales pursuant to Section 8.12, as required hereby, or to comply with Section 7.03, then after notice as herein provided, the Association may perform such maintenance, clearing of debris or other functions (the "Required Actions"). All costs of such Required Actions shall be assessed to the particular Owner(s) and his or their Lot(s) as a Special Charge. Until so collected, such costs shall be treated as a Common Expense. In proceeding under this Section, the Association shall employ the procedures hereinafter set forth:

- (a) Upon finding by the Board of a deficiency in the carrying out of any Required Actions, the Board shall provide notice thereof in writing to the responsible Owner, briefly describing the deficiency and setting forth the action needed to correct the deficiency.
- (b) If the Owner does not correct such deficiency within the earlier of twenty-five (25) days after mailing such notice, or twenty (20) days after receipt of such notice,

then thereafter the Board may give notice to the Owner of the Board's intention that the Association shall perform such Required Actions.

- (c) Thereafter, the Association may effect such Required Actions.
- (d) All such Required Actions by the Association shall take place only during daylight hours on weekdays, excluding holidays.

8.14. No Further Subdivision. No Owner may subdivide a Lot nor convey or create any other possessory interest in less than the entire Lot.

8.15. Non Ingress-Egress Easement. There is hereby established, created and reserved a perpetual, non-exclusive easement over all parts of Lots in the Subdivision lying within five (5) feet of the right of way of State Road 70, as such right of way now exists or may hereafter be reconfigured. The purpose of such easement is to prohibit all vehicular access, and ingress to such Lots from such adjacent road, and egress from such Lots to such adjacent road. Said easement is hereby granted to the Association, its successors and assigns, and each conveyance of a Lot shall be subject to a reservation of such easement in favor of the Association, its successors and assigns.

ARTICLE 9 BUILDING REVIEW

9.01. Building Review. No buildings, garages, outbuildings, sheds or other structures, excavation, landscaping, sod, grass or other ground cover, borders, planters, irrigation systems, fences, walls, tennis courts, other athletic facilities and installations, screen enclosures, pools, patios, solar energy device, decorative structures, containers or other installations, devices, equipment, or any other improvement on a Lot that will alter the appearance of the Lot or existing improvements thereto when viewed from adjacent Lots or Common Property or an adjacent street or road (collectively the "Improvements," and individually an "Improvement") shall be constructed, reconstructed, altered, or installed until the design, materials and location thereof has first been approved in writing by the Architectural Review Board.

9.02. Application. Requests for ARB approval of proposed Improvements shall be in writing, shall be on such application form or forms as may be promulgated from time to time by the ARB, and shall be accompanied by such plans, specifications, site plans, drawings, samples and other materials as may be reasonably required by the ARB in order to evaluate the proposal. The ARB may waive formalities in the approval process. The ARB shall review and evaluate all applications within thirty (30) days after receipt of all such materials required, and either approve, disapprove or approve in part and disapprove in part.

9.03. Conditional Approval. The ARB may issue a conditional approval of proposed Improvements, specifying that the proposed Improvements will be approved, provided the Owner agrees to specified conditions. Such conditions may include, but shall not be limited to, locating the proposed Improvements at a different location within the Lot, altering colors, materials or other features of the proposed Improvement, shielding or screening proposed Improvements with landscaping, fences, walls or other materials, modifying exterior design, or such other conditions as will, in the judgment of the ARB, make the proposed Improvements consistent with this Declaration, or that will minimize or eliminate any undesirable feature of the proposed Improvement.

9.04. Time Limitations. Failure of the ARB to approve or disapprove within thirty (30) days after receipt of all materials shall be deemed approval. If Improvements are made without ARB approval, and the ARB does not issue written disapproval thereof for a period of ninety (90) days after completion of such Improvements, then such Improvements shall be deemed approved.

9.05. Compliance With Standards. All Improvements shall comply with the mandatory provisions of Section 9.11 of this Declaration. In addition, the ARB may adopt and modify from time to time design, material and locational criteria and standards for proposed Improvements (the "Architectural Design Guide"). The Architectural Design Guide shall be deemed to include any mandatory or prohibitory provisions of this Declaration, including Section 9.11 hereof. The Architectural Design Guide shall otherwise set forth matters subject to ARB review that are mandated, prohibited or approved, thereby establishing criteria that will assist Owners and provide criteria for the ARB in its review and action upon an application. It is anticipated that the Architectural Design Guide will be adopted for major elements under ARB consideration, as well as lesser items of a recurring nature. The fact that the ARB has not included a particular aspect of a proposed Improvement within the Architectural Design Guide shall not preclude the ARB from taking that aspect into consideration in its review and approval or disapproval of it. Proposed Improvements which are in full compliance with elements of the Architectural Design Guide that are comprehensive with respect to such proposal may be constructed or installed without necessity of formal ARB review and approval, but only if the Architectural Design Guide so provides.

9.06. Review Criteria. The Architectural Review Board shall have broad discretion to approve or disapprove proposed Improvements, including the discretion to approve or disapprove on the basis of esthetics. The Architectural Design Guide is to be a guide to the ARB, and even though an application may comply with all applicable provisions of the Architectural Design Guide, the ARB is not obligated to approve if there are other features of the application of which the ARB does not approve. The ARB may approve of an application which does not comply in all respects with all applicable provisions of the Architectural Design Guide if the ARB, in its sole judgment, determines that the proposed improvements in their entirety merit approval, and any deviation from the Architectural Design Guide will not substantially, materially and adversely affect the Owners and occupants of the Subdivision.

9.07. Appeal. Unless the Board is acting as the Architectural Review Board, any Owner aggrieved by decision of the Architectural Review Board may appeal same to the Board, which shall hold a hearing within thirty (30) days, and either approve, disapprove or modify the decision of the Architectural Review Board.

9.08. Procedural Matters. The ARB may adopt reasonable rules and regulations for the conduct of its authority, and the Board may establish, and modify from time to time, a reasonable schedule of fees for review by the ARB. The ARB, with approval of the Board, may engage the services of architects, landscape architects, engineers or other design professionals, to advise the ARB in carrying out its functions. In such event, costs associated therewith may be taken into consideration in the establishment of any fee schedule. The Association shall maintain records of all ARB proceedings, and shall furnish a certificate in recordable form upon the request of any Owner verifying the compliance or noncompliance of such Owner and his Lot with the Building Review provisions of this Declaration.

