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**INSTR # 2002102039**  
**OR BK 11521 PG 0598**

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RICHARD AKE CLERK OF COURT  
HILLSBOROUGH COUNTY  
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**PREPARED BY AND RETURN TO:**  
S. Katherine Frazier, Esq.  
Hill Ward & Henderson, P.A.  
Post Office Box 2231  
Tampa, FL 33601

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LOST RIVER PRESERVE**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LOST RIVER PRESERVE** (the "Declaration") is made this 27 day of March, 2002, by LOST RIVER PRESERVE, LLC, a Florida limited liability company (the "Developer").

**WITNESSETH:**

**WHEREAS**, Developer is the owner of the real property described in Article II of this Declaration and desires to create thereon an exclusive residential community known as "LOST RIVER PRESERVE" (the "Community"); and

**WHEREAS**, Developer desires to ensure the attractiveness of the individual lots and facilities within the Community and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of the said property, and to provide for the maintenance of Community common properties, areas and facilities and certain exterior maintenance on Lots as may be defined hereinafter, and, to this end, desires to subject the real property described in Article II of this Declaration to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each Homeowner thereof; and

**WHEREAS**, Developer has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the Community and to ensure the residents' enjoyment of the specific rights, privileges and easements in the Community common properties, areas and facilities, to create an organization to which should be delegated and assigned the powers of owning, maintaining and administering the Community common properties, areas and facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, Developer has incorporated under the laws of the State of Florida, as a corporation not-for-profit, LOST RIVER PRESERVE PROPERTY OWNERS' ASSOCIATION, INC., for the purpose of exercising the functions aforesaid within the Community.

**NOW, THEREFORE**, Developer declares that the real property described in Article II of this Declaration is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens (sometimes collectively referred to as the "Covenants and Restrictions") hereinafter set forth.

**Article I: Definitions and Construction**

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration:

Section 1. "Architectural Committee" means the Architectural Control Committee established pursuant to Article IV of this Declaration.

Section 2. "Articles of Incorporation" or "Articles" means the Articles of Incorporation of the Association, as may be amended from time to time. A copy of the Articles of Incorporation as filed with the Florida Department of State is attached as Exhibit B hereto. Any future amendments to the original Articles need not be recorded in the public records of Hillsborough County, Florida.

Section 3. "Association" means Lost River Preserve Property Owners' Association, Inc., a Florida corporation not for profit, organized or to be organized under Chapter 617, Florida Statutes.

Section 4. "Board" or "Board of Directors" means the Association's Board of Directors.

Section 5. "By-Laws" means the By-Laws of the Association as may be amended from time to time. A copy of the original By-Laws is attached as Exhibit C hereto. Any future amendments to the original By-Laws need not be recorded in the public records of Hillsborough County, Florida.

Section 6. "Common Expenses" means all expenses properly incurred by the Association in the performance of its duties pursuant to this Declaration, the Articles, the By-Laws or any rules promulgated thereunder, or any agreement properly entered into by the Association, including, but not limited to:

(a) the expenses incurred in connection with the ownership, maintenance, repair, replacement, reconstruction or improvement of the Common Property and/or real property held in title by the Association, if any, as provided for pursuant to this Declaration (which expenses may, but shall not necessarily, include utilities, taxes, assessments, insurance and repairs);

(b) the expenses of obtaining, repairing or replacing personal property owned by the Association;

(c) the expenses incurred in the administration and management of the Association; and

(d) the expenses declared to be Common Expenses pursuant to this Declaration or the Articles or the By-Laws.

Section 7. "Common Property" or "Common Properties" mean any portion or portions of the Property now or hereafter owned by the Association or designated herein or on the plat of the Property as recorded in Plat Book 92, Page 72, public records of Hillsborough County, Florida, as from time to time may be amended ("Plat"), as either Common Property or property to be maintained by the Association (whether or not such property is part of a dedicated right-of-way or easement). "Common Property" shall include (a) any landscaping in any median or cul-de-sac island located in any right-of-way as shown on the Plat (whether or

not these areas are indicated as common areas), (b) any lake areas, (c) any parks, boat ramps, nature trails and conservation areas for which the Association has maintenance responsibility and for which the costs thereof shall be shared by the Homeowners and certain owners of adjacent real property pursuant to separate agreement.

Section 8. "Declaration" means this instrument, as may be amended from time to time.

Section 9 "Developer" means Lost River Preserve, LLC, a Florida limited liability company.

Section 10. "Family" means one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than eight (8) persons not all so related, together with domestic servants if any, maintaining a common household in a Unit.

Section 13. "First Mortgage" means a valid Mortgage (as defined hereinafter) having priority over all other mortgages on the same property.

Section 14. "First Mortgagee" means the holder of a recorded First Mortgage encumbering a Lot and the Unit thereon, if any.

Section 15. "Homeowner" means any person who from time to time holds record title to any Lot. If more than one person holds such title, all such persons are Homeowners, jointly and severally. The Developer is a Homeowner with respect to each Lot from time to time owned by such Developer.

Section 16. "Lot" means each numbered lot as established by the recorded Plat of the Property.

Section 17. "Mortgage" means any valid instrument transferring any interest in real property as security for the performance of an obligation.

Section 18. "Person" means any natural person or artificial entity having legal capacity.

Section 19. "Property" means the real property described in Article II of this Declaration.

Section 20. "Resident" means a permanent occupant of a Unit.

Section 21. "Unit" or "Dwelling" means a residential housing unit consisting of a group of rooms which are designed or intended for the exclusive use as living quarters for one Family as constructed upon a Lot.

Section 22. "Work" means the development of all or any portion of the Property as a residential community by Developer's construction and installation of streets, dwellings, buildings, and other improvements and the sale or other disposition of the Property and improvements thereon in parcels or as completed Lots.

Section 23. The term "Article" and the term "paragraph" where used throughout this Declaration shall mean the same, unless the context requires otherwise.

Section 24. The term "Section" where used throughout this Declaration shall refer to that portion of the Article indicated, unless the context requires otherwise.

Unless the context expressly requires otherwise: (i) the use of the singular includes the plural and vice versa; (ii) the use of one gender includes all genders; (iii) the use of the terms "including" or "include" is without limitation; (iv) the use of the term "Lot" includes any portion applicable to the context thereof, any and all improvements, fixtures, trees, vegetation, and other property from time to time situated thereon, and any and all appurtenant rights; and (v) the words "must," "should," and "will" have the same legal effect as the word "shall." This Declaration should be interpreted, construed, applied, and enforced in a reasonable, practical manner to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Lots by providing a common plan for their development and enjoyment. The various headings used in this Declaration are for indexing and organizational purposes only and are not to be used to interpret, construe, apply, or enforce its substantive provisions.

### **Article II: Property Subject to This Declaration**

The real property which is, and shall be, held, transferred, sold, conveyed, and occupied subject to this Declaration is located in the County of Hillsborough, State of Florida, and is more particularly described in the metes and bounds description attached hereto as Exhibit A and incorporated by reference as fully as if specifically repeated herein, and all of which real property shall hereinafter be referred to as "Property."

### **Article III: Property Rights, Easements and Restrictions**

Section 1. Appurtenances. The benefit of all rights and easements granted by this Article constitute a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as non-exclusive by this Article, its benefit nevertheless is exclusive to all Lots granted such benefit by this Article unless this Article expressly grants such benefit to other persons. In no event will the benefit of any such easement extend to the general public.

Section 2. Utility Easements. Developer has identified areas for use by all utilities for the construction and maintenance of their respective facilities servicing the Property, and Developer hereby grants to such utilities, jointly and severally, easements for such purpose. The location and extent of such easements are as shown on the Plat (recorded or to be recorded) of the Property or such other instrument defining them. In addition to the above, Developer hereby reserves unto itself and its successors and assigns an easement over, under, across and through the Common Property as may be required for the construction, maintenance and operation of a two-way communication and security system. Such utilities, as well as Developer, and their respective agents, employees, designees and assigns shall have full rights of ingress and egress over any Lot for all activities appropriately associated with the purposes of said easements.

Section 3. Additional Easements. Developer (so long as it owns any Lot) and the Association, on their behalf and on behalf of all Homeowners, each shall have the right to (i) grant and declare additional easements over, upon, under and/or across the Common Property in favor of Developer or any person, entity, public or quasi-public authority or utility company, or (ii) modify, relocate, abandon or terminate existing easements over, upon, under and/or across the Common Property benefitting or affecting the Property. In connection with the grant, modification, relocation, abandonment or termination of any easement, Developer reserves the

right to relocate roads, parking areas, lines, and other improvements upon the Common Property and/or serving the Common Property or the Property. So long as the foregoing will not unreasonably and adversely interfere with the use of Lots for dwelling purposes, no consent of any Homeowner or any mortgagee of any Lot shall be required or, if same would unreasonably and adversely interfere with the use of any Lot for dwelling purposes, only the consent of the Homeowners and institutional lenders of Lots so affected shall be required. To the extent required, all Homeowners hereby irrevocably appoint Developer and/or the Association as their attorney-in-fact for the forgoing purposes.

Section 4. Sale and Development Easement. Developer reserves and shall have an easement over, upon, across and under the Common Property as may be reasonably required in connection with the development, construction, sale and promotion, or leasing, of any Lot within the Property or within any other property owned by Developer.

Section 5. Common Properties. Subject to the provisions of subsection (b) below, every Homeowner shall have a non-exclusive right and easement of enjoyment in and to the Common Properties, if any, and such easement shall be appurtenant to and shall pass with the title to every Lot situated within the Community.

(a) Extent of Members' Easement. The rights and easements of enjoyment created herein shall be subject to the following:

(i) the right of the Association to limit the use of the Common Properties to Homeowners, their families and guests;

(ii) the right of the Association to suspend the voting and enjoyment rights of a Homeowner for any period during which any assessment against his or her Lot remains unpaid, or for any infraction of the Association's published rules and regulations, if any;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Homeowners. No such dedication or transfer shall be effective unless the Members entitled to at least two-thirds (2/3) of the Class A votes and all of the Class B votes agree to such dedication or transfer, provided that this paragraph shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of electrical, telephone, special purpose cable for television and other uses, water and sewer, utilities and drainage facilities as set forth herein upon, over, under and across the Common Property without the assent of the membership; and

(iv) the right of the Association to impose reasonable Covenants and Restrictions with respect to the use of the Common Properties in addition to those set forth herein.

(b) Extension of Rights and Benefits. Every Homeowner shall have the right to extend the rights and easements of enjoyment vested in him or her under this Article to each of his or her tenants and to each member of his or her Family who resides with him or her and to such other persons as may be permitted by the Association.

Section 4. Lots. The following covenants, restrictions and easements are hereby imposed on each Lot in the Community:

(a) General Restrictions. The following restrictive covenants are easements and covenants running with the land and are binding upon all Homeowners, Residents, and other occupants and their respective successors and assigns (however, the provisions of this subsection 4(a) shall not apply to the Developer):

(i) Use. The Lots shall be used only for single-family residential purposes, and no professional, business or commercial use shall be made of the same, or any portion thereof, provided further that nothing herein shall be construed in such a manner as to prohibit a Homeowner from (a) maintaining his or her personal professional library therein; (b) keeping his or her personal, business or professional records or accounts therein; or (c) handling his or her personal, business or professional telephone calls or correspondence therefrom. All professional activities shall be conducted in accordance with the applicable ordinances of Hillsborough County.

(ii) Nuisances. No noxious or offensive activity shall be conducted upon any Lot, nor shall anything be done thereon which may become an annoyance or nuisance to the neighborhood. No inflammable, combustible or explosive fluid or chemical substance shall be kept on any Lot except such as are required for normal household use, and same shall be kept within the dwelling constructed on said Lot. No Homeowner shall permit or suffer anything to be done or kept in his or her Dwelling or, where applicable, on his or her Lot which will increase the rate of insurance as to other Homeowners or to the Association.

(iii) Other Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, other outbuilding, or above ground swimming pool shall be used on any Lot at any time as a residence either temporarily or permanently, except that (a) a barn, gazebo, guesthouse or other similar structure may be permitted on a Lot provided that the Homeowner of such Lot obtains the prior written consent and approval of the Architectural Committee, in its sole and absolute discretion, (b) Developer may place any type of temporary structure on any Lot at any time to aid in its construction and/or sales activities, and (c) all Homeowners (and/or their respective builders) may place any type of temporary structure on their respective Lots at any time during construction thereon to aid in said construction.

(iv) Garbage. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall be maintained in sanitary containers or as required by the Association or the applicable ordinances of Hillsborough County. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

(v) No Alterations. There shall be no alteration, addition or improvement of any Common Properties, except as provided in this Declaration, nor shall any person use the Common Properties or any part thereof in any manner contrary to or not in accordance with the rules and regulations pertaining

thereto as from time to time may be promulgated by the Association or approved and authorized in writing by the Association.

(vi) Trailers and Other Vehicles. Trailers or campers or boats or boat trailers must be parked in the rear or side yard behind the front of the dwelling on any Lot. No motor vehicle or boat repair work shall be conducted on any Lot other than for very minor repairs unless such work is performed inside the garage. Use of all off-road motorized vehicles, including dirt bikes and three (3) and four (4) wheel off-road all-terrain vehicles, is prohibited in the Community including streets and common areas.

(vii) Mailboxes. All mailboxes must be approved by the Architectural Committee and meet the Guidelines set by the Architectural Committee as promulgated by them from time to time.

(viii) Satellite Dishes. Satellite dishes, aerials, antennas and all lines and equipment related thereto located wholly within the physical boundaries of the dwelling on any Lot shall be permitted without any requirement for approval from the Board of Directors on any lot provided, however, that satellite dishes, aerials and antennas (including, but not limited to, ham radio antennas) shall be permitted only in the rear or side yard behind the front of the Dwelling on any Lot, except to the extent required to be permitted by applicable law (including, but not limited to, the federal Telecommunications Act of 1996, as may be amended). Notwithstanding the foregoing, the Association shall have the right and authority, in its sole discretion and from time to time, to promulgate rules and regulations concerning the size and location of, and safety restrictions pertaining to, the installation of such television signal reception equipment.

