

Wyndtree Phase 2 Assn., Inc.

DECLARATION OF COVENANTS

Amended April 13, 2009

These documents were adopted by the Board of Directors together with the Members support and participation.

R

Prepared By and Return to:
Monique E. Parker, Esquire
Brudny & Rabin, P.A.
200 North Pine Avenue
Oldsmar, Florida 34677

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CERTIFICATE OF AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR
WYNDTREE PHASE 2

PAULA S. O'NEIL, PASCO CLERK & COMPTROLLER
04/13/09 11:04am 1 of 19
OR BK 8060 PG 859

This is to certify that at a duly called meeting of the members of Wyndtree Phase 2 Assn., Inc. (the "Association") held on February 24, 2009, in accordance with the requirements of the applicable Florida Statutes and the governing documents, the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2 attached hereto as **Exhibit "A"**, was duly adopted by the membership. The Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2 were originally recorded in Official Records Book 7837, Page 506, Public Records of Pasco County, Florida, and subsequently amended.

IN WITNESS WHEREOF, WYNDTREE PHASE 2 has caused this instrument to be signed by its duly authorized officer on this 16th day of March, 2009.

Kelsa Spencer

Signature of Witness #1

Kelsa Spencer

Printed Name of Witness #1

Simon C. Gordon

Signature of Witness #2

Simon C. Gordon

Printed Name of Witness #2

STATE OF FLORIDA)
COUNTY OF PASCO)

WYNDTREE PHASE 2 ASSN., INC.

By: *Joe Blumberg*

Signature

JOSEPH T. BLUMBERG President

Printed Name and Title



The foregoing instrument was acknowledged before me this 16 day of March, 2009, by Joe Blumberg as President of WYNDTREE PHASE 2 on behalf of the corporation, who acknowledged that he/she executed this document on behalf of the corporation. He/she is personally known to me or has produced _____ as identification.



Shari L. Peterman
Notary Public
Shari L. Peterman
Printed Name

**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WYNDTREE PHASE 2**

This instrument amends, consolidates and restates in its entirety the original Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2, which was originally recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida, and as amended by Certificate of Amendment to the Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2, recorded in O.R. Book 7837, Page 506, aforesaid records.

WITNESSETH

WHEREAS, the land submitted to this Declaration is legally described on Exhibit "A" attached to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida; and

WHEREAS, it has been determined that it is desirable to consolidate and restate all previously recorded instruments and amendments contained herein; to make all of them more easily understood by all persons associated with Wyndtree Phase 2;

NOW, THEREFORE, this Amended and Restated Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2 ("Declaration") is to be effective upon the recording of a Certificate of Amendment confirming approval of these proposed amendments by the Membership.

ARTICLE I

DEFINITIONS

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association (as hereinafter defined), including any and all amendments or modifications thereof.

Section 2. "Association" shall mean and refer to Wyndtree Phase II Assn., Inc., a Florida corporation not for profit, its successors and assigns.

Section 3. "Board of Directors" shall mean and refer to the Association's Board of Directors.

Section 4. "By-Laws" shall mean and refer to the By-Laws of the Association, including any and all amendments or modifications thereof.

Section 5. "Common Area" shall mean and refer to all real property, including the improvements thereto, owned from time to time by the Master Association (as hereinafter defined) for the common use and enjoyment of the members of said Master Association.

Section 6. "Common Expense" shall mean and refer to any expense for which a general and uniform assessment may be made against the Owners (as hereinafter defined) and shall include, but in no way be limited to, the expenses of upkeep and maintenance of the Local Common Areas (as hereinafter defined), medians, shoulders, roadways and certain boundary walls and entrance signs within the Properties (as hereinafter defined) or any assessments by or reimbursement to the Wyndtree Master Community Association, Inc. if such Master Association performs any of the foregoing on behalf of the Association and charges the Association therefore.

Section 7. "County" shall mean and refer to Pasco County, Florida.

Section 8. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2 and any amendments or modifications thereof hereafter made from time to time.

Section 9. "Dwelling Unit" shall mean and refer to single-family residential home constructed upon a Lot (as hereinafter defined).

Section 10. "FHA" shall mean and refer to the Federal Housing Administration.

Section 11. "FNMA" shall mean and refer to the Federal National Mortgage Association.

Section 12. "Front Street Line" shall mean and refer to the line defined as such on Exhibit "B" to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida.

Section 13. "GNMA" shall mean and refer to the Government National Mortgage Association.

Section 14. "Institutional Lender" shall mean and refer to any federal or state chartered bank, insurance company, VA (as hereinafter defined) or FHA approved mortgage lending institution, FNMA, GNMA, recognized pension fund investing in mortgages, or federal or state chartered savings and loan association or savings bank.