9.09. Architectural Review Board. Prior to the Completion Date, unless Declarant shall otherwise specify in writing, the Declarant shall act as the ARB or may appoint the ARB, and may

approve applications or take other actions on behalf of the ARB in Declarant's own name or in the name of the ARB. After the Completion Date, or upon an earlier determination by Declarant, the ARB shall be composed of at least three (3) individuals appointed by the Board, each of whom shall be an Owner or an architect or other licensed design professional. The ARB shall act by simple majority vote. In the event of the death, resignation or removal of any member of the ARB appointed by the Board, the Board shall appoint a successor. No member of the ARB shall be entitled to compensation for, or be liable for claims, causes of action, damages arising out of, services performed pursuant to this Declaration; provided, however, any non-Owner member serving on the ARB may be entitled to reasonable compensation, the cost of which may be taken into consideration in establishing fees for Building Review. Members of the Architectural Review Board shall serve terms established by the Board, and may be removed with or without cause by the Board.

9.10. Disclaimer of Liability. Neither Declarant, the Association nor the ARB or any of its members or advisors shall have any responsibility for the design or quality of materials, construction or structural soundness of any Improvements, nor compliance thereby with any governmental codes or requirements. No liability relating to the construction of Improvements shall result from Declarant, the Association, the ARB, or any consultant engaged by the Association reviewing, approving, or commenting upon any proposed Improvements. Neither the Declarant, the Association, the ARB nor its advisors evaluate applications or proposals to determine whether same meet architectural or engineering standards, or comply with government codes and regulations, nor do they evaluate the quality of workmanship and materials.

9.11. Improvement Standards. Each Lot shall be subject to the following mandatory standards, requirements, prohibitions and criteria for the design, construction and alteration of Improvements to such Lot, except to the extent otherwise expressly provided with respect to Lots within any particular Phase by the Supplemental Declaration adding such phase.

- (a) **Setbacks.** All structures shall be located and set back not less than a minimum distance from the front, rear and each side boundary line of a Lot. Front and rear setbacks are fifty (50) feet. Side setbacks are thirty-five (35) feet. Provided, however, that the Architectural Review Board may grant variances to such setbacks if the Architectural Review Board determines such variance is reasonably necessary in order to preserve a significant tree or other natural attribute of such Lot, or if the ARB determines that the topography of such Lot is such as to make compliance with such setback unreasonable, or if such variance is reasonably necessary to comply with the Governmental Approvals. The ARB may require submission of such plans and supporting materials as it may deem necessary or useful in deciding whether or not to grant a variance. Any variance granted shall be in writing and in recordable form, and shall be recorded in the Public Records at the expense of the applicant. In no event, however, may any setback be less than that required by the Code.
- (b) **Exterior Finish.** Any dwelling or other structure shall have finished exterior walls of brick, stone, painted stucco, painted or stained wood, or prefinished vinyl siding, and a finished roof of fiberglass shingles, concrete, cedar shakes, tile or metal. Notwithstanding the foregoing, the ARB may approve alternate materials for garages and other outbuildings if the ARB determines such materials will present a consistent or complementary appearance to the primary dwelling or other structures located on a Lot. The ARB may condition such approval upon use of specific colors, restricted locations of such structure, and required

landscaping or other screening, as the ARB may deem appropriate.

- (c) **Minimum Area.** No single family residential structure shall be constructed within the Subdivision having fewer than two thousand (2,000) square feet of enclosed, air conditioned living area, exclusive of garages, open or screened porches, patios, balconies and terraces. Any such residential structure containing more than one story shall have no fewer than twelve hundred fifty (1,250) square feet of such enclosed, air conditioned living area on the first floor.
- (d) **Drainage.** All grading, filling and development of a Lot shall be carried out consistent with the Governmental Approvals. No Owner shall cause or permit any filling, grading or other alteration of his Lot which will adversely affect or interfere with the drainage within the Subdivision, or result in a substantial increase in surface water run-off to adjacent parts of the Subdivision so as to cause unreasonable accumulation of standing water thereon.
- (e) **Ancillary Equipment.** All garbage, trash and refuse containers, air conditioning units, oil or fuel tanks, bottled gas tanks, and permanently affixed swimming pool equipment and housing shall be underground or placed in areas attached or adjacent to structures, which areas are substantially enclosed or sheltered by solid or decorative walls (such as shadow block), decorative fences or landscaping, or a combination thereof, so that they shall be substantially concealed or hidden from eye-level view from any road, street or adjacent property.
- (f) **Antennas.** All antennas, masts, satellite dishes, disks or other similar telecommunication sending or receiving devices for which restrictions on location may be regulated by the Federal Communications Commission shall be located as may be approved by the ARB, provided that (i) application may be submitted informally and without fee, (ii) the ARB shall approve of locations that minimize the visual impact of such devices when viewed from adjacent streets and roads, and (iii) in no event shall the ARB impose any restriction on location that unreasonably delays the installation of such device, unreasonably increases the cost of installation, or unreasonably interferes with the quality of signal received thereby. All other such devices are prohibited.
- (g) **Landscaping Criteria.** At the time of the construction of a residential dwelling on each Lot, the Lot shall be landscaped in accordance with a detailed landscaping plan approved by the ARB and thereafter the Lot's landscaping shall be maintained in good condition in accordance with the approved plan. The landscaping plan shall be prepared by a landscape architect, other appropriate design professional or landscaping installation company. The landscaping plan shall meet the following minimum criteria:
 - (i) Maintenance of existing areas within the Lot containing significant trees and native habitats, in order to preserve the existing variety of natural appearance between and among the Lots.
 - (ii) All areas of a Lot, together with those parts of any public right of way lying between a Lot line and an improved street, not occupied by an Improvement (other than landscaping) shall be either sodded with an approved grass as a lawn or landscaped.