(ix) No Change in Lot Size or Elevation. No Lot shall be increased in size by filling in any water it may abut. The elevation of a Lot may not be changed so as to materially affect the surface elevation or grade of the surrounding Lots without the prior written approval of the Architectural Committee.

(x) Garages and Utility Buildings. No automobile garage shall open on the front of the house. No automobile garage shall be permanently enclosed and converted to other use without the substitution of another enclosed automobile storage facility upon the Lot. If a garage or utility building is built detached from the Dwelling, the garage or utility building shall be of the same kind of material as the construction of the Dwelling. The garage or utility building shall conform architecturally with the Dwelling, unless the Homeowner of such Lot obtains the prior written consent and approval of the Architectural Committee, in its sole and absolute discretion. The garage shall accommodate at least three (3) cars.

(xi) Driveways. Each Lot shall have a professionally constructed stabilized driveway of concrete, shell, gravel, pavers, or asphalt (recycled asphalt, crushed concrete, or crushed limerock are not permitted) which shall be not less than twelve feet (12') wide with a depth adequate to support vehicular traffic in compliance with any and all applicable laws, rules and regulations.

(xvi) Other Tanks and Equipment. All oil tanks, bottle gas tanks, soft-water tanks, permanently affixed swimming pool equipment and housing and similar structures of installations shall be placed in the rear of the Dwelling or under the surface of the ground or within walled-in areas or areas screened with fencing or shrubbery, so as to not be visible from the street or objectionable to adjacent residences.

(xvii) Minimum Living Area. The living area of the main structure, exclusive of any garage or porch, shall not be less than 2,400 square feet.

(xviii) Minimum Lot Size. Front, rear and side setback requirements, as established by any applicable laws, rules, regulations and/or ordinances in effect at the time of construction, shall be maintained.

(xix) Landscaping. All dead or diseased sod, plants, shrubs, trees, or flowers shall be promptly replaced, and excessive weeds, underbrush or unsightly growth shall be promptly removed on any finished or maintained landscape areas of any Lot (specifically excluding any areas of native vegetation on any Lot). No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior of any Lot.

(xx) Air Conditioning Units. No window, wall, or portable air conditioning units shall be permitted on any Dwelling. Window, wall and portable air conditioning units shall be permitted on any utility building or accessory structure to any Dwelling.

(xxi) Outside Storage of Personal Property. The personal property of any Resident of the Property shall be kept inside the resident's Dwelling or a fenced or walled-in yard, except for patio furniture and accessories, and other personal property commonly kept outside, which must be neat in appearance and in good condition.

(xxii) Trees. In connection with the development of any Lot for residential purposes, or the construction of improvements thereon, reasonable care shall be used to preserve and retain as many trees as is reasonably possible. No excavation of fill or clear cutting of trees shall be performed in violation of law.

(xxiii) Boats and Motor Vehicles.

(a) No boat, boat trailer, camper, mobile home, travel trailer, van, truck, trailer, motorcycle or other similar motor vehicle shall be permitted to remain on any Lot or public street unless inside a garage or otherwise parked, stored or located in such a manner and located on a Lot so as not to be visible from the public streets or neighboring Lots.

(b) No stripped, unsightly, offensive, wrecked, junked or dismantled vehicles or portions thereof, no furniture or appliances designed for normal use or operation within (as distinguished from outside of) Dwellings, shall be parked, permitted, stored or located upon any Lot in such manner or location as to be visible from the public streets or neighboring Lots.



(xxiv) Exterior Attachments. Clotheslines or clothes-hanging devices exterior to a Dwelling or aerials or transmission or receiving tower(s), apparatus or devices or other similar or dissimilar exterior attachment (specifically excluding a satellite dish less than twenty-four inches (24") in diameter or exterior radio, television, electronic or like antennas) shall be permitted only in the rear yard behind the Dwelling on any Lot so that the same is not visible from the public streets or neighboring Lots.

(xxv) Fire and Other Casualty. No building or improvement which has been partially or totally destroyed by fire or other casualty shall be allowed to remain in such state for more than six (6) months from the time of such destruction. If reconstruction or repair of any such buildings or improvements is not so commenced within six (6) months, the Homeowner thereof shall raze or remove the same promptly from such Homeowner's Lot.

(xxvi) Construction. Every building, structure or other improvement, the construction of which is begun on any Lot, shall be diligently and continuously prosecuted after the beginning of such construction or placement and the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes within twelve (12) months from the date of commencement of construction thereof.

(xxvii) Other Structures. All docks, boatlifts and covers or boathouses shall be constructed with permits from the Hillsborough County Building Department and the Hillsborough County Environmental Protection Commission. All docks, boatlifts and covers must be constructed within the submerged area of each Lot. The Homeowner of such Lot shall obtain the prior written consent and approval of the Architectural Committee, in its sole and absolute discretion.

(b) Further Rights of Developer. Nothing contained in this Article III shall be interpreted or construed to prevent Developer, its successors or assigns, or its or their contracts or subcontractors, from doing or performing on all of any part of the properties owned or controlled by Developer, or its successors or assigns, whatever they determine to be reasonable, necessary or advisable in connection with the completion of the Community, including, without limitation:

(i) erecting, constructing and maintaining thereon, such structures as may be reasonably necessary for the conduct of Developer's business of completing the Community and establishing the properties as a residential community and disposing of the same in Lots by sale, lease or otherwise; or

(ii) conducting thereon its or their business of completing the Community and establishing the properties as reasonably necessary in connection with the sale, lease, or other transfer of the properties in Lots; or

(iii) maintaining such sign or signs thereon as may be reasonably necessary in connection with the sale, lease or other transfer of the properties in Lots.

(c) Further Subdivision. There shall be no further subdivision of any Lots.

(d). Additional Restrictions. The Board of Directors may from time to time adopt or amend previously adopted rules and regulations governing the details of the operation, use, maintenance, management and control of the Common Properties and governing and restricting the use and maintenance of the Lots and improvements and landscaping thereon; provided, however, that copies of such rules and regulations are furnished to each Homeowner prior to the time same became effective and provided that said rules and regulations are a reasonable exercise of the Association's power and authority based upon the overall concepts and provisions in this Declaration.

(e) Grass Maintenance. Where a Lot abuts any body of water, the Homeowner of such Lot shall be responsible for maintaining all grass areas lying between the water's edge and such Lot. No amendment to this paragraph shall be effective without the express prior written consent of Developer.

Section 5. General Easements. Each Lot and the Common Property are hereby subjected to a permanent easement appurtenant to any adjoining Lot to permit the use, construction, existence, maintenance, repair and restoration of structures located on such adjoining Lot, including but not limited to driveways, walkways and roof structures which overhang and encroach upon the servient Lot or Common Property, if any, provided that such structures were constructed by Developer or the construction of such structure is permitted and approved as elsewhere herein provided. The owner of the dominant tenement shall have the right, at all reasonable times, to enter the easement area in order to make full use of such structure for its intended purposes and to maintain, repair and restore any improvements located on the dominant tenement; provided, however, that any such entry made for purposes of maintenance, restoration or repair shall be limited to daylight hours and shall only be made with the prior knowledge of the owner of the servient tenement. In case of emergency, the right of entry for maintenance, restoration or repair shall be immediate, not restricted as to time and not be conditioned upon prior knowledge of the owner of the servient tenement. The owner of the servient tenement shall not place any improvement, material or obstacle in or over the easement area on the servient tenement which would unreasonably interfere with the rights of the owner of the dominant tenement granted by this paragraph. Any such improvement, material or obstacle shall be promptly removed by the owner of the servient tenement at that owner's expense when requested by the owner of the dominant tenement or Developer notwithstanding any lapse of time since such improvement, material or other obstacle was placed in or over the easement area.

Section 6. Provisions Inoperative as to Initial Construction. Nothing contained in this Declaration will be interpreted, construed, or applied to prevent Developer, or its or their contractors, subcontractors, agents, and employees, from doing or performing on all or any part of the Property owned or controlled by Developer, whatever they determine to be reasonably necessary or convenient to complete the Work, including:

(a) Improvements. Erecting, constructing, and maintaining such structures and other improvements as may be reasonably necessary or convenient for the conduct of such Developer's business of completing the Work, establishing the Property as a residential community, and disposing of the same in parcels or Lots by sale, lease, or otherwise; or

(b) Development. Conducting thereon its business of completing the Work, establishing the Property as a residential community, and disposing of the Property in parcels or Lots by sale, lease or otherwise; or

(c) Signs. Maintaining such signs as may be reasonably necessary or convenient in connection with the sale, lease or other transfer of the Property in parcels or Lots.

Section 7. Access by Association. The officers, employees, or designated agents of the Association have a right of entry onto the exterior of each Lot to the extent reasonably necessary to discharge any duty imposed, or exercise any right granted, by this Declaration or to investigate or enforce the provisions of the Declaration and the rules and regulations of the Association. Such right of entry must be exercised in a peaceful and reasonable manner at reasonable times, and the entry may be only upon reasonable notice whenever circumstances permit. Entry into any improvement upon any Lot may not be made without the consent of its Homeowner or occupant for any purpose, except pursuant to court order or other authority conferred by law. Such consent will not be unreasonably withheld or delayed.

Section 8. General Easements. In the event that any part of any Unit encroaches or shall hereafter encroach upon any part of any other Lot or the Common Property, valid easements for the maintenance of such encroachments are hereby established and shall exist so long as all or any part of the same shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Homeowner if such encroachment or use is detrimental to or interferes with the reasonable use and enjoyment of the Unit of another Homeowner and if it occurred due to the willful conduct of any Homeowner.

Section 9. Ingress and Egress. Each Homeowner shall have a perpetual unrestricted easement over, across and through the Common Property for the purpose of ingress to and egress from his or her Lot, subject only to the right of the Association to impose reasonable and non-discriminatory rules and regulations governing the manner in which such easement is exercised, which easement shall be appurtenant to and pass with ownership to each Lot.

Section 10. Restrictions on Use of Lakes, Waterways, Wetlands, or Other Bodies of Water. With respect to any lakes, waterways, wetlands or other bodies of water located on the Property, no Homeowner, Resident or any temporary occupant of a Unit shall: (i) disturb, remove, alter or in any way disrupt vegetation thereon; (ii) all docks or seawalls must have a permit from the Hillsborough County Environmental Protection Commission and Architectural Committee or (iii) connect to any lake, waterway, wetland or other body of water through the use of a well, pump, ditch or other system of any nature for any purpose, including, but not limited to, lawn irrigation, lawn maintenance, water features or for any other use without prior written approval from the Architectural Committee. All boats used on the lakes must not exceed twenty-two feet (22'), nor have a motor larger than 200 h.p. No air-boats, jet skis, wave-runners, or other type of personal motorized watercraft powered by an internal combustion engine will be permitted.

#### Article IV: Architectural, Maintenance and Use Restrictions

Section 1. Architectural Control Standards. The Board of Directors shall adopt from time to time specific architectural control standards, guidelines or criteria for the Community, which standards, guidelines or criteria shall be applied by the Architectural Committee and the Board of Directors in their respective capacities as provided hereinafter.

Section 2. Role of the Board and the Architectural Committee. The purpose of the Board and the Architectural Committee is to insure the maintenance of the Property as a

residential area of highest quality and standards and to insure that all improvements on each Lot shall present an attractive and pleasing appearance from all sides of view. All references to the Architectural Committee shall also reference the Board.

Section 3. Composition of the Architectural Committee. The Developer will appoint the members and Chairman of the Architectural Committee until 100% of the Lots are conveyed. Thereafter, the Board shall appoint the chairman and members of the Architectural Committee. The Board may remove Architectural Committee member(s) if determined beneficial. Where a vacancy or vacancies on the Architectural Committee occurs, a successor or successors shall be appointed by the Board.

Section 4. Powers of the Architectural Committee. After 100% of the Lots are conveyed, the Architectural Committee shall represent, act as directed by, and report to the Board. The Board shall retain final authority in case of differing opinion. The Architectural Committee shall evaluate, control and approve construction, remodeling, or additions to the buildings, dwellings, structures and other improvements on each Lot in the manner and to the extent set forth herein. No dwelling, building, utility yard, driveway, swimming pool or other structure or improvement, regardless of size or purpose, whether attached to or detached from the main dwelling, shall be commenced, placed, erected or allowed to remain on any Lot, nor shall any addition to or exterior change or alteration thereto be made, nor shall any change in the elevation or surface contour of a Lot be made, unless and until building plans and specifications covering same ("Plans and Specifications") showing such information as may be required by the Architectural Committee and/or the Board of Directors, have been submitted to and approved in writing by the Board. Acceptance or rejection of Plans and Specifications shall be made by majority vote of the Board.

Section 5. Plans and Specifications. The Architectural Committee requires that all Plans and Specifications be accompanied by site plans that show the siting of the dwelling on each Lot on each side of the dwelling under consideration. As a prerequisite to consideration for approval, and prior to beginning the contemplated work, a complete set, or as many as requested by the Architectural Committee, of Plans and Specifications must be submitted to the Architectural Committee. In addition, if requested by the Architectural Committee, there shall be submitted to the Architectural Committee for consideration such samples of building materials proposed to be used as the Architectural Committee shall specify and require. These requirements pertaining to Plans and Specifications may be waived, in whole or in part, by the Architectural Committee and the Board of Directors upon application of the Homeowner showing good cause for waiving such requirement(s). All requests for improvements must be submitted to the Architectural Committee members and/or Board members evaluating the request.