Section 15. "Institutional Mortgage" shall mean and refer to any first mortgage on a Lot (as hereinafter defined) held by an Institutional Lender.

Section 16. "Local Common Area" shall mean and refer to all real property, including the improvements thereto, owned or in which there is an easement right from time to time by or to the Association for the common use and enjoyment of the members of said Association.

Section 17. "Lot" shall mean and refer to the least fractional part of the subdivided lands within the Plat (as hereinafter defined) and which has limited fixed boundaries and an assigned number, letter or other name through which it may be identified; provided, however, that "Lot" shall not mean any Common Area, Local Common Area or parcel of land designated as a "Tract".

Section 18. "Master Association" shall mean and refer to the Wyndtree Master Community Association, Inc., a Florida corporation not for profit, its successors and assigns.

Section 19. "Master Declaration" shall mean and refer to that certain Master Declaration of Covenants, Conditions and Restrictions for Wyndtree Master Community Association, Inc. as recorded in Official Record Book 1788 at Page 0977, et seq., of the Public Records of the County.

Section 20. "Owner" shall mean and refer to the fee simple owner or owners of a Lot, other than Declarant.

Section 21. "Parcel" shall mean and refer to any part of the Properties (as hereinafter defined) when said Parcel is recorded in the Public Records of the County, other than a Common Area, Local Common Area, Lots, dedicated streets and roads, and land owned by a governmental body or agency or public utility company, whether or not such Parcel is developed or undeveloped, and without regard to the use or proposed use of such Parcel. Any Parcel, or part thereof, however, for which a subdivision plat has been filed of record shall, as to such portion, cease being a Parcel, or part thereof, and shall become Lots.

Section 22. "Plat" shall mean and refer to the plat of the Properties (as hereinafter defined) as recorded in the Public Records of the County.

Section 23. "Properties" shall mean and refer to the real property described in Exhibit "A" to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida, and such addition thereto, if any, which may be made pursuant to this Declaration.

Section 24. "Rear Yard Line" shall mean and refer to the line defined as such on Exhibit "B" to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida.

Section 25. "Restrictions" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Wyndtree Phase 2 and any amendments or modifications thereof hereafter made from time to time along with the Articles of Incorporation, Bylaws, and Rules and Regulations adopted by the Association.

Section 26. "Side Street Line" shall mean and refer to the line defined as such on Exhibit "B" to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida.

Section 27. "Side Yard Line" shall mean and refer to the line defined as such on Exhibit "B" to the Original Declaration of Covenants, Conditions and Restrictions of Wyndtree Phase 2 recorded in O.R. Book 1874, Page 833, of the Public Records of Pasco County, Florida.

Section 28. "Structure" shall mean and refer to the structure as that term is defined by Zoning Ordinance of the County in effect at the time of the recording of this Declaration.

Section 29. "VA" shall mean and refer to Veterans Administration.

Section 30. "Voting Member" shall mean and refer to any Owner who is authorized to cast the vote for the Lot they own as set forth in this Declaration.

Section 31. "Interpretation" Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

ARTICLE II

PURPOSE

Section 1. Operation, Maintenance and Repair of Local Common Areas. The purpose of the Association shall be to operate and manage the Local Common Areas, and any improvements thereon; including the decorative entranceways to the Properties and landscaped medians, shoulders, surfaces and subsurfaces of any and all private streets within the Properties; any irrigation facilities servicing land which the Association is obligated to maintain; and take such other action as the Association is authorized to take with regard to the Properties pursuant to the Articles of Incorporation, By-Laws and this Declaration.

Section 2. Common Expense. The expenses and costs incurred by the Association in performing the rights, duties and obligations set forth in Section 1 of this Article are hereby declared to be common expenses.

Section 3. Damages Caused by Owners, Etc. Notwithstanding Section 2 of this Article, should any maintenance, repair or replacement of any Local Common Areas or improvements thereon as identified in Section 1 of this Article be caused by the negligence or misuse, intentional or otherwise, of or by an Owner or occupant of the Owner's dwelling unit or guest of the Owner, said Owner shall be responsible to the Association for all costs incurred in said maintenance, repair or replacement and the Association shall have the right to a lien against the Lot and the Owner thereof for the costs of such maintenance, repair or replacement and for any reasonable attorneys' fees and costs related to or arising out of the enforcement of this provision, said lien to be of the same nature and have the same force and effect as a lien created hereunder for delinquent assessments.

Section 4. Easement for Maintenance. The Association is hereby granted a non-exclusive, perpetual easement as to the Properties to the extent reasonably necessary to discharge its duties under this Declaration. Such right of entry shall be exercised in a peaceful and reasonable manner at reasonable times upon reasonable notice whenever the circumstances permit.