- (iii) The landscaping plan shall comply with the requirements of the Architectural Design Guide with respect to location, spacing, size, maintenance, preservation, trimming and replacement of canopy trees. There shall be one (1) canopy tree for every fifty (50) linear feet of frontage of a Lot on an adjacent local street right of way, or any substantial fraction thereof. Canopy trees must be planted within twenty-five (25) feet of the right of way, but not within a swale, and be otherwise located as approved by the ARB. Trees may be spaced no closer together than 25 feet, unless a decorative grouping or alternate method is chosen and approved by the ARB. Existing native trees should be used to fulfill this requirement if they meet the spacing and size requirement. Inasmuch as the mandated trees are replacement trees, they must be preserved, properly trimmed and maintained by the Owner. If a street tree dies or is removed, the Owner of the Lot on which the tree is located is responsible to replace the tree within thirty (30) days.
 - (iv) Trees native to the area, such as oak, pine, and myrtle, shall be maintained or planted appropriately in and about the Improvements to the Lot, including the principal dwelling, driveway, intersection of the driveway and adjacent street, and other focal points. Trees so planted or maintained may vary in size from saplings to fully grown.
 - (v) Appropriate irrigation as reasonably necessary to maintain lawns and landscaping pursuant to the approved plan.
 - (vi) Such other criteria as may be contained in the Architectural Design Guide.
- (h) **Garages.** Each single family residential dwelling structure shall be designed, constructed and maintained with an enclosed garage as a part thereof, for a minimum of two cars, with the garage door opening to the side of the structure.
- (i) **Driveways.** All driveways shall be of an impervious surface, such as concrete, asphalt, or other materials approved by the ARB.
- (j) **Fences.** No barbed wire, wire mesh, or other fence of similar material or appearance shall be permitted. No fence may be located closer to a street or right of way than the top of the bank of such swale that is furthest from the street or right of way. All fences must be consistent with the Architectural Design Guide and be of such materials, height, location and construction as may be approved by the ARB.
- (k) **Crawl Space Enclosure.** Any crawl space between the finished grade of the Lot surrounding a structure and the first floor of the structure that is in excess of 32 inches shall be enclosed.
- (l) **Construction Debris.** During the period of construction of Improvements to a Lot, all construction debris shall be placed in a dumpster or other appropriate container maintained on the Lot, and the contents of such container shall be

periodically removed therefrom and hauled to an appropriate destination. Such container and debris removal shall be maintained and carried out in compliance with any applicable governmental laws, rules, regulations or franchise agreements. The container or containers shall be of such size and number, and the debris hauled at such intervals, so as to provide adequate interim storage for all construction debris generated from the Lot. In the event of a failure to comply with this provision, the Association may do so in accordance with Section 8.13, with the cost thereof to be assessed as a Special Charge.

- (m) **Athletic Facilities.** Lighted tennis courts are prohibited, as are above-ground swimming pools. Any basketball backboard and any other fixed game or play structures must be located to the side or at the rear of the principal dwelling, or in the case of a corner Lot, on the side of the Lot not fronting on a street. All such structures shall be within setback lines. Tree houses or platforms shall not be constructed on any part of a Lot in front of the rear line of the principal residential dwelling thereon, and shall be located within the setback lines.
- (n) **Utilities Underground.** All utilities installed within a Lot by or on behalf of an Owner shall be underground, except as may be otherwise approved by the ARB, which shall only approve exceptions in circumstances in which strict enforcement of the underground requirement would prevent practical access to utilities, or result in a violation of other provisions of this Declaration.
- (o) **Quality Design Aspiration.** It is intended that the residential structures in the Subdivision be of an exterior design reflecting an appropriate degree of architectural features, interest and character, so that such homes are widely regarded as being of more value, and possessing greater appeal, than plain, unadorned rectangular buildings possessing little or no architectural interest or character, such as may commonly be found in entry level, inexpensive developments. In order to attain such goal, Owners are encouraged to use exterior designs prepared by architects or other design professionals, or to have plans reviewed by such professionals with modifications as appropriate. The ARB may, as part of its review under this Article require plans it finds to lack desired characteristics to be reviewed by an architect or other design professional, and condition its approval on modification of the exterior design to incorporate recommendations by such design professionals.
- (p) **Compliance With Governmental Approvals.**
 - (i) No construction activities may be conducted relative to any portion of the Surface Water Management System Facilities. Prohibited activities include, but are not limited to, digging or excavation, depositing fill, debris or any other material or item, constructing or altering any water control structure, or any other construction to modify the Surface Water Management System Facilities. If this Subdivision includes a wetland mitigation area, as defined by the District, or a wet detention pond, no vegetation in these areas shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the District in the ERP may be conducted without specific written approval from the District.

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- (ii) No Improvements or other construction upon, alterations to or use of, a Lot shall intrude upon or otherwise impact or interfere with or disturb any required drainage boundaries, facilities or contours, or any buffer area, or be otherwise in violation of the Governmental Approvals. Each Owner (and the Association with respect to areas within the Subdivision for which it is responsible for maintenance hereunder) shall comply with any seeding and grassing requirements reflected or required by the Governmental Approvals. The Association and each Owner shall otherwise observe and comply with the terms and requirements of the Governmental Approvals
- (r) **Culvert Sizes.** In connection with the construction of any driveway onto a Lot, if there shall be a swale adjacent to or within the right of way abutting such Lot, then there shall be a culvert installed in such swale, the size of which culvert shall be in accordance with a Table of Internal Culvert Sizes, prepared by Zoller, Najjar and Shroyer, Inc., and approved by the District, as submitted as part of the application for the ERP. A copy of such table shall be delivered to and held by the Association as part of its records.
- (s) **Purchase of Fill Dirt.** Declarant intends to make such fill dirt as it acquires in its development of the Subdivision, or adjacent developments, available for purchase by Owners and their builders on a commercially reasonable basis, and each Owner agrees, for itself and its builder, to purchase fill dirt required for the improvement of such Owner's Lot from the Declarant. Declarant's price shall be deemed "commercially reasonable" so long as the price is comparable to the amount that would be paid for fill dirt from other sources, combined with the cost of transporting such fill dirt to the Subdivision.
- (t) **Lakes and Ponds Prohibited.** No lakes or ponds may be dug or otherwise created on any Lot.

9.12. Designated Builder Program. Declarant has determined that it is appropriate that the construction of residential dwellings on the Lots be limited to those licensed contractors selected from time to time by the Declarant (the "Designated Builders"). The provisions of this section constitute the "Designated Builder Program" establishing the terms and conditions thereof.

- (a) **Designation Procedure.** Declarant shall from time to time select and designate the Designated Builders. If Declarant withdraws the designation of a Designated Builder, that builder may nevertheless complete construction of any improvements for which construction is then underway, or with respect to which such builder has entered into a binding contract with an Owner for the construction of improvements as of the effective date of withdrawal of such designation, or if such builder is a Builder Member, such builder may construct improvements on any Lot owned by such Builder Member on the effective date of withdrawal of designation.
- (b) **Designation Criteria.** Declarant shall select and designate builders which Declarant, in the exercise of its reasonable business judgment, believes to have requisite capability, experience and understanding of the nature and goals of the Subdivision, to be able to construct Improvements to the Lots of consistent quality and value, in a timely manner and in accordance with this Declaration. Each Owner, however, is solely responsible for selecting his builder from among the Designated Builders, for investigating and determining such builder's

qualifications, reputation, experience, reliability, and financial responsibility, and for negotiating a contract with such selected builder. In no event shall Declarant be deemed to be a partner or joint venturer of any Designated Builder, nor does Declarant represent, warrant or guarantee to any Owner the reliability, competence or financial stability or integrity of any Designated Builder, the quality or outcome of any construction, or whether the construction price is less than others might charge, all such determinations to be made solely by the Owner. In no event shall Declarant be liable to an Owner with respect to any claim, cause of action or damage that may be asserted by such Owner arising out of or in connection with any contract between such Owner and a Designated Builder, the construction of Improvements by a Designated Builder, or any other matter related to a Designated Builder.