Section 6. Recommendations of the Architectural Committee. Once the Architectural Committee has received and reviewed the Plans and Specifications submitted by a Homeowner, the Architectural Committee may either (a) make a recommendation to the Board of Directors to either approve or disapprove the proposal of the Homeowner or (b) request additional information as the Architectural Committee deems necessary in its discretion to be able to render such recommendation to the Board of Directors. At such time as the recommendation to approve or disapprove is made, the Architectural Committee shall have no further action to take with regard to the Homeowner's proposal, except as may be requested by the Board of Directors in the course of its rendering a final decision regarding the proposal.

Section 7. Approval of Plans and Specifications. Upon written approval of the Board of Directors, construction may be commenced and shall be prosecuted to completion promptly and in strict conformity with such Plans and Specifications. The Board of Directors shall be entitled to stop any construction in violation of the Declaration, and any such exterior addition to or change or alteration made without application having first been made and approval obtained as provided above shall be deemed to be in violation of this covenant and the Declaration and may be required to be restored to the original condition at the Homeowner's expense. All costs and expenses of the Association (including attorneys' fees) related to the enforcement of these covenants and the Declaration shall be paid by the Homeowner in violation thereof. All structures must be built to comply substantially with the Plans and Specifications as approved by the Board of Directors.

Section 8. Rejection of Plans and Specifications. The Architectural Committee shall have the right to refuse to approve any Plans and Specifications that are not suitable or desirable in its opinion for any reason, including purely aesthetic reasons and reasons connected with future development plans of the Developer of the Property. In the event the Architectural Committee rejects such Plans and Specifications as submitted, the Architectural Committee shall so inform the Homeowner in writing, stating with reasonable detail the reason(s) for disapproval. In rejecting such Plans and Specifications, the Architectural Committee may take into consideration the suitability and desirability of proposed construction and the materials of which the same are proposed to be built, the Lot upon which such construction is proposed to be erected, the quality of the proposed workmanship and materials, the harmony of external design with the surrounding neighborhood and existing structures therein, and the effect and appearance of such construction as viewed from neighboring Lots.

Section 9. Appeal by Aggrieved Homeowner. If the Architectural Committee rejects such Plans and Specifications, the aggrieved Homeowner and/or any other interested Homeowner may appeal such adverse decision to the Board. If after the Board's review the appealing Homeowner is in disagreement with the Board's decision, such Homeowner may appeal such adverse decision by submitting in writing to the Board a request for a special meeting of all Homeowners (excluding the Developer) to consider the propriety of the Board of Directors' decision within ten (10) days after receipt of such written request. The Board thereafter shall call a special meeting, and the costs pertaining to such special meeting shall be borne by the appealing Homeowner. At such special meeting, the proposal made by the Homeowner and the decision of the Architectural Committee and the Board, together with the stated reasons for the rejection of the proposal, shall be made available to all Homeowners. A vote of a majority of the total voting interests present in person or by proxy of a duly-called and noticed meeting of the Association members at which a quorum is present (excluding the Developer) shall be necessary to overturn an adverse decision of the Architectural Committee and the Board against the Homeowner. Developer shall not vote.

Section 10. Compliance with Governmental Regulations. In addition to the foregoing requirements, any alteration, addition, improvement or change must be in compliance with the requirements of all controlling governmental authorities, and the Homeowner shall be required to obtain an appropriate building permit from the applicable governmental authorities.

Section 11. Enforcement of Restrictions; Developer Exemption. Developer shall have the responsibility of enforcing the restrictions set forth in this Article IV until such time as 100% of the Lots are sold. Thereafter, the Architectural Committee, which, upon election as discussed in Section 3 of this Article IV, shall assume and be responsible for enforcement. Notwithstanding anything to the contrary, however, Developer shall be solely responsible for the

promulgation of rules and regulations and establishing guidelines until such time as Developer has conveyed all Lots in the Community to third parties. References in this Article IV to the Architectural Committee shall mean Developer until the Architectural Committee is elected. The architectural, maintenance and use restrictions contained in this Article IV shall apply to each and every Lot now or hereafter subjected to this Declaration; provided, however, that Developer shall be exempt from the provisions of this Article IV and shall not be obligated to obtain Board approval for any construction or change(s) in construction which Developer may elect to make at any time.

Section 12. Liability of the Architectural Committee and the Board of Directors. Notwithstanding anything in this Article IV to the contrary, the Architectural Committee and the Board shall merely have the right, but not the duty, to exercise architectural control in a particular matter, and shall not be liable to any Homeowner, the Association or any other entity due to the exercise or non-exercise of such control, or the approval or disapproval of any improvements. Furthermore, the approval of any Plans or Specifications or any improvement shall not be deemed to be a determination or warranty that such Plans or Specifications or improvements:

- (i) are complete or do not contain defects; or
- (ii) in fact meet any standards, guidelines and/or criteria of the Architectural Committee or the Board; or
- (iii) are in fact architecturally or aesthetically appropriate; or
- (iv) comply with any applicable governmental requirements.

Furthermore, the Architectural Committee and the Board shall not be liable for any defect or deficiency in such Plans or Specifications or improvements or any injury resulting therefrom.

#### Article V: Membership and Voting Rights

Section 1. Membership. Every Homeowner of a Lot that is subject to assessment under Article VIII of this Declaration shall become a member of the Association upon the recording of the instrument of conveyance. If title to a Lot is held by more than one person, each such person is a member. A Homeowner of more than one Lot is entitled to one (1) membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and is transferred automatically by conveyance of title to that Lot whether or not mention thereof is made in such conveyance of title. No person other than a Homeowner may be a member of the Association, and a membership in the Association may not be transferred except by the transfer of title to a Lot; provided, however, the foregoing does not prohibit the assignment of membership and voting rights by a Homeowner who is a contract seller to such Homeowner's vendee in possession.

Section 2. Voting. The Association shall have two (2) classes of voting membership: Class A and Class B. So long as there is Class B membership, Class A members are all Homeowners except Developer. The Class B member shall be Developer. Upon termination of Class B membership, as provided below, Class A members are all Homeowners, including Developer so long as such Developer is a Homeowner. Subject to the provisions of Section 3 of this Article, all members, Class A or Class B, are entitled to cast one (1) vote for each Lot

owned; however, as provided in the Articles of Incorporation, the Class B members are entitled to elect the Association's directors until termination of Class B membership.

**Section 3. Co-Ownership.** If more than one person owns an interest in any Lot, all such persons are members, but there may be only one vote cast with respect to such Lot. Such vote may be exercised as the co-owners determine among themselves, but no split vote is permitted. Prior to any meeting at which a vote is to be taken, each co-owner must file the name of the voting co-owner with the secretary of the Association to be entitled to vote at such meeting, unless such co-owners have filed a general voting authority with the secretary applicable to all votes until rescinded. Notwithstanding the foregoing, if title to any Lot is held in a tenancy by the entireties, either tenant is entitled to cast the vote for such Lot unless and until the Association is notified otherwise in writing.

**Section 4. Termination of Class B Membership; Transfer of Control.** From time to time, Class B membership may cease and be converted to Class A membership, and any Class B Lots then subject to the terms of this Declaration shall become Class A Lots, and members other than the Developer shall be entitled to elect a majority of the members of the Board, upon the happening of any of the following events, whichever occurs earliest:

(a) 3 months after 90% of the Lots in all portions of the Community that are or may be ultimately subject to governance by the Association have been conveyed to third party Homeowners of Lots;

(b) upon conveyance of the requisite percentage of Lots which triggers the transfer of control of the Association, as such percentage is mandated by applicable Federal Housing Authority, Federal National Mortgage Association, Government National Mortgage Association, Department of Housing and Urban Development, Federal Home Loan Mortgage Corporation or Veterans Administration provisions related to mortgage financing; or

(c) when the Developer waives in writing its right to Class B membership, which waiver shall be evidenced by the recording of a certificate to such effect in the public records of Hillsborough County, Florida.

Notwithstanding the foregoing, despite an event of transfer of control having occurred, the Developer shall be entitled to elect at least one member to the Board as long as the Developer holds for sale in the ordinary course of business at least 5% of the total number of Lots which are or may ultimately be contained within the Community.

Upon termination of Class B membership, all provisions of this Declaration or of the Articles of Incorporation or By-Laws referring to Class B membership will be obsolete and without further force or effect, including any provision requiring voting by classes of membership.

**Section 5. Amplification.** The provisions of this Declaration are amplified by the Association's Articles of Incorporation and By-Laws, but no such amplification will alter or amend substantially any of the rights or obligations of the Homeowners set forth in this Declaration. Developer intends the provisions of this Declaration, on the one hand, and the Articles of Incorporation and By-Laws, on the other, to be interpreted, construed, applied, and enforced to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Developer intends that the provisions of this Declaration control anything in the

Articles of Incorporation or By-Laws to the contrary. The terms defined in this Declaration shall have same meanings in the Articles of Incorporation and By-Laws, unless otherwise provided.

**Article VI: Rights and Obligations of the Association**

Section 1. **Association.** The Association shall govern, make rules and regulations, control and manage the Lots and Common Properties, if any, located on the Property pursuant to the terms and provisions of this Declaration and the Association's Articles of Incorporation and By-Laws. The Association shall at all times pay the real property ad valorem taxes on any Common Properties if said taxes are billed to the Association as differentiated from being billed to the Homeowner and pay any governmental liens assessed against the Common Properties. The Association shall further have the obligation and responsibility for the hiring of certain personnel and purchasing and maintaining such equipment as may be necessary for maintenance, repair, upkeep and replacement of any Common Properties and facilities which may be located thereon, the performance of any of its maintenance obligations and performance of such other duties as are set forth herein, as follows:

(a) Notwithstanding the foregoing, the Association may, but is not obligated to, employ security guard(s) or a security guard service. If a security guard(s) or security guard service is employed by the Association, the Board of Directors shall determine, in its sole discretion, the schedule and cost of expense of security guard(s) or security guard service. Developer, while in control of the Association, does not intend to hire or pay for security guard(s) or a security guard service.

(b) The Association shall maintain the Common Properties and pay the real property ad valorem taxes and governmental liens assessed against the Common Properties and billed to the Association. Any Common Properties that are to be maintained by the Association as provided herein shall be maintained in good condition and repair. Should real property ad valorem taxes or governmental liens as to any Common Properties be assessed against the billed Lots, the Board of Directors shall have the right to determine, in its sole discretion, if the Association should pay all or any portion of said bill(s) for taxes or liens, and such amount as they determine should be paid by the Association shall be levied as a Special Assessment pursuant to Article VIII of this Declaration.

(c) The Association shall maintain all landscaping islands and all landscaping and/or signage located, placed, installed or erected thereon.

(d) In the event the Association in the future acquires any Common Properties, the Association shall obtain, maintain and pay the premiums for the hazard insurance, flood insurance, liability insurance and fidelity bond coverage as set forth below and as consistent with state and local insurance laws, and such other types of insurance as the Board may deem advisable:

(i) Hazard insurance covering all Common Properties, except for land, foundations and excavations, and all common personal property and supplies. The policy must protect against loss or damage by fire and all other hazards normally covered by the standard extended coverage endorsement and all other perils customarily covered for similar types of communities, including those covered by the standard "all risk" endorsement. The policy shall cover 100% of the current replacement cost of all covered facilities and shall include

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the following endorsements: agreed amount and inflation guard (if available), construction code (if the local construction code requires changes to undamaged portions of buildings even when only part of the Property is destroyed by an insured hazard.

(ii) Flood insurance covering the Common Property buildings and any other common personal property if any part of the Community is in a special flood hazard area as defined by the Federal Emergency Management Agency. The amount of flood insurance shall be for not less than the lesser of (i) 100% of the current replacement cost of all buildings and insurable property within the flood hazard area, or (ii) the maximum coverage available for the Property under the National Flood Insurance Program.

(iii) Comprehensive general liability insurance covering all Common Properties and any other areas under the Association's supervision, including public ways and commercial spaces owned by the Association. The policy must provide coverage of at least One Million Dollars (\$1,000,000.00) for bodily injury and property damage for any single occurrence. The policy must cover bodily injury and property damage resulting from the operation, maintenance or use of the Common Properties and other areas under the Association's control and any legal liability resulting from law suits related to employment contracts to which the Association is a party. The policy must provide for at least ten (10) days' written notice by the insurer to the Association prior to cancellation or substantial modification.

(iv) Fidelity bond coverage for any person (including a management agent) who either handles or is responsible for funds held or administered by the Association, whether or not such persons are compensated for such services. The bond shall name the Association as an obligee and shall cover the greater of (i) the maximum funds that will be in the custody of the Association or its management agent while the bond is in force, and (ii) the sum of three (3) months' General Assessments on all Lots plus the Reserve Fund. The bond shall provide for ten (10) days' written notice to the Association and all servicers of FNMA-owned mortgages in the Property prior to cancellation of or substantial modification to the bond.

(e) The Association shall care for and maintain any entryway walls and signage intended for and/or identifying the Property and shall maintain any landscaping located within the Common Property, road right-of-way or any landscaping easement which is owned by or runs in favor of the Association, which maintenance activities may, but not necessarily will, include without limitation any of the following: replacement and/or replanting of existing landscaping, excavation, construction of berms, and installation, maintenance and repair of irrigation facilities.

(f) The Association shall care for and maintain any lakes and associated equipment located wholly on the Property. In addition, the Association shall have the power to contract with any other association or entity to share the expense of maintaining any lake and associated equipment which is not located wholly on the Property but which is contiguous to any portion of the Property, and such contractual obligations shall be a valid expense of the Association.