Section 5. Owner's Maintenance Responsibilities. The responsibility of the Owner shall be to maintain, repair and replace, at their sole expense, their Lot and all portions of their dwelling unit in an attractive and first class condition, and to promptly report to the Association any defect or need for repairs when the responsibility for the remedying of which is that of the Association.

ARTICLE III

PROPERTY RIGHTS

Section 1. Owners, Easements of Enjoyment. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Local Common Areas, which right and non-exclusive easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association from time to time in accordance with its By-Laws to establish, modify, amend and rescind reasonable rules and regulations regarding use of the Local Common Areas and Lots;

(b) The right of the Association to charge reasonable admission and other fees for use of any facilities, if any, situated upon the Local Common Areas;

(c) The right of the Association to suspend the voting rights and right to use of the Local Common Areas by an Owner for any period during which any assessment levied under this Declaration against such Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the published rules and regulations of the Association;

(d) The right of the Association to dedicate or transfer all or any part of the Local Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the voting Members. No such dedication or transfer shall be effective unless approved, in writing, by not less than two-thirds (2/3) of each class of Voting Members and no such dedication or transfer shall limit or impair the rights of ingress and egress for any Lot within the Properties.

(e) The right of the Association to grant an easement as to the Local Common Areas or any part thereof as provided by this Declaration or the Articles; and

(f) The right of the Association to otherwise deal with the Local Common Areas as provided by this Declaration or the Articles.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Local Common Areas and facilities, if any, to the members of his family, his tenants, or contract purchasers, provided the foregoing actually reside at the Owner's Lot.

Section 3. Prohibition of Certain Activities. No damage to or waste of the Local Common Areas or any part thereof shall be committed by any Owner or any family member, tenant or invitee of any Owner. No obnoxious, destructive or offensive activity shall be permitted on or in the Local Common Areas or any part thereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance or nuisance to any other Owner. No Owner may maintain, treat, landscape, sod, or place or erect any improvement or structure of any kind on any Local Common Area without the prior written approval of the Board of Directors, which approval may be arbitrarily withheld by the Board of Directors.

Section 4. Signs Prohibited. No sign of any kind shall be displayed in or on any Local Common Area without the prior written approval of the Board of Directors.

Section 5. Animals. No animals shall be permitted on or in the Local Common Areas at any time except as may be provided in the rules and regulations of the Association.

Section 6. Rules and Regulations. No Owner or other permitted user of the Local Common Areas shall violate the reasonable rules and regulations as the same are, from time to time, adopted by the Board of Directors. The Board of Directors shall have the authority to impose fines against owners, tenants and other persons, up to the maximum amount allowed by Florida law as amended from time to time, for violations of the restrictions or Rules and Regulations contained in the governing documents of the Association. Before any fine becomes final the person(s) proposed to be fined will be entitled to notice and an opportunity for a hearing, in accordance with any requirements of Florida law, and such additional policies and procedures as may be adopted by the Association. The Association shall also be entitled to recover all costs and attorneys' fees incurred in connection with the adoption and enforcement of the fine, and a fine may become a lien against property to the extent permitted by the Florida Statutes.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

Section 1. General Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, rules and regulations, and this Declaration. When any Lot is owned of record by two (2) or more persons or other legal entities, all such persons or entities shall be members. An Owner of more than one (1) Lot shall be entitled to one (1) membership for each Lot owned by him. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot to the grantee named in such conveyance.

Section 2. Voting. Where more than one person or entity shall at any time be the Owner of a Lot, the vote allocable to such Lot shall be exercised as such Owners mutually determine as long as only one vote is cast per Lot. In the event more than one vote is cast for a particular Lot, the votes will not be counted. The vote of an Owner which is not a natural person shall be cast by any officer of a corporation, or any partner or managing agent of another type of entity

ARTICLE V

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Responsibilities. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Local Common Areas, any common boundary fence or wall not maintained by the Master Association, and shall keep the same in good, clean and proper condition, order and repair. The Association shall be responsible for the payment of all costs, charges and expenses incurred in connection with the performance of its other obligations under this Declaration.

Section 2. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Association's Articles or By-Laws.

Section 3. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association additionally shall cause all persons responsible for collecting and disbursing Association monies to be insured or bonded with adequate fidelity insurance or bonds.

Section 4. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Articles, By-Laws, or by law and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privileges granted in this Declaration, the Articles, By-Laws or such laws.

ARTICLE VI

EXPENSES

Section 1. Common Expenses. All expenses of the Association in performing its duties and obligations or in exercising any right or power it has under this Declaration, the Articles or the By-Laws are deemed to be and hereby are common expenses.

ARTICLE VII

COMMON EXPENSE ASSESSMENTS

Section 1. Application. The provisions of this Article shall apply to all Lots within the Properties.