- (c) **Exclusivity.** The Designated Builders shall have the exclusive right to construct initial dwelling structures on all Lots within the Subdivision during the term of the Designated Builder Program, and no other builder or contractor shall be permitted to construct such Improvements during such time. Each Owner acknowledges and agrees that the choice of the builder shall be limited to those who are Designated Builders and that all such construction of residential building improvements on the Lot of such Owner shall be performed only by a Designated Builder.
- (d) **Default.** In the event an Owner fails to comply with the provisions of this Section and authorizes, permits or suffers construction of such improvements on his Lot by someone other than a Designated Builder, then and in that event, in addition to any other remedies available to Declarant at law or at equity, the Declarant shall be entitled to injunctive relief without necessity of posting bond, the parties agreeing that there is no adequate remedy at law. As an alternative, Declarant or its designated assign shall have the right and option, but not the obligation, to repurchase the Lot from the Owner causing, permitting or suffering such prohibited construction on the following terms and conditions:
- (i) Declarant's option may be exercised at any time prior to the expiration of such option by written notice to the Owner, sent by United States Mail, postage pre-paid, certified with return receipt requested. Closing shall occur on a date specified in such notice, but not earlier than ten (10) days nor more than sixty (60) days from the date of such notice. Declarant's option to repurchase shall terminate one (1) year after the commencement of construction. If there is any disagreement concerning the date of commencement of construction, it shall be deemed to be the date on which a notice of commencement, pursuant to Chapter 713, Florida Statutes, for such improvements is recorded in the Public Records.
 - (ii) The price for the repurchase shall be ninety (90%) percent of the purchase price paid to the Declarant upon the initial sale of the Lot, the parties agreeing that any difference between the then fair market value of the Lot and such price is fair and reasonable and consideration for Declarant's costs and the inconvenience of reinvesting funds in such Lot, holding same and remarketing same.
 - (iii) At the closing of such repurchase, the Owner shall pay all costs of such closing, including without limitation, documentary stamps, recording fees,

title search and title insurance premium for an owner's title insurance policy in the full amount of the repurchase price, and any of the costs associated with the closing of the repurchase. Taxes and assessments shall be prorated as of the day prior to the closing date.

- (iv) Owner shall convey the Lot by special warranty deed, free and clear of all liens, encumbrances and adverse claims arising by, through, under or against the Owner, title to be in the same condition as that originally conveyed by Declarant. Owner shall be solely responsible for removing any liens, encumbrances or other objections to title.
- (v) At the closing, Owner shall execute an Owner's Affidavit in form and substance reasonably satisfactory to Declarant, its attorneys and the title insurance company, sufficient to allow such title insurance company to delete standard exceptions for possessory rights, unrecorded easements, and construction liens arising under Chapter 713, Florida Statutes, and Owner shall comply with the Foreign Investment in Real Property Act.
- (e) **Term.** The Designated Builder Program shall commence upon recordation of this Declaration and continue until the earliest of (i) the completion of the construction of a residential dwelling on all Lots within the Subdivision, (ii) January 1, 2005, or (iii) termination of the Designated Builder Program by the Declarant. Declarant may terminate the Designated Builder Program either by amendment to this Declaration so providing, or by executing and recording among the Public Records a notice that the Designated Builder Program has been terminated.
- (f) **Limitation.** The Designated Builder Program does not apply to additions to or remodeling of a residential dwelling structure on a Lot after completion of initial construction and issuance of a certificate of occupancy therefor, nor does it apply to the construction of outbuildings commenced after a certificate of occupancy for the initial dwelling on such Lot, nor does it apply to site work only.
- (g) **Waiver and Certificate.** Declarant may, in its sole and absolute discretion, grant a waiver with respect to any particular Lot from the obligation to comply with the terms of this Section. Upon request, Declarant shall issue its certificate in recordable form attesting to the compliance of a Lot with the provisions of this Section, if that be the case.

9.13. Construction Time Limit. Declarant has determined that the values, ambience and livability of the Subdivision will be enhanced and preserved by prompt construction of Improvements to the Lots, the Subdivision being intended as a community of residents rather than vacant Lots awaiting later development. Accordingly, each Owner acknowledges and agrees that construction of a home on his Lot must commence within one (1) year following the closing of the initial purchase of the Lot from Declarant (the "Construction Commencement Period") Declarant may, in its sole and absolute discretion, grant extensions to the Construction Commencement Period with respect to any one or more Lots. Once construction has commenced on a Lot, such construction shall be completed and the certificate of occupancy issued within one (1) year from the date of the commencement of construction (the "Construction Completion Period"). Declarant may, in its sole and absolute discretion, grant extensions to the Construction Completion Period with respect to any particular Lot, and shall grant a reasonable extension in the event that such completion is delayed due to causes beyond the control of the Owner, such as, but not necessarily limited to, fire, flood, windstorm or other natural disasters,

strikes, riots or national emergencies. In the event an Owner fails to commence construction within the Construction Commencement Period, or having commenced construction, fails to complete construction within the Construction Completion Period, then and in either of such events, Declarant or its designated assigns shall have the right and option, but not the obligation, to repurchase such Lot from the Owner at the price and on the terms provided in Section 9.12 for repurchase. Such option shall continue until the earlier of such time as construction is commenced or four (4) years after the closing of the initial purchase of the Lot from Declarant (with respect to an option arising as a result of a failure to begin construction within the Construction Commencement Period) or the earlier of completion of construction or twenty-four (24) months after commencement of construction (with respect to an option arising from a failure to complete construction within the Construction Completion Period). Provided, however, in the event construction has commenced and such construction has been financed by a first mortgage of record, the repurchase price shall be not less than the outstanding balance secured by such mortgage. Declarant may, in its sole and absolute discretion, waive and release any option to repurchase pursuant to this Section, and shall, upon request, issue a certificate in recordable form attesting to the compliance of any specific Lot with the provisions of this Section, if that be the case.

ARTICLE 10 COMPLIANCE WITH CODE

The following provisions are mandated by the Code and are applicable to the Subdivision.