The foregoing constitutes the basic and general expenses of the Association, and said expenses are to be paid by members of the Association as hereinafter provided, except as otherwise provided herein. It shall be the duty and responsibility of the Association, through its Board of Directors, to fix and determine from time to time the sum or sums necessary and adequate to provide for the expenses of the Association. The procedure for the determination of such assessments shall be as hereinafter set forth in this Declaration or the By-Laws or the Articles of Incorporation. The Board of Directors shall have the power and authority to levy a Special Assessment, should one become necessary, as determined by it in its sole discretion, and said Special Assessment shall be determined, assessed, levied and payable in the manner determined by the Board of Directors as hereinafter provided in this Declaration or the Articles of Incorporation or the By-Laws. A General Assessment shall be payable in advance or monthly, quarterly, or on a semi-annual or annual basis or otherwise as determined by the Board of Directors.

**Section 2. Management Contracts and Leases of Common Property.** The Association shall expressly have the power to contract for the management of the Association and/or the Common Property, if any, and to lease the recreation areas, further having the power to delegate to such contractor or lessee any or all of the powers and duties of the Association respecting the contract granted or property demised. The Association shall further have the power to employ administrative and other personnel to perform the services required for proper administration of the Association, including, without limitation, legal and accounting services.

The undertakings and contracts authorized by the first Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board of Directors duly elected by the membership of the Association; provided, however, that any management or property maintenance contract entered into by the Association prior to the election of such first Board shall be terminable by the Association without cause or penalty at any time after such election upon not more than ninety (90) days' advance notice.

The Board shall pay all of the foregoing expenses from the Assessments obtained pursuant to Article VIII below.

**Section 3. Easements.**

(a) Easements for installation and maintenance of utilities (including, but not limited to, those required for cable television service) and drainage facilities are reserved as shown on the Plat or as otherwise granted by Developer. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may change the direction of flow of drainage channel in the easements, or which may obstruct or retard the flow of water through drainage channel in the easements, or which are or might be prohibited by the public authority to whom said easement is given.

(b) Easements over, under, across and through each Lot and the Common Properties are hereby expressly granted to the Association for the purpose of making any repairs or performing any maintenance provided for or required by this Declaration (and the Association shall have the right to erect fences upon any part of the Common Properties as may be deemed reasonably necessary by the Association in the performance of its rights and obligations hereunder), regardless of whether such repairs or maintenance directly benefit the Lot upon which they are performed.

(c) The easement area of each Lot and all improvements in it shall be maintained by the Homeowner of the Lot, except for those improvements for (i) the drainage structures installed by the Developer within the easement areas, which shall be maintained by the Association, and (ii) those improvements for which a public authority or utility company is responsible.

Section 4. Exterior Maintenance. The Association has no duty of exterior maintenance with respect to any Lot and, as more particularly provided in Article VII below, each Homeowner must maintain such Homeowner's Lot, including any appurtenant driveways, in a safe, sanitary and reasonably attractive condition. If:

(a) Any Homeowner refuses to make any repairs, maintenance, or replacements required by Article VII below; and

(b) As a result, any condition on or adjoining such Homeowner's Lot becomes a hazard or nuisance to any other Homeowner or diminishes or impairs the value or marketability of any other Lot, or is individually objectionable to persons lawfully on the Property; and

(b) At least 75% of the members of the Board find that the Homeowner was provided reasonable notice of the failure of repair, maintenance or replacement and the Board's consideration thereof, and was given a reasonable opportunity to be heard by the Board;

Then, upon the occurrence of all of the foregoing, the Association may make or perform such repairs, maintenance, or replacements as reasonably are necessary to correct such condition and assess all costs so incurred against such Homeowner's Lot as provided herein.

Section 5. Negligence. A Homeowner shall be liable and may be assessed by the Association for the expense of any maintenance, repair or replacement rendered necessary by his or her act, neglect or carelessness, to the extent otherwise provided by law and to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or the Common Areas.

Section 6. Responsibility of an Owner for Occupants, Tenants, Guests and Invitees. Any violation of any of the provisions of this Declaration, the Articles or the Bylaws by any resident of any Dwelling, or any guest or invitee of an Owner of any Lot, shall also be deemed a violation by the Owner, and shall subject the Owner to the same liability as if such violation was that of the Owner.

Section 7. Rights Cumulative. All rights, remedies and privileges granted to the Association pursuant to any terms, provisions, covenants or conditions of this Declaration, the Articles or the Bylaws, shall be deemed to be cumulative, and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the Association from executing any additional remedies, rights or privileges as may be granted or as it might have by law.

**Article VII: Maintenance of Units and Lots and  
Improvements and Landscaping Thereon**

Section 1. Homeowners. Each Homeowner shall be responsible for the maintenance, repair and replacement of all improvements (including landscaping and irrigation to the extent maintenance responsibilities are not assumed by the Association) on such Homeowner's Lot and such other areas as are provided herein. All unimproved lots will be maintained by the Association no more than four (4) times per year and all costs associated therewith will be a Specific Assessment for that lot in accordance with Article VIII. Any area or matter not specifically required to be maintained, repaired or replaced by the Association shall be maintained, repaired and replaced by the Homeowner.

Section 2. Failure to Maintain Lots. In the event a Homeowner of any Lot shall fail to maintain or repair the Lot, the improvements thereon or the landscaping thereon, if any, within thirty (30) days' written notice of same, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain, and restore the Lot, any improvements thereon and the landscaping thereon. The cost of same plus a 25% administrative fee shall be added to and become part of the assessment to which said Lot is subject, and said cost shall be a lien upon said Lot with the same force and effect as the liens on Lots for assessments as provided in this Declaration and the Articles of Incorporation and the By-Laws.

Section 3. Maintenance.

(a) Each portion of a Lot which has been disturbed from its native state, whether occupied or unoccupied, shall be maintained reasonably clean and free from refuse, debris, unsightly growth and fire hazard.

(b) All Lots, whether occupied or unoccupied, and any buildings, structures or improvements thereon, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish or debris thereon.

(c) Each Homeowner must repair, replace and maintain the roofs, gutters, downspouts, lawns, shrubs, landscaping, walks, fencing, exterior buildings surfaces, windows, doors, trim members, driveways, and other exterior improvements and attachments from time to time situated on such Homeowner's Lot. Each Homeowner is required to maintain the Landscape on the portion of such Homeowner's Lot which has been disturbed from its native state which landscape may include, without limitation, sodding, sprigging, xeriscape and seeding. Each Homeowner's duty of maintenance includes any and all easement areas upon such Homeowner's Lot except as provided in Article VI hereof. No Homeowner may permit any waste to the exterior portions of such Homeowner's Lot. Each Homeowner must make all repairs, maintenance and replacements necessary to attachments and appurtenant driveways, if any, in a safe, sanitary and reasonably attractive condition. Should a Homeowner fail to meet the minimum standards for maintenance, then the Association may perform or have performed the necessary required maintenance and thereafter specifically assess such Homeowner for such costs pursuant to Section 2 of this Article VII.

Section 4. Fire and Other Casualty. No building or improvement which has been partially or totally destroyed by fire or other casualty shall be allowed to remain in such state for more than six (6) months from the time of such destruction. If reconstruction or repair of any such buildings or improvements is not so commenced within six (6) months, the Owner thereof shall raze or remove the same promptly from such Owner's Lot.

Section 5. Construction. Every building, structure or other improvement, the construction of such is begun on any Lot, shall be diligently and continuously prosecuted after the beginning of such construction or placement and the same shall be fully completed, except to the extent prevented by strikes, lockouts, boycotts, the elements, war, inability to obtain materials, acts of God or similar causes within twelve (12) months from the date of commencement of construction thereof.

### Article VIII: Covenant for Assessments

Section 1. Assessments Established. Each Homeowner of any Lot, by acceptance of a deed to such Lot, whether or not it is so expressed in such deed, is deemed to covenant to pay to the Association:

- (a) General Assessments, as defined in Section 2 of this Article; and
- (b) Special Assessments, as defined in Section 6 of this Article; and
- (c) Specific Assessments against any particular Lot that are established pursuant to any provision of this Declaration as provided in Section 7 of this Article;
- (d) All taxes, if any, that from time to time may be imposed upon all or any portion of the assessments established by this Article; and
- (e) Interest and costs of collection of such Assessments, including reasonable attorney' fees, as provided in this Declaration.

All of the foregoing, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are a continuing charge on the land secured by a continuing lien upon the Lot against which each assessment is made as provided in Section 9 of this Article. Each such assessment, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, also is the personal obligation of the person or persons who was or were the Homeowner(s) of such Lot when such assessment fell due.

Section 2. Purpose of Assessments; General Assessment. The assessments levied by the Association must be used exclusively to promote the common good and welfare of the residents, to operate and manage the Association and the Common Properties, if any, and to perform such duties as may be required by this Declaration and the Articles of Incorporation and By-Laws of the Association. To effectuate the following, the Association may levy an annual general assessment ("General Assessment") to provide and be used for the operation, management and all other general activities and expenses of the Association.

Section 3. Initial General Assessment. The initial General Assessment shall be Sixty Five and no/100 Dollars (\$65.00) per month and will remain in effect until a different General Assessment may be determined as provided in Section 4 of this Article.

Section 4. Determination of General Assessment. Except with regard to the initial General Assessment, the amount of the General Assessment shall be fixed by the Board of Directors at least thirty (30) days in advance of each General Assessment period, and shall be based upon an adopted budget. The General Assessment period shall coincide with the Association's fiscal year. Except for the initial General Assessment, written notice of the

amount of the General Assessment should be given to every Homeowner, but the failure to give or receive such notice, or both, shall not invalidate any otherwise valid assessment. The General Assessment shall be paid in equal monthly installments without interest until delinquent, and prepayable in whole at any time or times during the applicable assessment period without penalty or other consideration; provided, however, at the discretion of the Board of Directors, the General Assessment may be collected on a quarterly, semi-annual or annual basis rather than collected each month.

Section 5. Guarantee of Assessments by Developer. For the initial fiscal year of the Association, Developer guarantees to each Homeowner that the amount of the General Assessment to be paid by Homeowners for that year shall not exceed an amount equal to 125% of the initial General Assessment as described in Section 3 of this Article. Upon commencement of the second fiscal year of the Association, the aforementioned guarantee shall continue to exist on a month-by-month basis until (a) the end of the next month following Developer's delivery of written notice to the Association stating Developer's decision to no longer guarantee the amount of the General Assessment, or (b) upon the transfer of control of the Association from Developer to the Homeowners, whichever shall occur first. During any period of existence of the aforementioned guarantee, Developer shall not be responsible for the payment of assessments on Lots it owns but shall fund any budget deficit for that particular fiscal year. The guarantee of the General Assessment by Developer shall not preclude the levying of Special Assessments against the Homeowners to defray the costs of Association expenses not contemplated under the Association's estimated operating budget for that fiscal year.

Upon termination of the aforementioned guarantee, Developer shall be responsible for the payment of assessments only upon Lots that it owns.

Section 6. Special Assessments. In addition to the General Assessment, the Association may levy in any fiscal year a special assessment ("Special Assessment") applicable to that year only for the purpose of defraying, in whole or in part, known expenses which exceeded, or when mature will exceed, the budget prepared and on which the General Assessment was based, or as described in Section 5 of this Article. Notwithstanding the foregoing, no Special Assessment against the Homeowners shall exceed one-twelfth (1/12th) of the total of the General Assessments levied against the Homeowners for that fiscal year without the prior approval of 75% of the total number of votes in the Association.

Section 7. Specific Assessments. Any and all accrued liquidated indebtedness of any Homeowner to the Association arising under any provision of this Declaration also may be assessed by the Association against such Homeowner's Lot after such Homeowner fails to pay it when due and such default continues for thirty (30) days after written notice.

Section 8. Uniformity of Assessments. The General Assessment and any Special Assessment must be uniform for each Homeowner throughout the Community.

Section 9. Commencement of General Assessment. The General Assessment as to each Lot owned by a Homeowner other than the Developer commences on the first day of the month following the closing of the purchase of the respective Lot by the Homeowner from Developer.

Section 10. Lien for Assessment. All sums assessed against any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are

secured by a lien on such Lot in favor of the Association. Such lien is subject and inferior to the lien for all sums validly secured by any First Mortgage encumbering such Lot. Except for liens for all sums validly secured by any such First Mortgage, all other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that such liens are inferior to the lien established by this Article, whether or not such consent is specifically set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and/or creditors of the existence of the Association's lien and its priority. The Association from time to time may record a Notice of Lien for the purpose of further evidencing the lien established by this Article, but neither the recording of, nor failure to record, any such notice of lien will affect the existence or priority of the Association's lien.

Section 11. Certificate. Upon demand, and for a reasonable charge, the Association will furnish to any interested person a certificate signed by an officer of the Association setting forth whether the General Assessment and any Special Assessment or Specific Assessment have been paid and, if not, the unpaid balance(s).

Section 12. Remedies of the Association. Any assessment not paid within thirty (30) days after its due date bears interest at the rate of 18% per annum or such other rate as may be from time to time determined by the Board, provided, however, that such rate shall not exceed the maximum rate allowed by law not constituting usury. The Association may bring an action at law against the Homeowner personally obligated to pay such assessment, or foreclose its lien against such Homeowner's Lot. No Homeowner may waive or otherwise escape liability for the Association's assessments. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise impairing the security of the Association's lien or its priority.

Section 13. Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In any such foreclosure, the Homeowner is required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. The Homeowner also is required to pay to the Association any assessments against the Lot that become due during the period of foreclosure, which assessments also are secured by the lien foreclosed and accounted on a pro rata basis and paid as of the date the Homeowner's title is divested by foreclosure. The Association has the right and power to bid at the foreclosure or other legal sale to acquire the Lot foreclosed, or to acquire such Lot by deed or other proceeding in lieu of foreclosure, and thereafter to hold, convey, lease, rent, encumber, use, and otherwise deal with such Lot as its Homeowner for purposes of resale only. If any foreclosure sale results in a deficiency, the court having jurisdiction over the foreclosure may enter a personal judgment against the Homeowner for such deficiency.