Section 2. Creation of the Lien and Personal Obligation for Common Expense Assessments.

(a) Each Owner of any Lot within the Properties, by acceptance of a deed or other instrument of conveyance thereto, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association:

1. Annual assessments or charges for common expenses; and
2. Special assessments as may be provided by the terms of this Declaration.

(b) Such assessments and charges, together with any applicable late fees, interest, costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a lien upon the Lot against which such assessment is made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due.

Section 3. Purpose of Common Expense Assessments. The Common Expense assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Properties and for the improvement and maintenance of the Local Common Areas and the carrying out of the other responsibilities and obligations of the Association under this Declaration, the Articles and the By-Laws. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of real property, services and facilities related to the use and enjoyment of the Local Common Areas; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes and assessments made or levied against the Local Common Areas; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the maintenance, landscaping and beautification of the Local Common Areas and such public lands and private lands, whether owned by the Association or not, as may be designated by the Declarant or the Association.

Section 4. Maximum Annual Assessment for Common Expenses.

(a) Standard Increases. The maximum annual assessment for common expenses as stated above may be increased each year as may be necessary; however, if the annual assessment for common expenses is increased by more than fifteen percent (15%) over the prior year's budget, excluding any charges for reserves or other non-recurring items, the membership can request that a special meeting be held for purposes of reconsidering the budget increase. Such request is to be made by a petition signed by at least thirty-three percent (33%) of the

membership. Upon receipt of the petition the Board shall schedule a special meeting of the membership. At the membership meeting, the members may vote to reduce the budget increase to a level of not less than fifteen percent (15%) over the prior year's budget, if such action is approved by at least two-thirds (2/3) of the members present at the meeting and voting in person or by proxy. The Board of Directors shall then adjust the budget in accordance with any such vote of the membership.

Section 5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or part, the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of Members present and voting in person or by proxy at a meeting duly called for this purpose.

Section 6. Notice of Meeting and Quorum for An Action Authorized Under Sections 4 and 5. Written notice of any members meeting called for the purpose of taking any action authorized under Sections 4 and 5 of this Article shall be sent to all members not less than fourteen (14) days or more than sixty (60) days in advance of the meeting. At such meeting, the presence of at least thirty percent (30%) of Voting Members in person or by proxy shall constitute a quorum.

Section. 7. Exemption from Assessments. The assessments, charges and liens provided for or created by this Article shall not apply to the Local Common Areas, any property dedicated to and accepted for maintenance by a public or governmental authority or agency, any property owned by a public or private utility company or public or governmental body or agency, or any property owned by a charitable or non-profit organization.

Section 8. Date of Commencement of Annual Assessments: The Board of Directors shall fix the amount of the annual assessment for common expenses against each Lot not later than January 30 of each calendar. Written notice of the annual assessment for common expenses shall be sent to every Owner. Unless otherwise established by the Board of Directors, assessments for common expenses shall be collected on an annual basis. The due date for the assessments and for any special assessments shall be as established by the Board of Directors.

Section 9. Master Association Assessments. Notwithstanding anything else within this Declaration to the contrary, Common Expenses shall include any and all assessments made by the Master Association against the Association or collectively against all Lots within the Properties; provided, however, that such Master Association assessments shall be established, from time to time, by the Master Association and shall not be calculated in or be considered a part of the maximum annual assessment set forth in Section 4(a) or the limitation of standard increases set forth in Section 4(b) of this Article VII but, rather, shall be considered as an additional assessment in addition to the other Common Expense assessments made pursuant to this Declaration.

SECTION VIII

GENERAL PROVISIONS ON ASSESSMENTS

Section 1. Lien for Assessments. All sums assessed to any Lot pursuant to this Declaration together with late fees, interest and all costs and expenses of collection including reasonable attorney's fees, shall be secured until paid in full by a continuing lien on such Lot in favor of the Association.

Section 2. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a reasonable late fee not to exceed the maximum amount permitted by Florida law, and shall bear interest from the due date at the highest rate allowed by Florida law per annum. The Association may bring an action at law against the Owner personally obligated to pay such assessment, or foreclose the lien against the Lot, or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Local Common Areas or abandonment of his. Any payment received by Association shall be applied first to any interest accrued, then to any late fee, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. If any assessment or installment shall remain unpaid when due for a period of forty-five (45) days, and a claim of lien is recorded, the Association shall have the right to accelerate the due date of the entire unpaid balance of the Lot's annual assessment, and all special assessments for that fiscal year, as if said balance had originally been due on the date the claim of lien was recorded. The Association's claim of lien shall secure payment of the entire accelerated obligation, together with interest on the entire balance, and attorneys' fees and costs as provided by law; and said claim of lien shall not be satisfied or released until all sums secured by it have been paid.