10.01. Alternate Maintenance by County. In the event the Association fails to maintain the Common Property in reasonable order and condition in accordance with applicable Governmental Approvals, the provisions of the Code allow for the County, upon specified notice and hearing, to enter the Common Property for the purpose of maintaining same. The cost of such maintenance by the County shall be assessed pro-ratedly against the Lots and such charges are payable by the Owners within sixty (60) days after receipt of a statement therefor from the County, and if unpaid at the end of such period shall become a lien on the Lots.

10.02. Further Disposition of Open Space. With respect to such portions of the Common Property or any interest therein that may be deemed required common open space under applicable governmental regulations, subsequent to the conveyance to the Association there shall be no further disposition of such Common Property that is real property by sale, dissolution of the Association or otherwise, except to an organization conceived and organized to own and maintain such property without first offering to dedicate the same to the County or other appropriate governmental agency.

10.03. Disturbance of Common Property. No portion of the Common Property shall be denuded, defaced or otherwise disturbed in any manner at any time, except for maintenance, repair and improvement, without the prior written approval of both the Association and the director of the County Planning, Permitting and Inspection Department, or such successor agency as may assume the duties of that department.

10.04. Right of Entry by County. A right of entry upon the Common Property is hereby granted to County and other governmental law enforcement officers, health and pollution control personnel, emergency medical service personnel, and firefighting personnel, and to governmental suppliers of utilities, while in the pursuit of their duties. All such governmental personnel are further granted authority to enforce cleared emergency vehicle access in the performance of their duties to the extent same may be reasonably necessary.

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10.05. Compliance with Law. Notwithstanding any other provision of this Declaration to the contrary, there shall be no violation of federal, state or local law permitted within the Subdivision.

ARTICLE 11 GENERAL PROVISIONS

11.01. Enforcement. The Association or any Owner shall have the right to enforce by proceedings at law or in equity all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, including the right to prevent the violation of any such provisions and the right to recover damages for such violations; provided, however, that with respect to Assessments and Assessment liens the Association, on determination of the Board, shall have the exclusive right to the enforcement thereof. Provided further, no enforcement proceedings may be maintained by the Owners of fewer than two (2) Lots. Failure of the Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.02. Severability. Invalidation of any part of this Declaration by a court of competent jurisdiction shall not affect any other provisions, which shall remain in full force and effect.

11.03. Covenants. The covenants, conditions, restrictions, easements and terms of this Declaration shall run with the land, bind all the property subject hereto and inure to the benefit of and be enforceable as provided above, for a term of 50 years from the date this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years each, unless an instrument of termination has been signed by (a) the Owners of at least two-thirds of the Lots and (b) mortgagees holding first mortgages encumbering fifty (50%) percent of all those Lots encumbered by first mortgages has been recorded at least one (1) year prior to end of any such period. In such event, this Declaration shall be terminated upon the expiration of the fifty (50) year term or applicable ten (10) year extension during which such instrument was recorded.

11.04. Construction. This Declaration, the Articles and Bylaws, shall be liberally construed to give effect to their purpose of creating a plan for a quality single family residential community. Article and section headings have been inserted for convenience only and shall not be considered in interpretation or construction of the document. This Declaration, the Articles and Bylaws, shall be construed under the laws of Florida, and shall not be construed more strongly against any party regardless of the extent to which any party may have participated in the drafting thereof. Whenever the context of this Declaration, the Articles or Bylaws require, the singular shall include the plural and the plural the singular, and any one gender may refer to any other gender.

11.05. Amendment. This Declaration may be amended only in accordance with this Section.

- (a) **By Declarant.** Prior to the Turnover Date, Declarant reserves the right to amend this Declaration, the Articles and Bylaws in any manner whatsoever, without the requirement of Association consent or the consent of any Owner or the mortgagee of any Lot. Subsequent to the Turnover Date and prior to the Completion Date, the Declaration may be amended at any time by the Declarant with the affirmative vote of twenty-five (25%) of Members other than Declarant who are present, in

person or by proxy, at a meeting called for that purpose at which a quorum is present. For such purposes, Declarant may require that a meeting be called for the purpose of voting upon any such proposed amendment.

- (b) **By Members.** Prior to that date that is five (5) years after the Completion Date, this Declaration may be amended at any time by the affirmative vote of Members owning two-thirds (2/3) of all Lots in the Subdivision together with the approval or ratification of a majority of the entire Board, or by the affirmative vote of Members owning 75 percent of all Lots. After the date that is five (5) years after the Completion Date, this Declaration may be amended by the affirmative vote of the greater of Members owning thirty-five (35%) of all Lots, or sixty-seven (67%) percent of all of those votes entitled to be cast at a meeting called for such purpose. Anything contained in this Subsection to the contrary notwithstanding, no amendment adopted by the Members pursuant hereto shall be effective prior to the Turnover Date, except with the written consent of the Declarant.
- (c) **By Board.** The Board, by a two-thirds vote of the entire Board, may effect an amendment to the Declaration or the Bylaws in any of the following circumstances:
- (i) To bring the Declaration or the Bylaws into compliance with the provisions of subsequently enacted laws, rules or regulations adopted by governmental authority which, in the opinion of counsel for the Association, are reasonably likely to be applicable to the Association.
 - (ii) If the Board determines that as a result of new, changing or evolving technology, materials, procedures, devices or standards the Declaration should be amended to take cognizance of such matters so that the overall intent of the Declaration shall not be frustrated by changing circumstances.
 - (iii) If the Board determines, in the reasonable exercise of its judgment, that such amendment is necessary to comply with regulations of the Veterans' Administration, the Federal Housing Administration, the Office of Interstate Land Sales Registration, the Federal National Mortgage Association, the Federal Home Loan Corporation, the Federal Home Loan Bank Board or other similar governmental agency, where non compliance with such regulations substantially interfere with, restricts or limits either the marketability of Lots or the ability of Owners to obtain mortgage financing.
 - (iv) If the Board determines, in the reasonable exercise of its judgment, that there is a scrivener's error or other error or omission that results in an ambiguity, inconsistency or an incomplete provision, or if experience with a particular provision results in an ambiguity with respect to the practical application of such provision.

Provided, however, that no Board adopted amendment to the Declaration or Bylaws pursuant to this Section shall go into effect until not fewer than sixty (60) days notice of the amendment shall have been given to the Members. If, during the time between the giving of such notice and the proposed effective date stated therein, Members having not less than ten (10%) percent of all voting interests request in writing that a meeting of the Members be called, then and in such event, the Board shall call such meeting promptly, the purpose of which meeting shall be to determine whether or not the amendment adopted by the Board shall go into effect.