Section 14. Subordination of Lien. Except where a notice of lien has been filed in the public records prior to the recording of a valid First Mortgage, the lien for the assessments provided in this Article is subordinate to the lien of any such First Mortgage. Sale or transfer of any Lot does not affect the assessment lien. The Association may give any encumbrancer of record thirty (30) days' notice within which to cure such delinquency before instituting foreclosure proceedings against the Lot. Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amounts secured by the lien established by this Article; upon such payment, such encumbrancer will be subrogated to all rights of the Association with respect to such lien, including priority.

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Section 15. Homesteads. By acceptance of a deed to any Lot, each Homeowner is deemed to acknowledge conclusively and consent that all assessments established pursuant to this Article are for the improvement and maintenance of any homestead thereon and that the Association's lien has priority over any such homestead.

Section 16. Reserve Fund. In the event the Association in the future acquires any Common Properties, then the Association shall maintain a reserve fund to be used solely for making expenditures in connection with the Common Properties ("Reserve Fund"). The Board shall determine the appropriate level of the Reserve Fund based on a periodic review of the useful life of the improvements to the Common Properties and equipment owned by the Association, as well as periodic projections of the cost of anticipated major repairs or improvements to the Common Properties, the purchase of equipment to be used by the Association in connection with its duties hereunder, or performance of required maintenance. Each budget shall disclose that percentage of the General Assessment that shall be added to the Reserve Fund and each Homeowner shall be deemed to make a contribution to the Association equal to such percentage multiplied by each installment of the General Assessment paid by such Homeowner.

Section 17. Initial Funding of Working Capital Fund. At the time the initial sale of each Lot is closed, the purchaser of the Lot shall pay to the Association an amount equal to one-hundred and no/100 dollars (\$100.00) which is based upon two (2) times the first full initial monthly assessment for such Lot ("Initial Working Capital Fund Payment"). This sum shall be used and applied for start-up costs and as a working capital fund in connection with all initial operating expenses for the Association. This payment shall not be refundable or applied as a credit against the Homeowner's payment of assessments.

#### Article IX: Miscellaneous Provisions Respecting Mortgages

The following provisions are intended for the benefit of a First Mortgagee and to the extent, if at all, that any other provisions of this Declaration conflict with the following provisions, the following provisions shall control:

Section 1. Notices of Overdue Assessments; Foreclosure. Upon request in writing to the Association identifying the name and address of the First Mortgagee or the insurer or guarantor of a recorded First Mortgage on a Lot ("Insurer or Guarantor") and the Lot number, the Association shall furnish each First Mortgagee, Insurer or Guarantor a written notice of such Lot owner's obligations under this Declaration which is not cured within sixty (60) days. Any First Mortgagee of a Lot who comes into possession of the said Lot pursuant to the remedies provided in the Mortgage, foreclosure or a deed in lieu of foreclosure shall, to the extent permitted by law, take such property free of any claims for unpaid assessments or charges in favor of the Association against the mortgaged Lot which become due prior to (i) the date of the transfer of title, or (ii) the date on which the holder comes into possession of the Unit, whichever occurs first.

Section 2. Rights of First Mortgagees, Insurers and Guarantors. Upon request in writing, each First Mortgagee, Insurer or Guarantor shall have the right:

- (a) to examine current copies of this Declaration, the By-Laws, all rules and regulations, and the books and records of the Association during normal business hours;



(b) to receive, without charge and within a reasonable time after such request, any annual audited or unaudited financial statements which are prepared and distributed by the Association to the Homeowners at the end of each of its respective fiscal years; provided, however, that in the event an audited financial statement is not available, any First Mortgagee shall be entitled to have such an audited statement prepared at its expense;

(c) to receive written notices of all meetings of the Association and to designate a representative to attend all such meetings;

(d) to receive written notice of any decision by the Homeowners to make a material amendment to this Declaration, the By-Laws or the Articles of Incorporation;

(e) to receive written notice of any lapse, cancellation or modification of an insurance policy or fidelity bond maintained by the Association; and

(f) to receive written notice of any action which would require the consent of a specified percentage of First Mortgagees.

Section 3. Distribution of Proceeds. No provision of this Declaration or the Articles of Incorporation or any similar instrument pertaining to the Property or the Lots therein shall be deemed to give a Homeowner or any other party priority over the rights of the First Mortgagees pursuant to their mortgages in the case of distribution to Homeowners of insurance proceeds or condemnation awards for losses to or a taking of the Lots, and/or the Common Property, or any portion thereof or interest therein. In such event, the First Mortgagees, Insurers or Guarantors of the Lots affected shall be entitled, upon specific written request, to timely written notice of any such loss.

Section 4. Fannie Mae Requirements. Unless the First Mortgagees on the individual Lots which represent at least 51% of the votes of Lots that are subject to First Mortgages and 67% of the total allocated votes of Class A and Class B members have given their approval, neither the Association nor the Homeowners shall be entitled to:

(a) amend this Declaration, the Articles of Incorporation or the By-Laws concerning:

- (i) voting rights;
- (ii) increases in assessments that raise the previous assessment by more than 25%, assessment liens or the priority of assessment liens;
- (iii) reductions in reserves for maintenance, repair and replacement of the Common Properties;
- (iv) hazard or fidelity insurance requirements;
- (v) rights to use of the Common Properties;
- (vi) responsibility for maintenance and repair of the Property;

- (vii) boundaries of any Lot;
- (viii) convertibility of Lots into Common Properties or of Common Properties into Lots;
- (ix) leasing of Lots;
- (x) imposition of any right of first refusal or similar restriction on the right of a Homeowner to sell, transfer, or otherwise convey his or her Lot;
- (xi) any provisions which expressly benefit First Mortgagees, Insurers or Guarantors;

(b) terminate professional management of the Community and establish self-management thereof where professional management had been previously required by a First Mortgagee;

(c) restore or repair the Community (after hazard damage or a partial condemnation) in a manner other than specified in this Declaration; or

(d) take any action to terminate the legal status of the Community after substantial destruction or condemnation thereof.

Section 5. Termination of the Community. Unless the First Mortgagees of the individual Lots representing at least 67% of the votes in the Association have given their prior written approval, neither the Association nor the Homeowners shall be entitled to terminate the legal status of the Community for reasons other than substantial destruction or condemnation thereof.

Section 6. Notice of Damage, Destruction or Condemnation. Upon specific written request to the Association, each First Mortgagee, Insurer or Guarantor of a Lot shall be furnished notice in writing by the Association of any damage to or destruction or taking of the Common Property if such damage or destruction or taking exceeds Ten Thousand Dollars (\$10,000.00). If damages shall occur to such Lot in excess of One Thousand Dollars (\$1,000.00), notice of such event shall also be given.

Section 7. Condemnation; Priority of Awards. If any Lot, Unit thereon or portion thereof or the Common Property or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the First Mortgagee, Insurer or Guarantor of said Lot will be entitled to timely written notice, upon specific written request, of any such proceeding or proposed acquisition, and no provisions of any document will entitle the Homeowner of such Lot or other party to priority over such First Mortgagee with respect to the distribution to such Lot of the proceeds of any award or settlement.

**Article X: Damage, Destruction, Condemnation and  
Restoration of Improvements**

Section 1. Damage, Destruction and Restoration. In the event the improvements forming a part of the Common Property, or any portion thereof, shall suffer damage or

destruction from any cause and the proceeds of any policy or policies insuring against such loss or damage, and payable by reason thereof, plus the Reserve Fund, shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken and the insurance proceeds and, if necessary, the Reserve Fund shall be applied by the Board or the payee of such insurance proceeds in payment therefor; provided, however, that in the event, within one hundred eighty (180) days after said damage or destruction, the Homeowners shall elect to withdraw the Property from the provisions of this Declaration, or if the insurance proceeds and the Reserve Fund are insufficient to reconstruct the damaged or destroyed improvements to the Common Property and the Homeowners and all other parties in interest do not voluntarily make provision for reconstruction within one hundred eighty (180) days from the date of damage or destruction, then such repair, restoration, or reconstruction shall not be undertaken. In the event such repair, restoration, or reconstruction is not undertaken, the net proceeds of insurance policies shall be divided by the Board or the payee of such insurance proceeds among all Homeowners, after first paying from the share of each Homeowner the amount of any unpaid liens on his or her Lot, in the order of the priority of such liens.

**Section 2. Withdrawal of Property From Declaration.** In the case of damage or other destruction, upon the unanimous affirmative vote of the Homeowners voting at a meeting called for that purpose, any portion of the Property affected by such damage or destruction may be withdrawn from this Declaration. The payment of just compensation, or the allocation of any insurance or other proceeds to any withdrawing or remaining Homeowners, shall be on an equitable basis. Any insurance or other proceeds available in connection with the withdrawal of any portion of the Common Property shall be allocated to the Homeowners on the basis of an equal share for each Lot. Upon the withdrawal of any Lot or portion thereof, the responsibility for the payment of assessments on such Lot or portion thereof by the Homeowner shall cease.

**Section 3. Eminent Domain.** In the event any portion of the Property is taken by condemnation or eminent domain proceedings, provision for withdrawal of the portion so taken from the provisions of this Declaration may be made by the Board. The allocation of any condemnation award or other proceeds to any withdrawing or remaining Homeowner shall be on an equitable basis. Any condemnation award or other proceeds available in connection with the withdrawal of any portion of the Common Property shall be allocated to the Homeowners on the basis of an equal share for each Lot. Upon the withdrawal of any Lot or portion thereof, the responsibility for the payment of assessments on such Lot or portion thereof by the Homeowner shall cease. The Association shall represent the Homeowners in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for the acquisition of the Common Property or any part thereof. In the event of the total taking of the Property by eminent domain, the condemnation award available in that connection shall be divided by the Association among all Homeowners on the basis of an equal share for each Lot, after first paying from the share of each Homeowner the amount of any unpaid liens on his or her Lot, in the order of the priority of such liens.

#### **Article XI: Termination of the Community**

At a meeting called for such purpose and attended by all Homeowners, the Homeowners, by affirmative vote of 100% of the Homeowners, may elect to terminate the legal status of the Community and sell the Common Property as a whole. Within ten (10) days after the date of the meeting at which such sale was approved, the Board shall give written notice of such action to all First Mortgagees, Insurers and Guarantors entitled to notice under Article IX of this Declaration. Such action shall be binding upon all Homeowners, and it shall thereupon

become the duty of every Homeowner to execute and deliver such instruments and to perform all acts in manner and form as may be necessary to effect such termination and sale. The Association shall represent the Homeowners in any negotiations, settlements and agreements in connection with termination of the Community and sale of the Common Property, and any proceeds obtained therefrom shall be first used to pay all expenses and outstanding obligations of the Association and the remainder, if any, shall be divided among all Homeowners on the basis of an equal share for each Lot. Notwithstanding any provision to the contrary, the termination of the legal status of the Community shall in no manner impact each Homeowner's membership in and obligations due to the Association.

**Article XII: Operation**

The provisions of this Declaration are self-executing and will run with the land and be binding upon all persons having any right, title, or interest therein, or any part, their respective heirs, successors, and assigns.

**Article XIII: General Provisions**

Section 1. **Enforcement.** Unless expressly provided otherwise, the Association, or any Homeowner, has the right to enforce, by any appropriate proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, charges, rules, and regulations now or hereafter imposed by, or pursuant to, the provisions of this Declaration. If the Association or any person entitled to enforce any of the provisions of this Declaration is the prevailing party in any litigation involving this Declaration or any rule or regulation, such party may recover from the losing party all costs and expenses incurred, including reasonable attorneys' fees for all trial, appellate and bankruptcy proceedings, if any. Failure by the Association or by any Homeowner to enforce any covenant, restriction, rule, or regulation will not constitute a waiver of the right to do so at any time. Declarant also has the right to enforce all provisions of this Declaration relating to the use, maintenance, and preservation of the Property, and, if Declarant is the prevailing party in any litigation involving this Declaration to recover all of Declarant's costs and expenses incurred, including reasonable attorneys' fees.

Section 2. **Amendment.** Subject to the provisions of Article X of this Declaration and as may be otherwise provided herein, Developer may amend this Declaration by an instrument executed with the formalities of a deed without the approval or joinder of any other party at any time prior to the date on which Developer shall have conveyed 90% of the Lots on the Property. Subject to the provisions of Article X of this Declaration and as may be otherwise provided herein, commencing on the date that Developer shall have conveyed 90% of the Lots on the Property, this Declaration may be amended, rescinded, or terminated: (i) on or before January 1, 2010, by an instrument executed by the Association with the formalities from time to time required of a deed and signed by 75% of all Homeowners; and, (ii) thereafter by an instrument so executed by the Association and signed by not less than 70% of all Homeowners. No amendment is effective until recorded, and the Association's proper execution will entitle it to public record, notwithstanding the informal execution by the requisite percentage of Homeowners. Notwithstanding the foregoing, no instrument of amendment, rescission or termination shall be effective while there are Class B memberships unless 100% of the Class B members shall approve and join in such instrument. For purposes of this Section, a Lot shall be considered conveyed when the deed is duly recorded.

Section 3. **Special Amendment.** Anything herein to the contrary notwithstanding, and subject to the requirement of First Mortgagee approval set forth in Article IX of this

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Declaration where applicable, Developer reserves the right and power to record a special amendment ("Special Amendment") to this Declaration, at any time and from time to time, which amends this Declaration and any provision therein: (i) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities; (ii) to induce any of such agencies or entities to make, purchase, sell, insure, guarantee or otherwise deal with first mortgages covering Units; (iii) to correct clerical or typographical errors in this Declaration; (iv) to bring this Declaration into compliance with applicable laws, ordinances or governmental regulations; or (v) to minimize any federal or state income tax liability of the Association. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Developer to make or consent to a Special Amendment on behalf of each Homeowner and the Association. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power of the Developer to make, execute and record Special Amendments. The right and power of Developer to make Special Amendments hereunder shall terminate on December 31, 2005, or on the date of the conveyance of all Lots in the Community by the Developer to third parties, whichever occurs last.