Section 3. Foreclosure. The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Florida. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorney's fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date the Owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

Section 4. Homestead. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available by reason of the homestead exemption provisions of Florida law, if for any reason such are applicable. This Section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

Section 5. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate only to the lien of any first Institutional Mortgage which is given to or held by an Institutional Lender or which is guaranteed or insured by the FHA or VA. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. The Association shall, upon written request from an Institutional Lender, report to any such Institutional Lender any assessments remaining unpaid on the Lot for which they hold or guarantee an Institutional Mortgage for a period longer than sixty (60) days after the same have become due, and shall give such Institutional lender a period of thirty (30) days from the date of such request in which to cure such delinquency before instituting foreclosure proceedings against the Lot; provided, however, that such Institutional Lender first shall have furnished to the Association written notice of the existence of its Institutional Mortgage, which notice shall designate the Lot encumbered by a proper legal description and shall state the address to which notices pursuant to this Section are to be given. Any such Institutional Lender holding a lien on a Lot shall be liable for delinquent assessments to the extent provided by the Florida Statutes.

Section 6. Certificate of Amounts Due. The Association shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot shall be binding upon the Association as of the date of its issuance.

ARTICLE IX

USE RESTRICTIONS

Section 1. Residential Use. All of the Properties shall be known and described as residential property and no more than one (1) single-family dwelling unit may be constructed on any Lot, except that more than one (1) Lot may be used for one (1) dwelling unit, in which event, all restrictions in this Declaration shall apply to such Lots as if they were a single Lot.

Section 2. Structures. Except as originally constructed or thereafter reconstructed to repair damage or destruction to the original dwelling unit, no dwelling unit shall be erected nearer to a Front Street Line, a Side Yard Line, or a Rear Yard Line than is allowed by the Building and Zoning Codes of the County. Above ground swimming pools of any type are prohibited.

Section 3. Dwelling Units. No dwelling unit shall have a square foot area of less than one thousand four hundred (1,400) square feet, exclusive of screen enclosed areas, open porches, terraces, patios and garages. Each dwelling unit shall have at least one (1) inside bath, each containing at least one (1) shower or tub, one (1) toilet and one (1) wash basin. No dwelling shall exceed thirty-five (35) feet in height. A shrubbery planting shall be in front of each dwelling unit, which planting shall comply with County regulations.

Section 4. Easements.

(a) Perpetual easements for the installation and maintenance of utilities and drainage areas are hereby reserved to the Association and the County in and to all utility easement and drainage easement areas shown on the Plat, which easements shall include, without limitation, the right of reasonable access over Lots to and from the easement areas, and the Association and the County each shall have the right to convey in whole or in part such easements on an exclusive or non-exclusive basis to any person, corporation or governmental entity. Neither the easement rights reserved pursuant to this Section nor as shown on the Plat shall impose any obligation on the Association to maintain such easement areas, or to install or maintain the utilities or improvements that may be located on, in or under such easements, or which may be served by them. Within any such easement areas, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with access to or the installation, use and maintenance of such easement areas or any utilities or drainage facilities contained therein, or which may change the direction of flow or obstruct or retard the flow of drainage water in any such easement areas, or which may reduce the size of any water retention areas constructed by the Association in such easement areas. The easement areas of each Lot, whether as reserved hereunder or as shown on the Plat, and all improvements in such easement areas shall be maintained continuously by the Owner of the Lot upon which such easement exists, except for those improvements for which a public authority, utility company or the Association pursuant to this Declaration is responsible. With regard to specific easements for drainage shown on the Plat, the Association shall have the right, but without any obligation imposed thereby, to alter or maintain drainage facilities in such easement areas, including slope control areas. No Owner shall alter or modify the drainage flow on his Lot without prior approval as set forth in Section 17 of this Article.

(b) There may be designated certain areas of the Properties as "Drainage Easements" on the Plat. No permanent improvements or structures shall be placed or erected upon such Drainage Easements. In addition, no fences, driveways, pools and decks, patios, air conditioners, improvements with any impervious surface, utility sheds, trees, shrubs, hedges, plants or any other landscaping element other than sod shall be placed or erected upon or within such Drainage Easements.

(c) The Association, may reserve a landscape and signage easement running along the perimeters of certain Lots within the Properties as more specifically shown on the Plat or other instrument recorded in the Public Records of the County, for the purposes of construction of monument signage. Once such monuments have been erected, the Association shall have the obligation, at the Association's expense, which shall be a common expense, to maintain, repair and replace such monuments in a neat and aesthetic condition like that as originally constructed. Nothing in this Section shall be construed to obligate the Association to construct any such monuments.