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Effectiveness of any amendment shall be suspended until the end of such meeting. At such meeting if a quorum is obtained, a majority of those present, in person or by proxy, may determine that the amendment adopted by the Board, or any part thereof, shall not be effective. If a quorum is not obtained at such meeting, or if at such meeting there is no majority vote against such amendment, then the amendment shall go into effect at the later of the date specified in the notice, or the conclusion of such meeting. Thirty (30) days after the Certificate of any amendment adopted by the Board pursuant hereto is recorded in the Public Records, the authority of the Board to adopt such amendment shall be conclusively presumed, shall be binding upon all Owners and may not be challenged in any court proceeding or otherwise.

- (d) **Approval Procedure.** Any amendment approved or disapproved by the Members pursuant to this Section 11.05 shall be approved or disapproved at an annual, regular or a special meeting called for that purpose, pursuant to written notice setting forth the proposed amendment or a summary of the changes to be effected thereby, such notice to be given within the time and in the manner provided for in the Bylaws. In lieu of voting in an annual, regular or special meeting as herein provided, amendments may be approved in writing executed by the requisite number of Owners; provided, however, that the requisite majority for an amendment in writing shall be equal to that for a meeting at which all Members are in attendance.
- (e) **Limitation.** Anything contained herein to the contrary notwithstanding, no amendment which abridges, impairs, prejudices, amends, alters or otherwise affects the rights, privileges, exemptions or priorities of the Declarant shall be effective until five (5) years after the Turnover Date, unless the Declarant consents thereto in writing.
- (f) **For Amendments Affecting Surface Water Management System.** Anything contained in this Section to the contrary notwithstanding, no amendment of this Declaration, the Articles or Bylaws, which would affect the Surface Water Management System Facilities or the operation and maintenance of the Surface Water Management System Facilities shall be effective without the prior written approval of the District, or its successor agency.
- (g) **Certificate of Amendment.** Any amendment to the Declaration or Bylaws adopted or approved by the Members or the Board under this Section 11.05 shall be evidenced by a Certificate of Amendment executed by the Association in the form required for the execution of a deed. If the consent of the Declarant is required for such amendment, and if the Declarant has so consented to such Amendment, then Declarant shall join in the execution of such Certificate. Amendments effected by the Declarant that do not require Member approval may be executed by the Declarant alone, without the necessity of a certificate of the Association. Certificates of Amendment shall set forth that the amendment has been adopted and approved in accordance with the Declaration or Bylaws, as applicable, but if the Certificate does not so state, same shall not affect the validity of the Certificate or the amendment, and the Certificate shall be presumed so to state. Amendments to the Articles shall be filed with the Florida Department of State as may be required by applicable law, and such amendment shall be evidenced by a Certificate in the same manner as a Certificate of Amendment to the Declaration.

11.06. Limitation on Law Suits. Anything contained in this Declaration, the Articles, Bylaws or elsewhere to the contrary notwithstanding, the Association may not institute,

maintain, settle or appeal actions or hearings in its name on behalf of Owners concerning matters of common interest to such Owners, nor shall the Association have any authority to maintain a class action as a representative of, or on behalf of, its Members. This provision may not be amended until more than ten (10) years after the Completion Date.

11.07. Attorney's Fees. If any action is instituted to enforce or construe the provisions of this Declaration, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment a reasonable attorney's fee and the costs of such suit. Additionally, if it becomes necessary for the Association to retain the services of an attorney to obtain compliance of an Owner with the provisions of this Declaration without necessity of instituting legal proceedings, then fees and costs incurred by the Association with respect to such enforcement shall be deemed the same as fees and costs incurred by the Association as a prevailing party in legal proceedings. If the Association is a prevailing party in such action, or deemed so pursuant hereto, the amount of such attorney's fees and costs shall be a Special Charge with respect to any Lot and its Owner if such Owner was the non-prevailing party in such litigation or deemed so pursuant hereto.

11.08. Declarant Provisions. Declarant, for itself, and its designees, further reserves the right to erect temporary structures for use in its development business and otherwise to establish and use any part of the property covered hereby for the development, construction, marketing, promotion and sale of Lots and improvements thereto. So long as Declarant owns any Lot of record, it may establish licenses, reservations, easements and rights-of-way in favor of itself, the Association, suppliers of utility and similar services and public authorities as may from time to time be reasonably necessary to the proper development and disposition of the Subdivision. In any instance where a structure has been erected upon a Lot, or the construction thereof is substantially advanced in a manner that violates the restrictions of this Declaration or in such a manner that same encroaches on any Lot line, easement area or setback, or in any other circumstance in which an Owner or Lot is not in compliance with this Declaration, Declarant reserves the right to release the Lot an Owner from the restriction and to grant an exception and variance to permit the encroachment by the structure or other instance of noncompliance, so long as Declarant, in the exercise of its sole discretion, determines that the release, waiver or exception will not materially and adversely affect the health, safety and welfare of present and future Owners, the value of adjacent Lots and the appearance of the Subdivision.

11.09. Assignment by Declarant. Declarant's rights hereunder may be assigned to any successor to all or any part of Declarant's interest in the Subdivision by express assignment incorporated in a deed or by separate instrument, and such Declarant rights shall inure to any mortgagee of Declarant who acquires title to undeveloped portions of the Subdivision by foreclosure or deed in lieu of foreclosure or to a successor Declarant acquiring title through foreclosure or from a mortgagee or other person acquiring title through such foreclosure or deed in lieu thereof. Declarant may designate in writing one or more successor Declarants as to portions of the Subdivision, which instrument shall detail the extent and nature of the rights of Declarant assigned thereby. After any such assignment is recorded among the Public Records, the assignee shall stand in the place of Declarant as fully as if it had originally been the Declarant hereunder to the extent of the assignment described therein. Any mortgage of all or substantially all of the undeveloped portions of the Subdivision executed by Declarant or any successor to Declarant shall be deemed to carry with it a conditional assignment of such Declarant rights unless otherwise specified therein.

11.10. Rights of Mortgagees. The Association shall make available for inspection upon request, during normal business hours and under reasonable circumstances, this Declaration, the Article, Bylaws and the books, records and financial statements of the

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Association to Owners and the holders, insurers or guarantors of any first mortgages encumbering any portion of the Subdivision. Upon written request to the Association by such holder, insurer or guarantor (the "Listed Mortgagee") of a first mortgage encumbering a Lot, the Association shall provide such Listed Mortgagee with timely written notice of the following:

- (a) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (b) Any proposed action which would require the consent of mortgagees holding a first mortgage encumbering a Lot; and
- (c) Any failure by an Owner owning a Lot encumbered by a mortgage held, insured or guaranteed by such Listed Mortgagee to perform his obligations under this Declaration, including but not limited to, any delinquency in the payments of Assessments, or any other charge owed to the Association by said Owner where such failure or delinquency has continued for a period of sixty (60) days.