**Section 4. Additions to the Property.**

(a) Additional land may be made subject to all the terms hereof and brought within the jurisdiction and control of the Association in the manner specified in this Section, provided such is done within forty (40) years from the date this Declaration is recorded. Notwithstanding the foregoing, however, under no circumstances shall Developer be required to make such additions, and until such time as such additions are made to the Property in the manner hereinafter set forth, no other real property owned by Developer or any other person or party whomsoever, other than within the Property, shall in any way be affected by or become subject to this Declaration. All additional land that, pursuant to this Section, is brought within the jurisdiction and control of the Association and made subject to the Declaration shall thereupon and thereafter be included within the term "Property" as used in this Declaration. Notwithstanding anything contained in this Section, Developer neither commits to, nor warrants or represents, that any such additional land will be made subject to and brought within the jurisdiction and control of the Association.

(b) Procedure for Making Additions to the Property. Additions to the Property may be made by the following procedure:

(i) Developer shall have the right from time to time, in its discretion and without need for consent or approval by either the Association, any Homeowner, Resident or other Person to make additional land owned by Developer subject to the scheme of this Declaration and to bring such land within the jurisdiction and control of the Association; provided, however, in the event any portion of such additional land is encumbered by one or more mortgages, Developer must obtain the consent and approval of each holder of such mortgage(s).

(ii) The addition shall be accomplished by Developer filing of record in the public records a supplement to this Declaration with respect to the additional land extending the terms of the Covenants and Restrictions of this Declaration to such land as specifically and legally described. Such supplement need only be executed by Developer and shall be accompanied by the consent(s) and joinder(s) of any holder(s) of mortgage(s) on such additional land. No joinder or consent of the Association, any Homeowner, Resident or other Person shall be required. Such supplement may contain such additional provisions and/or modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land or permitted uses thereof. In no event, however, shall such additional provisions and/or modifications revoke, modify, or add to the Covenants and Restrictions established by this Declaration as such affect the land described in the original Exhibit A or added by a previous supplement.

(iii) Nothing contained in this Section shall obligate Developer to make additions to the Property.

Section 6. Rights of Mortgagees. Any First Mortgagee has the following rights:

(a) Inspection. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect the books, records, and papers of the Association.

(b) Copies. Upon payment of any reasonable, uniform charge that the Association may impose to defray its costs, to receive copies of the Association's books, records, or papers, certified upon request.

(c) Financial Statements. Upon written request to the secretary of the Association, to receive copies of the annual financial statements of the Association; provided, however, the Association may make a reasonable charge to defray its costs incurred in providing such copies.

(d) Meetings. To designate a representative to attend all meetings of the membership of the Association, who is entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting but in no event entitled to vote thereon.

By written notice to the secretary of the Association, and upon payment to the Association of any reasonable annual fee that the Association from time to time may establish for the purpose of defraying its costs, any First Mortgagee also is entitled to receive any notice that it required to be given to the Class A members of this Association under any provision of this Declaration or the Articles of Incorporation or By-Laws.

Section 7. Severability. Invalidity of any particular provision of this Declaration by judgment or court order will not affect any other provision, all of which shall remain in full force and effect; provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision contained in this Declaration when necessary to avoid a finding of invalidity while effectuating Developer's intent of providing a comprehensive plan for the use, development, sale, and beneficial enjoyment of the Community.

Section 8. Joinder. Should title to any Lot of the Community have been conveyed by Developer prior to the recording of this Declaration, such Homeowners of Lots by their signature to a Joinder shall be deemed to have joined with the Homeowner in the recording of this Declaration and shall have subordinated their right, title and interest in the Lot to the terms hereof and declare that their property shall be subject to this Declaration as fully as if title had been taken by them subsequent to the recording hereof.

Section 9. Covenants Running with the Property. Except as otherwise provided herein, the covenants, conditions and restrictions of this Declaration shall run with and be binding upon the Property, and shall remain in force and be enforced by the Board of Directors and the Homeowners, their heirs, successors and assigns, for a term of thirty (30) years after the date this Declaration is recorded in the public records of Hillsborough County, Florida, and shall be automatically renewed for successive periods of ten (10) years, unless the Homeowners, upon the affirmative vote of the holders of 70% of the voting interests decide within six (6) months of such renewal date, not to renew these covenants, conditions and restrictions, and a certificate executed by the president or the vice-president and secretary of the Association certifying to such vote is recorded in the public records of Hillsborough County, Florida.

Section 10. Amendment Pertaining to Surface Water Management System. Notwithstanding any provisions to the contrary contained in this Declaration, any amendment which will affect the surface water management system, including the management portion of the Common Property, serving the Community, must have the prior written approval of the Southwest Florida Water Management District in order to be effective and binding.

Section 11. Meeting Requirements. Whenever any provision of this Declaration, the Articles of Incorporation or the Bylaws require any action to be approved by 2/3 or more of the votes, at a meeting duly convened for such purpose, written notice of such meeting must be given to all Homeowners not less than fifteen (15) days in advance, setting forth its purpose. At such meeting, the presence in person or by proxy of Homeowners entitled to cast at least 50% of the votes outstanding constitutes a quorum.

Section 12. Rights of Developer. Developer shall have the right from time to time, at its sole discretion, to perform, at Developer's expense, the duties and obligations required hereunder to be performed by the Association and, in connection therewith, to reduce the budget of the Association and the Assessments for Common Expenses payable by the Homeowner, provided, however, that any such performance on the part of Developer may be discontinued by Developer at any time, and any such performance shall not be deemed to constitute a continuing obligation on the part of Developer.

Section 13. Inapplicability of Condominium Act. It is acknowledged that the Association is not intended to be a condominium association and is not intended to and shall not be governed by the provisions of *Florida Statutes*, Chapter 718.

Section 14. Actions Against Developer. The Association shall not institute any legal proceedings against Developer, or any partner of Developer, or any other person or entity related to or affiliated with Developer or any partner of Developer, or spend or commit to spend any Association funds in connection with any such legal proceedings without the consent of 75% of the votes of all of the Homeowners obtained at a meeting of the Homeowners called expressly for the purpose of approving such action.

Section 15 Conflicts. In the event of any conflict among the provisions of this Declaration, the Articles and Bylaws, first the provisions of this Declaration, then those of the Articles and then those of the Bylaws shall govern, in that order.

IN WITNESS WHEREOF, Developer has executed this Declaration the date and year first written above.

Signed, sealed and delivered in the presence of:

DECLARANT

LeAnn T. Casey  
Name (Print): LEANN T. CASEY

LOST RIVER PRESERVE, LLC,  
a Florida limited liability company

Craig S. Casey  
Name (Print): Craig S. Casey

By: William W. Casey  
William W. Casey, President

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

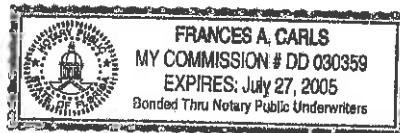
The foregoing instrument was acknowledged before me this 19 day of February, 2002, by William W. Casey, as President of Lost River Preserve, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or produced \_\_\_\_\_ as identification.

Frances A. Carls  
Notary Public

(Notary Seal)

FRANCES A. CARLS  
(Type, print or stamp name)

My Commission expires:



OR BK 11521 PG 0630



**JOINDER AND CONSENT OF MORTGAGEE**

Platinum Bank, a Florida banking corporation ("Mortgagee") being the Mortgagee under that certain Mortgage and Security Agreement dated August 2, 2001, executed by Lost River Preserve, LLC, a Florida limited liability company, in favor of Mortgagee, recorded in Official Records Book 10978, at Page 842, of the Public Records of Hillsborough County, Florida (the "Mortgage"), does hereby join in and consent to the foregoing Declaration and does hereby subordinate the lien of the Mortgage to the Declaration and to the rights of the parties to the easements created thereby.

**MORTGAGEE**

Howard Vo  
Name (Print) Howard Vo

Jana Colla  
Name (Print:) Jana Colla

**PLATINUM BANK, a Florida banking corporation**

By: Marvin F. Crabtree, Jr.  
Marvin F. Crabtree, Jr.  
Senior Vice President

(BANK SEAL)

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 15 day of February, 2002, by Marvin F. Crabtree, as Senior Vice President of Platinum Bank, a Florida banking corporation, on behalf of the corporation. He is personally known to me or produced as identification.

Susan Salvato  
Notary Public

Susan Salvato  
(Type, print or stamp name)

My Commission expires:

(Notary Seal)



OR BK 11521 PG 0631

## EXHIBIT A

### LEGAL DESCRIPTION

#### LOST RIVER PRESERVE – PHASE I

A parcel of land lying in the North ½ of Section 15, Township 32 South, Range 18 East, Hillsborough County, Florida, explicitly described as follows:

Commence at the SE corner of the NE ¼ of said Section 15; thence on the North boundary thereof N 89° 54'36" W, a distance of 1326.05 feet to the SW corner of the East ½ of the NE ¼ of said Section 15; thence departing said North boundary S 89° 52'45" W, a distance of 1284.58 feet; thence N 00° 06'44" W, a distance of 25.00 feet for a POINT OF BEGINNING, said point being on the Northwesterly right-of-way line of Gulf City Road; thence on said right-of-way line S 89° 53'16" W, a distance of 2033.59 feet; thence departing said right-of-way line N 00° 27'20" W, a distance of 637.36 feet; thence N 89° 59'09" E, a distance of 2086.41 feet; thence N 45° 00'00"E, a distance of 1668.58 feet; thence S 89° 02'46" E, a distance of 1350.00 feet to a point on the aforesaid Northwesterly right-of-way line of Gulf City Road; thence on said right-of-way line the following four (4) courses: 1) S 00° 57'14" W, a distance of 1410.79 feet to a point on a curve concave northwesterly having a radius of 420.26 feet and a central angle of 46° 14'53" 2) on the arc of said curve a distance of 339.22 feet, said arc subtended by a chord which bears S 25° 42'44"W a distance of 330.09 feet to a point on a curve concave northwesterly having a radius of 555.21 feet and a central angle of 29° 00'50"; 3) on the arc of said curve a distance of 281.15 feet, said arc subtended by a chord which bears S 73° 29'10" W a distance of 278.16 feet; 4) thence S 89° 53'16" W, a distance of 2144.05 feet to the POINT OF BEGINNING.

#### TOGETHER WITH:

A parcel of land lying in the South ½ of Section 15, Township 32 South, Range 18 East, Hillsborough County, Florida, explicitly described as follows:

Commence at the SE corner of the NE ¼ of said Section 15; thence on the North boundary thereof N 89° 54'36" W, a distance of 1326.05 feet to the SW corner of the East ½ of the NE ¼ of said Section 15; thence departing said North boundary S 89° 52'45" W, a distance of 1284.58 feet; thence S 00° 06'44" E, a distance of 50.00 feet for a POINT OF BEGINNING; thence continue S 00° 06'44" E, a distance of 175.00 feet; thence S 45° 12'21" W, a distance of 3170.19 feet; thence S 00° 23'08" E, a distance of 235.42 feet; thence S 89° 43'34" W, a distance of 400.00 feet to a point on the Southeasterly right-of-way line of Gulf City Road; thence on said right-of-way line the following seven (7) courses: 1) N 00° 23' 08" W, a distance of 36.16 feet; 2) S 89° 36'52" W, a distance of 10.00 feet; 3) N 00° 23' 08" W, a distance of 151.00 feet; 4) S 89° 36' 52" W, a distance of 20.00 feet; 5) N 00° 23'08" W, a distance of 1951.23 feet to the beginning of a curve concave Southeasterly having a radius of 525.00 feet and a central angle of 90° 16'24"; 6) on the arc of said curve, a distance of 827.17 feet, said arc subtended by a chord which bears N 44° 45'04" E a distance of 744.23 feet to the curve's end; 7) N 89° 53'16" E, a distance of 2143.15 feet to the beginning of a curve concave Southwesterly having a radius of 25.00 feet and a central angle of 90° 00'00"; thence on the arc of said curve a distance of 39.27 feet, said arc subtended by a chord which bears S 45° 06'44" E, a distance of 35.36 feet to the curve's end and the POINT OF BEGINNING.

EXHIBIT B

ARTICLES OF INCORPORATION  
OF  
LOST RIVER PRESERVE PROPERTY OWNERS' ASSOCIATION, INC.

(A Florida corporation not for profit)

The undersigned, by these Articles, hereby associate for the purpose of forming a corporation not for profit under Chapter 617, Florida Statutes, and certify as follows:

Article I – Name

The name of the corporation shall be: LOST RIVER PRESERVE PROPERTY OWNERS' ASSOCIATION, INC., hereinafter sometimes referred to as the "Association" and its principal office is at 3939 Cockroach Bay Road, Ruskin, Florida 33570.