(d) Association and Owners consent hereby to an easement for utilities including but not limited to telephone, gas, water, cable television, electricity, sanitary sewer service, irrigation and drainage in favor of all lands which abut the Properties, their present Owners and their successors and assigns. The easement set forth in this Paragraph shall include the right to "tie in", join and attach to the existing utilities, sanitary sewer service, irrigation and drainage in the Properties so as to provide access to these services to said abutting lands directly from the Properties.

(e) The Board of Directors shall have the right to create new easements for pedestrian and vehicular traffic and utility services across and through the Properties; provided, however, that the creation thereof does not materially adversely affect the use of any Lot.

(f) The creation of new easements as provided for in this Section shall not unreasonably interfere with ingress to and egress from a Lot or dwelling unit thereon.

(g) In the event that any structure or improvement on any Lot shall encroach upon any of the Common Areas, Local Common Areas or upon any other Lot for any reason other than the intentional or negligent act of the Owner, or in the event any Common Areas or Local Common Areas shall encroach upon any Lot, then an easement shall exist to the extent of such encroachment for so long as the encroachment shall exist.

(h) Notwithstanding anything in this Section to the contrary, no easement granted by this Section shall exist under the outside parametrical boundaries of any dwelling unit originally constructed on any portion of the Properties.

Section 5. Use of Access or Structures. Other than the dwelling unit and its garage, no tent, shack, barn, utility shed or building shall, at any time, be erected and used on any Lot temporarily or permanently, whether as a residence or for any other purpose; provided, however, that temporary buildings, mobile homes, or field construction offices may be used by Declarant and its agents, contractors and subcontractors in connection with construction work. No recreation vehicle may be used as a residence or for any other purpose on any Lot.

Section 6. Commercial Uses and Nuisances. No trade, business, profession or other type of commercial activity shall be carried on upon any Lot, except that real estate brokers, Owners and their agents may show dwelling units in the Properties for sale or lease. Businesses not requiring regular visitation of customers, clients, vendors or suppliers may be allowed with prior written approval from the Board of Directors, provided that they meet the requirements herein and do not have any exterior display of business use or activity or adverse impact on surrounding residences or occupants. Such businesses include, but are not limited to, home offices for professionals such as accountants, real estate agents, attorneys or other persons who deal primarily in services and whose clients do not visit or make use of the premises and which is conducted primarily through telephonic and electronic media. Nothing shall be done on any Lot which may become a nuisance or an unreasonable annoyance to the neighborhood.

Section 7. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that cats, dogs, and other household pets may be kept provided they are not kept, bred or maintained for any commercial purposes. No person owning or in custody of a dog shall allow the dog to stray or go upon any other Owner's Lot without the consent of the Owner of such Lot. No more than a total of two (2) animals may be kept on any Lot. Each dog must be on a leash when the dog is outside of the Owner's Lot. The Association has the authority to adopt and amend additional rules and regulations regarding the ownership and control of animals in the community, consistent with the terms of this Declaration.

Section 8. Fences, Walls and Hedges. Except as to fences, walls or hedges originally constructed or planted by or with the written authorization of the Association if any, no fences, walls or hedges of any nature may be erected, constructed or maintained upon any Lot except in accordance with the terms and conditions of this Declaration and the Building and Zoning Codes of the County; provided, however, that no such fence, wall or hedge shall be erected or permitted on a Lot in any location thereon where the Association has erected a subdivision privacy fence or monument as provided in Subsection 4(c) of this Declaration. As to any fence, wall or hedge erected or maintained pursuant to this Paragraph, such fence, wall or hedge may be constructed or maintained to a height not to exceed six (6) feet; provided, however, that any fence, wall or hedge which abuts or runs along the boundary of any pond, lake, water body, common area, recreation area or facility or any portion of any golf course shall not exceed thirty-six (36) inches in height from the ground. Such fences must be kept in good condition and repair. No fence, wall or hedge may be constructed or maintained between a Front Street Line and the Front Dwelling Line. The Association has the authority to adopt and amend additional rules and regulations regarding the installation of fences, consistent with the terms of this Declaration.

Section 9. Vehicles. No motor vehicle shall be parked on the Properties except on a paved or concrete driveway or in a garage. No motor vehicles which are primarily used for commercial purposes, except off duty public service vehicles such as police and emergency medical vehicles, other than those present on business, and no trailer, motorcycle, camper, truck, semi trailer, truck-tractor, recreational vehicle, travel" trailer, camping trailer, truck camper, motor home, boat or boat trailer may be parked in the Properties unless inside a garage and concealed from public view. Included within the definition of "commercial vehicles" are all vehicles with exterior commercial lettering; pickup trucks with a carrying capacity in excess of one-half (1/2) ton; vans designed for commercial purposes, which determination is based upon factors including the size of the van, the absence of passenger windows on the sides of the vehicle, and the absence of rear seats for passengers with space for carrying cargo present in place of such seats; and trucks, including pickup trucks of any size, which evidence visible uses or modifications for commercial purposes. This includes trucks where items are carried or stored in open view (as opposed to being concealed in a storage box or other approved container). This also includes trucks where any commercial equipment, inventory, or apparatus is visible on the exterior of the vehicle. Also prohibited are any passenger vehicles, including sport utility vehicles, which have been modified from the condition which existed when sold by the manufacturer, including modifications which have increased the height of such vehicles, added