Any Listed Mortgagee shall, upon written request made to the Association, be entitled to financial statements for the Association for the prior fiscal year free of charge and the same shall be furnished within a reasonable time following such request.

IN WITNESS WHEREOF, Declarant has caused these presents to be executed in its name by its general partner thereunto duly authorized as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Deborah L. Osgood
Witness

Deborah L. Osgood
Print Name of Witness

Marilyn E. Romick
Witness

Marilyn E. Romick
Print Name of Witness

**PANTHER RIDGE COMMUNITIES,
LTD**, a Florida limited partnership

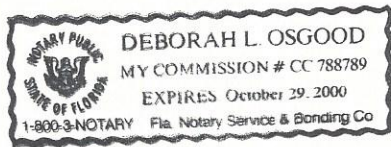
By: **Panther Ridge Communities,
Inc.**, a Florida corporation, its
general partner

Jeffrey D. Gravely
Jeffrey D. Gravely,
its Executive Vice President
3651 Cortez Road West,
Bradenton, FL 34210

**STATE OF FLORIDA
COUNTY OF MANATEE**

April The foregoing instrument was acknowledged before me this 12th day of April, 2000, by Jeffrey D. Gravely, as Executive Vice President of Panther Ridge Communities, Inc., a Florida corporation, on behalf of the corporation, as general partner of Panther Ridge Communities, Ltd., a Florida limited partnership, on behalf of the partnership, (L) who is personally known to me or () who has produced n/a as identification.

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Deborah L. Osgood
Notary Public
My Commission Expires: 10/29/2000

AFFIDAVIT

Panther Ridge Communities, Ltd.

**STATE OF FLORIDA
COUNTY OF MANATEE**

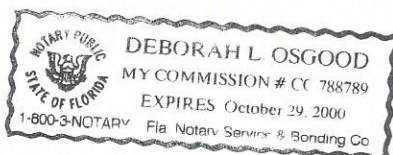
Before me, the undersigned authority, personally appeared Jeffrey D. Gravely, who being by me first duly sworn, deposes and says:

1. The Affiant is executive vice president of Panther Ridge Communities, Inc., a Florida corporation (the "Corporation"), and is authorized to execute this Affidavit on behalf of the Corporation.
2. That the Corporation is a general partner of Panther Ridge Communities, Ltd., a Florida limited partnership (the "Partnership"), and this Affidavit is made and executed on behalf of the Partnership.
3. The name of the sole general partner of the Partnership is Panther Ridge Communities, Inc., a Florida corporation.
4. The general partner is authorized to execute a conveyance, encumbrance or other instrument affecting the Partnership's real property, such execution to be without necessity of joinder by any other general partner.
5. The Partnership is in existence as of the date hereof, the Corporation is not a debtor in a bankruptcy proceeding, and the Corporation is organized under the Laws of Florida, in good standing with the Department of State, and has not been dissolved.
6. This Affidavit is made pursuant to Section 689.045(3), Florida Statutes.

FURTHER AFFIANT SAYETH NOT.

Jeffrey D. Gravely
Jeffrey D. Gravely

Sworn to and subscribed before me this 12th day of April, 2000, by Jeffrey D. Gravely, (☒) who is personally known to me or (☐) who has produced n/a as identification.



Deborah L. Osgood
Notary Public
My Commission Expires: 10/29/2000

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This Instrument was prepared by:
David K. Deitrich, Esquire
Dye, Deitrich, Prather, Petruff & St. Paul, P.L.
1111 Third Avenue West, Suite 300
Bradenton, FL 34205
941/748-4411

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EXHIBIT A

LOTS 49 THROUGH 96 INCLUSIVE, BLOCK 6; LOTS 49 THROUGH 96 INCLUSIVE, BLOCK 7; LOTS 1 THROUGH 96 INCLUSIVE, BLOCK 10; LOTS 1 THROUGH 64 INCLUSIVE, BLOCK 11; LOTS 1 THROUGH 11 AND LOTS 12 THROUGH 22 LYING NORTHERLY OF STATE ROAD 70 (FDOT RIGHT OF WAY MAP SECTION 13160-2506) AND LOTS 23 THROUGH 28, BLOCK 14; LOTS 1 THROUGH 62 INCLUSIVE AND LOT 63 LYING NORTHERLY OF STATE ROAD 70 (FDOT RIGHT OF WAY MAP SECTION 13160-2506); LOT 64 THROUGH 78 INCLUSIVE, BLOCK 15; LOTS A AND B LYING NORTHERLY OF STATE ROAD 70 (FDOT RIGHT OF WAY MAP SECTION 13160-2506); LOTS 1 THROUGH 7 INCLUSIVE AND LOTS 8 THROUGH 21 LYING NORTHERLY OF STATE ROAD 70 (FDOT RIGHT OF WAY MAP SECTION 13160-2506); LOT 22, BLOCK 19, AS PER THE PLAT OF POMELLO CITY CENTRAL UNIT AS RECORDED IN PLAT BOOK 6, PAGE 62 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA

TOGETHER WITH:

RIGHT OF WAY VACATIONS (O.R.B. 1618, PG.7453)

A PORTION OF THE PLATTED RIGHT OF WAYS AND ALLEY WAYS IN POMELLO CITY CENTRAL UNIT, A SUBDIVISION IN SECTION 28, TOWNSHIP 35 SOUTH, RANGE 20 EAST, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 62 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 49 THROUGH 72, BLOCK 7;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS LOT 81 THROUGH 96, BLOCK 7;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAYS LYING WEST OF LOT 56 AND LOT 89, BLOCK 7;

THAT PORTION OF THE INTERSECTION RIGHT OF WAYS LYING SOUTHWEST OF LOT 56 AND LOT 89, BLOCK 7;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING WEST OF LOT 64, BLOCK 7 LESS THE SOUTH 43.00 FEET THEREOF;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 1 THROUGH 24, BLOCK 10;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 49 THROUGH 72, BLOCK 10;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAYS LYING WEST OF LOT 8, LOT 41, LOT 56 AND LOT 89, BLOCK 10;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS 25 THROUGH 48, BLOCK 10;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS 81 THROUGH 96, BLOCK 10;

THAT PORTION OF THE INTERSECTION RIGHT OF WAYS LYING SOUTHWEST OF LOT 8, LOT 41, LOT 56 AND LOT 89, BLOCK 10;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 1 THROUGH 16, BLOCK 15;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 47 THROUGH 62, BLOCK 15;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS 31 THROUGH 46, BLOCK 15;