Article II – Purpose

2.1 The purpose for which the Association is organized is to provide for the maintenance, preservation and architectural control of resident Lots and the Common Property within that certain tract of property described as:

See Exhibit "A" attached hereto and any addition thereto (hereinafter referred to as the "Lands"),

And to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association for the purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and Restrictions, hereinafter called the "Declaration" and applicable to the property, or any portion thereof, and recorded or to be recorded in the Public Records of Hillsborough County, Florida, as the same may be amended from time to time as therein provided;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association; to borrow money, and with the consent of the Association; to borrow money, and with the consent of two-thirds (2/3) of each class of membership, mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(c) Hold funds solely and exclusively for the benefits of the members of the Association for the purposes set forth in these Articles of Incorporation and the Declaration;

(d) Promulgate and enforce rules, regulations, bylaws, covenants, restrictions and agreements to effectuate the purposes for which the Association is organized;

(e) Delegate power or powers where such is deemed in the interest of the Association;

(f) Purchase, lease, hold, sell, mortgage or otherwise acquire or dispose of, real or personal property; to enter into, make, perform or carry out contracts of every kind with any person, firm, corporation or association; to do any and all acts necessary or expedient for carrying on any and all of the activities and pursuing any and all of the objects and purposes set forth in the Articles of Incorporation and not forbidden by the laws of the State of Florida;

(g) Dedicate, sell or transfer all or any part of the Common Property to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication, sale or transfer shall be effective unless an instrument agreeing to such dedication, sale or transfer has been signed by members entitled to cast not less than two-thirds (2/3) of the votes of each Class or members of the Association;

(h) Charge recipients for services rendered by the Association and the user for use of Association property where such is deemed appropriate by the Board of Directors of the Association;

(i) Pay taxes and other charges, if any, on or against property owned or accepted by the Association;

(j) Have and exercise any and all powers, rights and privileges which a corporation organized under the Non-profit Corporation Laws of the State of Florida by law may now or hereafter have or exercise;

(k) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes or annex additional residential property and Common Property, provided that any such merger or consolidation shall have the assent of two-thirds (2/3) of the votes of each Class of members of the Association;

(l) Operate and maintain the Common Property, specifically the surface water management system as permitted by the Southwest Florida Management District including all lakes, retention areas, culverts, and related appurtenances;

(m) To enter into contracts and agreements with the associations for adjoining condominium properties for shared maintenance, utility and security expenses.

Notwithstanding anything contained above to the contrary, no part of the net earnings of the Association shall inure to the benefit of any member and no distributions of income shall be made to its members, directors or officers.

### Article III - Membership

Every person or entity who is a record owner of a Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association. Classes of membership may be established pursuant to the Declaration of Covenants, Conditions and Restrictions recorded for the Land. Any owner of more than one Lot shall be entitled to one (1)

settlement the indemnification shall apply only when the Board of Directors approves such settlement, and reimbursement as being for the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Article IX – Bylaws

The first Bylaws of the Association shall be adopted by the Board of Directors and may be altered, amended or rescinded in the manner provided by the Bylaws.

Article X – Amendments

Amendments to the Articles of Incorporation shall be proposed and adopted in the following manner.

10.1 Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

10.2 A resolution for the adoption of a proposed amendment may be proposed either by the Board of Directors or by the members of the Association. Directors and members not present in person or by proxy at the meeting considering the amendment may express their approval in writing, providing such approval is delivered to the secretary at or prior to the meeting. Except as elsewhere provided:

- (a) Such approvals must be by not less than seventy-five percent (75%) of the votes of the entire membership of the Association.

10.3 Provided, however, that no amendment shall make any changes in the qualifications for membership nor the voting rights of members without the Developer's approval as long as the Developer owns a Lot in the Development.

10.4 A copy of each amendment shall be certified by the Secretary of State and be recorded in the Public Records of Hillsborough County, Florida.

Article XI – Term

The term of the Association shall be perpetual.

Article XII – Subscriber

The name and address of the subscriber of these Articles of Incorporation is as follows:

Name	Address
William W. Casey	3939 Cockroach Bay Road Ruskin, Florida 33570


OR BK 11521 PG 0637

Article XIII - Dissolution

The Association may be dissolved with the consent given in writing and signed by not less than two-thirds (2/3) of each Class of members of the Association. Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event that dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes.


This Articles of Incorporation have been duly approved by the undersigned as and constituting all of the subscribers and directors of said corporation in a meeting duly held and assembled.

Dated this 19 day of February, 2002.

  
William W. Casey

STATE OF FLORIDA  
COUNTY OF PINELLAS

BEFORE ME, the undersigned authority, personally appeared William W. Casey who is personally known to me or who produced \_\_\_\_\_ as identification, and who after being duly sworn, acknowledged that he executed the foregoing Articles of Incorporation for the purposes expressed in such Articles this 19 day of February, 2002.

  
Notary Public  
Name: FRANCES A. CARLS  
My Commission Expires \_\_\_\_\_

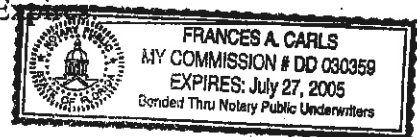


EXHIBIT C

BYLAWS OF  
LOST RIVER PRESERVE PROPERTY  
OWNERS' ASSOCIATION, INC.

A corporation not for profit  
under the Laws of the State of Florida

Article I - Identity

Section 1. These are the Bylaws of Lost River Preserve Property Owners' Association by these Bylaws, a corporation not for profit under the Laws of the State of Florida, the Articles of Incorporation of which were filed in the office of the Secretary of State on \_\_\_\_\_, 2002.

Section 2. The office of the Association shall be at 3939 Cockroach Bay Road, Ruskin, Florida 33570.

Section 3. The Association shall operate upon the calendar year beginning on the first day of January and ending on the 31st day of December of each year. The Board of Directors is expressly authorized to change from a calendar year basis to a fiscal year basis whenever deemed expedient and for the best interests of the Association.

Section 4. The seal of the Association shall bear the name of the Association, the word "Florida," and the words "corporation not for profit" and the year of incorporation, an impression of which is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Articles II - Definitions

Section 1. All words, phrases, names and terms used in these Bylaws, the Declaration and the Articles of Incorporation of the Association shall have the same meaning and be used and defined the same as they are in the Declaration of Covenants, Conditions and Restrictions of Lost River Preserve.

Article III - The Association

Section 1. Members. The members of the Association shall be those individuals or entities as so defined in the Declaration of Covenants, Conditions and Restrictions and the Articles of Incorporation, and shall be any legal entity capable of ownership of real property under the Laws of Florida.

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Section 2. Place of Meetings. Meetings of the membership shall be held at the principal office or place of business of the Association, or at such other suitable place convenient to the membership as may be designated by the Board of Directors.

Section 3. Annual Meetings. The first annual meeting of the Association shall be held one (1) year from the date of incorporation of the Association. Thereafter the annual meetings of the Association shall be held on the same day of the month of each succeeding year. If the day so designated falls on a legal holiday, then the meeting shall be held on the first secular day thereafter. At the annual meeting the members may transact such business of the Association as may properly come before them. The time of all meetings shall be set by the directors and the directors, by majority vote, may change the date of the annual meeting.

Section 4. Special Meetings. Special meetings of the members may be called by the President and shall be called by the President or Secretary at the request in writing of the Board of Directors or at the request in writing of members who are entitled to vote ten percent (10%) of all of the total voting interest of the Association. Such requests shall state the purpose or purposes of the proposed meeting.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and place where it is to be held, to each member of record, at his address as it appears on the membership books of the Association, and if no such address appears, at his last known place of address, at least fifteen (15) days for an annual meeting and ten (10) days for a special meeting, prior to such meeting. The mailing of a notice in the manner provided in this section shall be considered notice served. The notice shall specify the day, place and hour of the meeting, and if a special meeting, the purpose.

Section 6. Minutes. Minutes of all meetings shall be kept in a businesslike manner and be available for inspection by Lot owners and Board members at all reasonable times.

Section 7. Quorum. The presence in person or by proxy at the meeting of members entitled to cast thirty-three and one-third percent (33-1/3%) of all votes, regardless of class of membership, shall constitute a quorum for any action required by the membership, except as otherwise provided in the Articles of Incorporation, the Declaration of Covenants, Conditions and Restrictions or these Bylaws.

Section 8. Adjourned Meetings. If any meeting of members cannot be organized because a quorum has not attended, the members who are present, either in person or by proxy, may adjourn the meeting to a time not later than ten (10) days from the time the original meeting was called, and hold the meeting adjourned, without additional notice, provided that a quorum can be obtained for such meeting.

Section 9. Voting. At every meeting of the members, the owner or owners of each unit, or combination of units, either in person or by proxy, shall have the right to cast one vote as set forth in the Declaration. The vote of the majority of those present, in person or by proxy, shall decide any question brought before such meeting, unless the question is one upon which, by



express provision of statute, or of the Declaration of Covenants, Conditions and Restrictions, or of the Articles of Incorporation, or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. If a Lot is owned by more than one person, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by all of the record owners of the Lot according to the roster of Lot owners and filed with the Secretary of the Association. If a Lot is owned by a corporation, the person entitled to cast the vote for the Lot shall be designated by a certificate signed by the president or vice president and attested by the secretary or assistant secretary of the corporation and filed with the Secretary of the Association. Those certificates shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Lot concerned. A certificate designating the person entitled to cast the vote for a Lot may be revoked by any owner of a share in the Lot. If a certificate designating the person entitled to cast the vote for a Lot is not on file, the vote of the owners shall not be considered in determining whether a quorum is present nor for any other purpose, except if the Lot is owned jointly by husband and wife. If a Lot is owned jointly by husband and wife, the following provisions are applicable:

- a. They may, but are not required, to designate a voting member;
- b. If they do not designate a voting member, and if both are present at a meeting and are unable to concur on a decision upon any subject requiring a vote, they shall lose the right to vote on the subject at that meeting;
- c. When they do not designate a voting member, and only one is present at a meeting, the person present may cast the Lots's vote;

Section 10. Proxies. A member may appoint any other member, any owner of any Lot, the Developer, or the manager as a proxy. Any proxy must be filed with the secretary before the appointed time of each meeting.

Section 11. Order of Business. The order of business at all annual or special meetings of the members shall be as follows:

- a. Roll call.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of the minutes of preceding meeting.
- d. Reports of officers
- e. Reports of committees
- f. Election of officers (if election is to be held).
- g. Unfinished business.

- h. New business

Article IV -Administration

Section 1. Board of Directors.

a. Number and Qualification. The affairs of the Association shall be governed by a Board of Directors. The number of directors which shall constitute the Board shall be not less than three (3) nor more than nine (9). The number of directors may be increased or decreased within the above limits by affirmative vote of a majority of the membership. All directors, except for the initial directors named in the Articles of Incorporation, shall either be members of the Association, or designees of the Developer. The Developer reserves the right, in its sole discretion, to remove and replace any of the initial directors or their replacements. Thereafter, the Directors shall be elected at the annual meeting of the owners by a majority vote. The initial Directors shall serve until their resignation or relinquishment of control of the Association by the Developer. No director, other than the Developer or its representatives, shall serve for more than two (2) consecutive three (3) year terms. After the Developer has relinquished control, there shall be a minimum of three (3) Directors elected, one third (1/3) for a one (1) year term, one third (1/3) for a term of two (2) years and the balance for a term of three (3) years, and at each annual meeting thereafter the members shall elect one (1) Director for a term of three (3) years.

b. Removal. Directors, except for the Developer's representatives, may be removed for cause by an affirmative vote of a majority of the owners. The vacancy so created shall be filled by the members of the Association. No Director, other than the initial Directors named in the Articles of Incorporation, or their duly elected replacements, shall continue to serve on the Board if, during his term of office, his membership in the Association shall be terminated for any reason whatsoever.

c. Vacancies. Except as to vacancies provided by removal of Directors by members, vacancies in the Board of Directors occurring between annual meetings of members shall be appointed by the remaining Directors.

Section 2. Powers and Duties. The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Association, and may do all such acts and things as are not by the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be exercised and done by the members or officers. The powers and duties of the Board shall include, but not be limited to, the following:

a. All powers and duties of the Association as set forth in the Articles of Incorporation of the Association, except as limited as above provided.

b. To prepare and adopt an annual operating budget, which budget shall be sufficient in amount to pay for all necessary expenses and expenditures to be shared in common by the respective owners of units, and including a reasonable reserve for repairs, upkeep and replacement of the common area and for contingencies.

The report, upon written request, shall be sent to holders, insurers or guarantors of any first mortgage on a Lot and, if required, the report shall be in the form of a financial statement certified by a corporate officer.

j. The Board shall make available for inspection, during reasonable business hours or circumstances, to Lot owners and holders, insurers or guarantors of first mortgages current copies of the Declaration of Covenants, Conditions and Restrictions, the Bylaws and other rules concerning the operation of the Association, and the books, records and financial statements of the Association.

Section 3. Election of Directors. Election to the Board of Directors shall be by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4. Management Agent. The Board of Directors may employ for the Association a management agent at a compensation established by the Board to perform such duties, services and powers as the Board shall authorize, including, but not limited to, the duties, services and powers listed in section 2 of this paragraph.

Section 5. Compensation. No compensation shall be paid to directors for their services as directors. No remuneration shall be paid a Director for services performed by him for the Association in any other capacity, unless a resolution authorizing such remuneration shall have been unanimously adopted by the Board of Directors before the services are undertaken.

Section 6. Organization Meeting. The first meeting of the Board of Directors shall be held within ten (10) days after the annual members' meeting, at such place as shall be fixed by the Board and no notice shall be necessary to the newly elected directors in order legally to constitute such meeting, providing all of the Board of Directors shall be present.

Section 7. Regular Meetings. Regular meetings of the directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Board of Directors shall be given -to each director, personally or by mail, telephone or telegraph, at least three days prior to the day named for such meeting.

Section 8. Special Meetings. Special meetings of the Board of Directors may be called by the President on three days' notice to each director, given personally or by mail, telephone or telegraph, which notice shall state the time, place (as hereinabove provided) and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President and Secretary, in like manner and on like notice, on the written request of at least two directors.

Section 9. Notice of Meetings to Lot Owner. Meetings of the Board of Directors shall be open to all Lot owners and notices of meetings shall be either hand delivered or mailed

by regular mail to each member at least seven (7) days in advance of a meeting of Lot owners or posted in a conspicuous place in the community at least forty eight (48) hours in advance of a meeting, except in an emergency.

Section 10. Vote of Directors. Directors may not vote by proxy or secret ballot at Board meetings except that secret ballots may be used in the election of officers.