off-road or enlarged tires, or added roll bars or other apparatus unrelated to conventional passenger use of the vehicle. The Association has the authority to adopt and amend additional rules and regulations regarding parking and vehicles, consistent with the terms of this Declaration.

Section 10. Storage. No Lot shall be used for the storage of rubbish, trash, garbage or other waste and such material shall not be kept on any Lot except in sanitary containers properly concealed from public view.

Section 11. Clothes Hanging and Drying. All outdoor clothes hanging and drying activities shall be done in a manner so as not to be visible from any Front Street or Side Street or any adjacent or abutting property and are hereby restricted to the area between the Rear Dwelling Line and the Rear Yard Line and, in the cases of Lots bordering a Side Street, to that portion of the afore-described area which is not between the Side Street and the Side Dwelling Line. All clothes poles shall be susceptible of being lifted and removed by one (1) person in one (1) minute's time and shall be removed by the Owner when not in actual use for clothes drying purposes.

Section 12. Antennas. No exterior radio, television or other electronic antennas or aerials or satellite dish antennas shall be allowed, unless installed in a manner that will cause the least adverse visual impact to the neighboring properties, while still allowing an acceptable quality signal and not imposing any unreasonable increases in cost. Therefore, if the installation will be visible from neighboring properties, the Association may require inexpensive screening or painting in a color compatible with the building, in order to minimize any adverse impact.

Section 13. Street Lighting. All street lighting on the Properties shall be in accordance with applicable governmental ordinances, rules and regulations now or hereafter in effect. The Association shall have the right to contract for street lighting and the fees under any such contract shall be a common expense of the Association.

Section 14. Signs. Except as otherwise provided in this Section, no signs of any nature whatsoever shall be erected or displayed upon any of the properties, except when express prior written approval of the size, shape, content and location thereof has been obtained from the Association. Every Owner has the right, without the consent of the Association, to place upon his Lot one (1), but only one (1), professionally made sign which shall not be larger than nine (9) square feet and which shall contain no wording other than "For Sale" or "For Rent", the name and address of one (1) registered real estate broker and a phone number of Owner or his agent.

Section 15. Lot Upkeep. All Owners of Lots with completed units thereon shall, maintain the Lots in an attractive and first class condition, free of weeds, debris, overgrowth and other unsightly conditions, and shall, have the grass regularly cut and all trash and debris removed. If an Owner of a Lot fails, in the Association's sole discretion, to maintain their Lot as required herein, the Association, after giving such Owner at least ten (10) days written notice, is hereby authorized, but shall not be hereby obligated, to maintain that Lot and said Owners shall

reimburse the Association for actual costs incurred therewith. The Association has the authority to adopt and amend additional rules and regulations regarding the maintenance of the Lots, consistent with the terms of this Declaration.

Section 16. Architectural Control. Prior to the commencement of any exterior changes, modifications, alterations, additions or improvements, all building plans and specifications (including plot plan, grading plan and material lists) for the construction, alteration or addition of structures, or for the erection of hedges or fences, and all plans for the landscaping of Lots, and all plans or agreements relating to the appearance, colors and materials to be used on the exterior of a structure, shall be approved in writing by the Association. The Association shall have the absolute right to approve or disapprove said plans for any reason including aesthetic considerations. Any plans not disapproved within thirty (30) days after their receipt, along with any such additional information that may be requested by the Association, shall be deemed approved.

Section 17. Modifications. No Owner shall cause any additions, modifications, improvements or changes to be made on the exterior of their dwelling unit, including painting, stone work, veneer, brick work, brick, stucco, stucco veneer or any facade of any nature or other decoration, or the installation of electrical wiring, machinery, water softener or air-conditioning units which may protrude through the walls or roof of the dwelling unit, or in any manner change the exterior appearance of any portion of the dwelling unit, or change any grade or drainage flow on the Properties or modify any landscaping of the Properties without the written consent of the Association. The Board of Directors of the Association, may establish any reasonable requirements it deems necessary to grant or deny such modifications. The Association has the authority to adopt and amend additional standards and design guidelines regarding architectural control, consistent with the terms of this Declaration.