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THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS 63 THROUGH LOT 78, BLOCK 15 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAYS LYING WEST OF LOT 8, LOT 39, LOT 54, LOT 62 AND LOT 71, BLOCK 15;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAY LYING NORTHERLY AND NORTHEASTERLY OF LOTS 23 THROUGH 30, BLOCK 15;

THAT PORTION OF THE 73 FOOT WIDE RIGHT OF WAY LYING NORTHERLY AND NORTHEASTERLY OF LOT A, BLOCK 15 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING WEST OF LOT 63, BLOCK 15 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THE SOUTH ONE-HALF OF THAT PORTION OF THE INTERSECTION RIGHT OF WAY LYING NORTHWESTERLY OF LOT 62, BLOCK 15;

THAT PORTION OF THE INTERSECTION RIGHT OF WAYS LYING SOUTHWESTERLY OF LOT 8, LOT 39, LOT 54, LOT 62 AND LOT 71, BLOCK 15;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING WEST OF LOT 8, BLOCK 19 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAY LYING SOUTH OF LOTS 1 THROUGH 8, BLOCK 19 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 49 THROUGH 72, BLOCK 6;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAY LYING SOUTH OF LOTS 73 THROUGH 80, BLOCK 6;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAY LYING SOUTH OF LOTS 81 THROUGH 85 LESS THE EAST 22.57 FEET THEREOF;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING WEST OF LOT 56, LOT 64, LOT 81 AND LOT 89, BLOCK 6;

THAT PORTION OF THE INTERSECTION RIGHT OF WAYS LYING SOUTHWEST OF LOT 56, LOT 64 AND LOT 81, BLOCK 6;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 1 THROUGH 16, BLOCK 11;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAYS LYING SOUTH OF LOTS 33 THROUGH 48, BLOCK 11;

THAT PORTION OF THE 60 FOOT WIDE RIGHT OF WAYS LYING SOUTH OF LOTS 17 THROUGH 32, BLOCK 11;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAYS LYING WEST OF LOT 8, LOT 16, LOT 17, LOT 25, LOT 40, LOT 48, LOT 49 AND LOT 57, BLOCK 11;

THAT PORTION OF THE INTERSECTION RIGHT OF WAYS LYING SOUTHWEST OF LOT 8, LOT 16, LOT 17, LOT 25, LOT 40 AND LOT 48, BLOCK 11;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAY LYING SOUTH OF LOT 7 THROUGH 12, BLOCK 14 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING WEST OF LOT 14, BLOCK 14 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY STATE ROAD 70;

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THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING EAST OF LOT 7, BLOCK 14;

THAT PORTION OF THE 50 FOOT WIDE RIGHT OF WAY LYING EAST OF LOT 20, BLOCK 14 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 16 FOOT WIDE ALLEY WAY LYING NORTHWESTERLY AND NORTHERLY OF LOTS 21 THROUGH 28, BLOCK 14 AND NORTH OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE 73 FOOT WIDE RIGHT OF WAY LYING NORTHWESTERLY AND NORTHERLY OF LOT B, BLOCK 14 AND NORTHERLY OF THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70;

THAT PORTION OF THE INTERSECTION RIGHT OF WAY LYING SOUTHEASTERLY OF LOT 7, BLOCK 14.

LESS AND EXCEPT THE FOLLOWING DESCRIBED PARCEL:

A PORTION OF POMELLO CITY CENTRAL UNIT, A SUBDIVISION IN SECTION 28, TOWNSHIP 35 SOUTH, RANGE 20 EAST, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 6, PAGE 62 OF THE PUBLIC RECORDS OF MANATEE COUNTY, FLORIDA, BEING DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTH 1/4 CORNER OF SAID SECTION 28; THENCE S 88°42'41" E ALONG THE SOUTH LINE OF SAID SECTION 28, A DISTANCE OF 538.38 FEET TO THE NORTHEASTERLY RIGHT OF WAY LINE OF STATE ROAD 70 AND THE POINT OF BEGINNING; THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE THE FOLLOWING TWO (2) COURSES: (1) N 62°35'57" W, A DISTANCE OF 67.27 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE LEFT HAVING A RADIUS OF 5797.58 FEET; (2) ALONG THE ARC OF SAID CURVE TO THE LEFT IN A NORTHWESTERLY DIRECTION, A DISTANCE OF 0.65 FEET THROUGH A CENTRAL ANGLE OF 00°00'23" TO AN INTERSECTION WITH THE SOUTH LINE OF BLOCK 15 SAID POMELLO CITY CENTRAL UNIT; THENCE S 88°42'41" E ALONG SAID SOUTH LINE, A DISTANCE OF 159.70 FEET; THENCE N 25°38'20" E, A DISTANCE OF 280.29 FEET; THENCE N 30°48'18" E, A DISTANCE OF 203.88 FEET TO AN INTERSECTION WITH THE WEST RIGHT OF WAY LINE OF 4TH STREET AS PER PLAT OF SAID POMELLO CITY CENTRAL UNIT; THENCE N 00°47'18" E ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 1156.63 FEET TO AN INTERSECTION WITH THE NORTH LINE OF BLOCK 7 SAID POMELLO CITY CENTRAL UNIT; THENCE S 88°46'51" E ALONG SAID NORTH LINE, A DISTANCE OF 446.19 FEET TO AN INTERSECTION WITH THE EAST LINE OF SAID POMELLO CITY CENTRAL UNIT; THENCE ALONG SAID EAST LINE THE FOLLOWING THREE (3) COURSES: (1) S 00°47'27" W, A DISTANCE OF 1589.97 FEET; (2) S 00°20'07" W, A DISTANCE OF 60.01 FEET; (3) S 00°07'59" E, A DISTANCE OF 270.08 FEET TO THE SOUTHEAST CORNER OF LOT 22, BLOCK 19 SAID POMELLO CITY CENTRAL UNIT; THENCE N 88°42'41" W ALONG THE SOUTH LINE OF SAID LOT 22 AND LOT 21, SAID BLOCK 19, A DISTANCE OF 93.52 FEET TO AN INTERSECTION WITH SAID NORTHEASTERLY RIGHT OF WAY LINE; THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES:

(1) N 62°32'57" W, A DISTANCE OF 673.12 FEET; (2) S 27°27'03" W, A DISTANCE OF 30.00 FEET; (3) N 62°35'57" W, A DISTANCE OF 68.47 FEET TO THE POINT OF BEGINNING. SUBJECT TO PERTINENT EASEMENTS, RIGHTS OF WAY AND RESTRICTIONS OF RECORD.