Section 11. Minutes. Minutes of all meetings of the Board of Directors and of the Lot owners shall be kept in a businesslike manner and available for inspection by unit owners and Board members at all reasonable times.

Section 12. Quorum. At all meetings of the Board of Directors a majority of the directors shall constitute a quorum for the transaction of business, and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board of Directors. If at any meeting of the Board of Directors there is less than a quorum present, the majority of those present may adjourn the meeting from time to time.

Section 13. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums of such bonds shall be paid by the Association.

Section 14. Designation of Officer. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary.

Section 15. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the organization meeting of each new Board, and shall hold office at the pleasure of the Board.

Section 16. Removal of Officers. Upon an affirmative vote of a majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board called for such purpose.

Section 17. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board of Directors. He shall have all of the general powers and duties which are usually vested in the office of President of the Association.

Section 18. Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other member of the Board to do so on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board of Directors.

Section 19. Secretary. The Secretary shall keep the minutes of all meetings of the Board of Directors, and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board of Directors may direct; and he shall, in general, perform all the duties incident to the office of Secretary.

Section 20. Treasurer. The Treasurer shall have responsibility for Association funds and securities, and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board of Directors.

#### Article V - Assessment And Collection Of Common Expenses

As more fully provided in the Declaration of Covenants, Conditions and Restrictions, each lot owner is obligated to pay to the Association annual and special assessments which are secured by a continuing lien against the Lot against which is made, which lien is in favor of the Association and shall come into effect upon recordation of the Declaration of Covenants, Conditions and Restrictions. Said lien shall secure not only unpaid, delinquent assessments, but also reasonable attorney's fees and other costs of collecting assessments and interest at the highest lawful rate. Said lien shall date back to the date of recording of the Declaration of Covenant, Conditions and Restrictions and shall be prior to the creation of any homestead status or subsequent lien or encumbrance, except that said lien shall be subordinate and inferior to that of any institutional first mortgage lender.

#### Article VI - Annual Budget

Pursuant to Article IV, section 2, paragraph b. of these Bylaws, the Board of Directors shall have the power and duty of preparing and adopting an annual operating budget for the Association. Each Lot owner shall be given written notice of the time and place at which the meeting at which the budget will be considered shall be held, and such meeting shall be open to the Lot owners. If a budget is adopted by the Board of Directors which requires assessment against the Lot owners in any fiscal or calendar year exceeding one hundred fifteen per cent (115%) of such assessments for the preceding year, upon written application of ten per cent (10%) of the Lot owners, a special meeting of the Lot owners shall be held upon not less than ten (10) days' written notice to each Lot owner, but within thirty (30) days of the delivery of such application to the Board of Directors or any member thereof, at which special meeting Lot owners may consider and enact a revision of the budget, or recall any and all members of the Board of Directors and elect their successors. In either case, the revision of the budget or the recall of any and all members of the Board of Directors shall require a vote of not less than two-thirds (2/3) of each Class of members of the Association. In determining whether assessments exceed one hundred fifteen per cent (115%) of similar assessments in prior years, there shall be excluded in the computation any provision for reasonable reserves made by the Board of Directors in respect of repair or replacement of the property or in respect of anticipated expenses by the Association which were not anticipated to be incurred on a regular or annual basis. There shall also be excluded from such computation assessments for betterments to the property. An

OR BK 11521 PG 0646

example of this procedure is if a previous year's assessments for a Lot were \$150.00 per year, then the assessment may increase to \$172.50 per year by Board of Directors action alone.

The proposed annual budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

#### Article VII – Amendment of Bylaws

The Bylaws of the Association may be modified, amended or revoked, unless specifically prohibited elsewhere herein, at any regular or special meeting of the members of the Association by not less than seventy-five percent (75%) of the votes of the entire membership of the Association, provided that no less than fourteen (14) days' notice of said meeting has been given to the members of the Association, which notice contained a full statement of the proposed modification, change or revocation.

The foregoing were adopted as the Bylaws of Lost River Preserve Property Owners' Association, a corporation not for profit under the Laws of the State of Florida, at the first meeting of the Board of Directors on \_\_\_\_\_, 2002.

This instrument was prepared by and should be returned to:  
S. Katherine Frazier, Esquire, of Hill, Ward & Henderson, P.A.  
Bank of America Plaza, Suite 3700  
101 East Kennedy Boulevard  
Tampa, Florida 33602

INSTR # 2005454045

O BK 15585 PG 0040

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RECORDED 10/03/2005 03:58:23 PM

PAT FRANK CLERK OF COURT

HILLSBOROUGH COUNTY

DEPUTY CLERK B Loggans

**FIRST AMENDMENT AND SUPPLEMENT TO DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF LOST RIVER PRESERVE**

THIS FIRST AMENDMENT AND SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF LOST RIVER PRESERVE (the "First Amendment") is made and entered into as of September 30, 2005, by LOST RIVER PRESERVE, LLC, a Florida limited liability company (the "Developer").

**RECITALS**

- A. Developer executed that certain Declaration of Covenants, Conditions and Restrictions dated March 27, 2002, as recorded in Official Records Book 11521, at Page 598, of the Public Records of Hillsborough County, Florida (the "Declaration"), which Declaration encumbers that certain Property situated in Hillsborough County, Florida, as more particularly described in the Declaration;
- B. The Southwest Florida Water Management District ("SWFWMD") has promulgated an Environmental Resource Permitting (ERP) Information Manual which includes Part B stipulating the Basis of Review for 40D Rules (the Manual and Part B collectively are hereinafter referred to as the "SWFWMD Regulations") which are applicable to the Property, including, without limitation, Section 2.6.2.2.5, which requires certain declarations of protective covenants to provide certain terms as a part of said declarations;
- C. Pursuant to the SWFWMD Regulations, SWFWMD requires Developer to amend the Declaration to include the terms provided in Section 2.6.2.2.5 of the SWFWMD Regulations;
- D. Pursuant to the terms of Article XIII Sections 3(iv) and 10 of the Declaration, Developer desires to record this First Amendment as a Special Amendment in order to amend the Declaration to conform to the SWFWMD Regulations subject to the terms and conditions set forth herein; and
- E. In addition, pursuant to Article XIII Section 4 of the Declaration, Developer desires to make additional real property (the "Additional Land"), a legal description of which is attached hereto as Exhibit A and by this reference made part hereof, subject to all the terms of the Declaration and to bring the Additional Land within the jurisdiction and control of the Association pursuant to Article XIII Section 4 of the Declaration subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the covenants herein contained, Developer acknowledges and agrees as follows.

#### AGREEMENTS

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference. All defined terms used herein shall have the same meaning as given in the Declaration, unless otherwise defined herein.

2. Additional Land; Association Control. The terms of the Covenants and Restrictions of the Declaration are hereby extended to the Additional Land. The Additional Land is hereby brought within the jurisdiction and control of the Association and made subject to the Declaration and shall hereby and hereafter be included within the term "Property" as used in the Declaration.

3. Surface Water Management System. The following is hereby added as Article XIV to the Declaration and is entitled "ADDITIONAL PROVISIONS WITH RESPECT TO SURFACE WATER MANAGEMENT SYSTEM."

"Section 1. Definitions. "Surface Water Management System Facilities" shall include, but are not 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, as applicable, located on the Property.

Section 2. Location. The Surface Water Management System Facilities are located on land that is designated Common Property on the Plat, are located on land that is owned by the Association, or are located on land that is subject to an easement in favor of the Association and its successors.

Section 3. Construction. Except as otherwise provided in this Section 3, 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. The Property does not include a wetland mitigation area as defined in section 1.7.24 of the SWFWMD Regulations; provided, however, with respect to the wet detention pond located on the Property, no vegetation within such wet detention pond shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from SWFWMD. Construction and maintenance activities which are consistent with the design and permit conditions approved by SWFWMD in the Environmental Resource Permit to be issued pursuant to application number 43008689.003 (the "Environmental Resource Permit") may be conducted without specific written approval from SWFWMD.

Section 4. Operation and Maintenance. The Association shall be responsible for 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.



Section 5. Association Membership. Pursuant to and in accordance with Article V Section 1 of the Declaration, all the Homeowners shall be members of the Association.

Section 6. Assessments for the Surface Water Management System Facilities. Any and all costs associated with the operation, maintenance and replacement of the Surface Water Management System Facilities shall be included with the basic and general expenses of the Association described in Article VI Section 1, and shall be paid by members of the Association and controlled, managed, maintained, repaired, kept up, and replaced by the Association as provided and in accordance with Articles VI-VIII of the Declaration.

Section 7. Enforcement. SWFWMD shall have the right to take enforcement measures, including a civil action for injunction and/or penalties, against the Association to compel the Association to correct any outstanding conditions not in compliance with the Surface Water Management System Facilities.

Section 8. Responsibility of Persons other than the Association. If the Association ceases to exist, all of the Lot owners, Unit owners or Homeowners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System Facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an appropriate governmental unit, public utility, or non-profit corporation similar to the Association assumes responsibility for the operation and maintenance of the Surface Water Management System Facilities."

4. Amendment Subject to Approval. Pursuant to Article XIII Section 10 of the Declaration, Declarant hereby confirms receipt of SWFWMD's prior approval to this First Amendment.

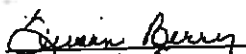
5. Ratification. Except as otherwise expressly provided in this First Amendment, the Declaration shall remain in full force and effect and is hereby ratified and confirmed.

IN WITNESS WHEREOF, Developer has executed this First Amendment the date and year first written above.

Signed, sealed and delivered in the presence of:

DECLARANT

LOST RIVER PRESERVE, LLC,  
a Florida limited liability company

  
Name (Print): Susan Berry


By:   
William W. Casey, President

  
Name (Print): Michelle Rodon

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 30 day of September, 2005, by William W. Casey, as President of Lost River Preserve, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or produced a FL driver license as identification.

  
Notary Public

(Notary Seal)

\_\_\_\_\_  
(Type, print or stamp name)

My Commission expires:



Michelle Pradon  
MY COMMISSION # 00226143 EXPIRES  
June 5, 2007  
BONDED THRU TROY FARM INSURANCE, INC.

**EXHIBIT A**

**LEGAL DESCRIPTION:**

A parcel of land lying in Sections 14 and 15, Township 32 South, Range 18 East, Hillsborough County, Florida, explicitly described as follows:

Commence at the northeast corner of the West 1/4 of said Section 14; thence on the east boundary thereof S00°09'54"W, a distance of 32.94 feet to the POINT OF BEGINNING; thence continue on said east boundary S00°09'54"W, a distance of 5333.25 feet to the southeast corner of the West 1/4 of said Section 14; thence on the south boundary thereof N89°23'40"W, a distance of 1343.58 feet to the southwest corner of said Section 14 the same being the southeast corner of aforesaid Section 15; thence on the south boundary thereof S89°37'35" W, a distance of 2640.23 feet; thence continue on said south boundary S89°44'10"W, a distance of 2204.53 feet to the boundary of LOST RIVER PRESERVE PHASE I as recorded in Plat Book 92, Page 72 of the Public Records of Hillsborough County, Florida; thence on said boundary the following four (4) courses (1) thence N00°23'08"W, a distance of 235.42 feet; (2) thence N45°12'21"E, a distance of 3170.19 feet; (3) thence N00°06'44"W, a distance of 175.00 feet to the beginning of a curve concave southwesterly having a radius of 25.00 feet and a central angle of 90°00'00"; (4) thence on the arc of said curve a distance of 39.27 feet, said arc subtended by a chord which bears N45°06'44"W a distance of 35.36 feet to the right-of-way of Gulf City Road; thence on said right-of-way the following six (6) courses: (1) thence N89°53'16"E, a distance of 2131.53 feet to a point on a curve concave northwesterly having a radius of 605.21 feet and a central angle of 33°08'26"; (2) thence on the arc of said curve a distance of 350.06 feet, said arc subtended by a chord which bears N75°07'56"E a distance of 345.20 feet to a point on a curve concave northwesterly having a radius of 470.26 feet and a central angle of 49°58'17"; (3) thence on the arc of said curve a distance of 410.14 feet, said arc subtended by a chord which bears N24°23'40"E a distance of 397.27 feet; (4) thence N00°57'14"E, a distance of 1815.30 feet to a point on a curve concave southeasterly having a radius of 400.00 feet and a central angle of 79°51'19"; (5) thence on the arc of said curve a distance of 557.49 feet, said arc subtended by a chord which bears N38°20'42"E a distance of 513.46 feet; (6) thence N89°42'18"E, a distance of 1002.43 feet to the POINT OF BEGINNING.

AND

A parcel of land lying in Sections 14 and 15, Township 32 South, Range 18 East, Hillsborough County, Florida, explicitly described as follows:

Commence at the northeast corner of said Section 15; thence on the north boundary thereof S89°51'32"W, a distance of 178.00 feet to the POINT OF BEGINNING; thence S00°08'28"E, a distance of 24.76 feet; thence N89°51'32"E, a distance of 387.23 feet to the westerly right-of-way line of Gulf City Road and a point on a curve concave southeasterly having a radius of 450.00 feet and a central angle of 63°51'57"; thence on said right-of-way line and on the arc of said curve a distance of 501.60 feet, said arc subtended by a chord which bears S30°21'01"W a distance of 476.03 feet; thence continue on said right-of-way line S00°57'14"W, a distance of 428.10 feet to the northeast corner of LOST RIVER PRESERVE PHASE I as recorded in Plat Book 92, Page 72 of the Public Records of Hillsborough County, Florida; thence on the north boundary thereof N89°02'46"W, a distance of 264.88 feet; thence N00°57'14"E, a distance of 856.94 feet to the aforesaid north boundary of said Section 15 N89°51'32"E, a distance of 110.98 feet to the POINT OF BEGINNING.