Section 18. DEP and SWFWMD Regulations. The requirements of the Florida Department of Environmental Regulation ("DER") and Southwest Florida Water Management District ("SWFWMD") shall apply to the Association and all Lots and Owners. With respect to any Lot which abuts any wet detention pond, the Owner of such Lot shall not remove native vegetation (including cattails) that become established within the wet detention pond. As used herein the term "remove" shall include dredging, application of herbicides or cutting. It shall be the responsibility of said Lot Owner to consult with SWFWMD or such other governmental entity as has control or authority over such wet detention ponds with respect to the care and maintenance thereof. It shall be the responsibility of such Lot Owners, at their sole expense, to maintain any land area between the rear of their Lot and the high water mark of such detention pond in such a fashion as to be reasonably acceptable to the Association. No Owner may construct or maintain any building, residence or structure or undertake or perform any activity in the wetlands, buffer areas and upland conservation areas described in any approved permit or the Plat, unless prior approval is received from SWFWMD pursuant to Chapter 40D-4 of the Florida Administrative Code.

Section 19. Mailboxes. It is the responsibility of the individual Lot Owner to maintain, repair and replace the mailbox serving their Lot, providing that no changes in the style of the mailbox are to be made without obtaining approval of the Association in accordance with the provisions set forth in this Declaration, as it may be amended from time to time.

ARTICLE X

FNMA PROVISIONS

Section 1. Information. The Association shall make available to all Owners and to all Institutional Lenders holding an Institutional Mortgage encumbering a Lot, upon reasonable notice and for a reasonable charge not to exceed the cost of photocopying, current copies of this Declaration, the Articles and By-Laws, and any rules and regulations in force from time to time, and the most recent annual financial statement of the Association. Copies of any of the foregoing, and the books and records of the Association, shall be available for inspection, upon request, during normal business hours.

Section 2. Reserves. The Association shall have the authority and discretion to establish and maintain, out of regular maintenance assessments, adequate reserve funds as it deems necessary.

Section 3. Lender's Notices. Upon written request to the Association, identifying the name and address of the Institutional Lender and the Lot number or address, such Institutional Lender will be entitled to timely written notice of:

(a) Any condemnation or casualty loss that affects either a material portion of the Properties or the Lot encumbered by its Institutional Mortgage.

(b) Any delinquency of sixty (60) days or more in the payment of assessments or charges owed by the Owner of the Lot encumbered by its Institutional Mortgage.

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action that requires the consent of a specified percentage of Institutional Lenders.

Section 4. Fidelity Bonds. All officers of the Association dealing with funds of the Association, and such other officers as the Board of Directors may designate from time to time, may be provided with fidelity bond coverage as a common expense of the Association and for the benefit of the Association.

ARTICLE XI

GENERAL PROVISIONS

Section 1. Master Declaration and Association. Every Owner of a Lot within the Properties, by acceptance of a Deed for said Lot, hereby acknowledges that such Lot and such Owner are, or will be, subject to the Master Declaration and Master Association and all the terms and conditions thereof including, but not limited to, assessments for common expenses and lien rights in favor of the Master Association for the collection of such assessments.

Section 2. Enforcement. The Association, the Master Association, and any Owner shall each have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration or as may be expressly authorized by the Master Declaration as described in Section 1 of this Article. Failure of the Association, Master Association, or any Owner to enforce any covenant or restriction herein or therein contained shall in no event be deemed a waiver of the right to do so. Thereafter, if a person or party is found in the proceedings to be in violation of or attempting to violate the provisions of this Declaration or the Master Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorney's fees, including those incurred prior to litigation and on appeal, by the party enforcing them. The Master Association shall not be obligated to enforce this Declaration or the Master Declaration and shall not in any way or manner be held liable or responsible for any violation of this Declaration or the Master Declaration by any person other than itself.

Section 3. Severability. Invalidation of any word, term, phrase or other portion of this Declaration by law, judgment or court order shall not affect any of the other provisions of this Declaration, and such other provisions shall remain in full force and effect.

Section 4. Amendment. The Covenants and Restrictions of this Declaration shall run with and bind the Properties for a term of twenty (20) years from the date this Declaration is recorded in the Public Records of the County, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated by the vote of eighty (80%) percent of the Voting Members at a meeting called for such purpose. This Declaration may be amended with approval of two-third (2/3) of the Voting Members who participate in the voting in person or by proxy, at a meeting call for such purpose.

Section 5. Irreparable Harm. Every Owner agrees and acknowledges that a violation of any term or condition of this Declaration by such Owner or their family members, guests, invitees, licensees, tenants or servants constitutes irreparable harm to the Association and every other Owner in the Properties and that any action at law or equity to obtain an injunction against such violation shall require no further proof of irreparable harm other than the admission herein contained.

END OF AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS