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Prepared by and return to:
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5200 Tamiami Trail North, Suite 101
Naples, Florida 34103

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly elected and acting President of Lely Civic Assn., Inc., a Florida not-for-profit corporation, does hereby certify that at a duly called meeting of the members held on October 19, 2022, where a quorum was present, after due notice, the attached Amended and Restated Declaration of Protective Covenants for Lely Golf Estates, Pinehurst Estates Section was approved by a proper percentage of the voting interests of the Pinehurst Estates Section membership.

The original Declaration of Protective Covenants, Conditions and Restrictions for Lely Golf Estates, Pinehurst Estates Section, was recorded at O.R. Book 580, Page 938, *et. seq.*, in the Official Records of Collier County, Florida (the "Declaration"). The Declaration is hereby amended in accordance with Exhibit "A" attached hereto and incorporated herein and is now in full force and effect.

Dated: January 10th, 2023

Lely Civic Assn., Inc., a Florida not-for-profit corporation

Witness

By: Lisa Rice McGarity, President

Printed Name: Laura V Mann

Witness

Printed Name: Katheryn Frost

STATE OF FLORIDA
COUNTY OF COLLIER

Acknowledged and subscribed before me, an officer duly authorized in the above mentioned state and county to take acknowledgments, by means of physical presence, this 10 day of January, 2023, by Lisa Rice McGarity, as President of Lely Civic Assn., Inc., who is personally known to me or presented identification, and who did take an oath.

Notary Public

Michelle Zambelli

Printed name of Notary
My Commission Expires

Michelle D. Zambelli
Notary Public
State of Florida
Comm# HH072462
Expires 12/15/2024

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NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE DECLARATION OF PROTECTIVE COVENANTS. FOR PRESENT TEXT, SEE EXISTING DECLARATION.

AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR LELY GOLF ESTATES, PINEHURST ESTATES SECTION

MARKED COPY

KNOW ALL MEN BY THESE PRESENTS that on February 27, 1974 the original Declaration of Protective Covenants for Lely Golf Estates, Pinehurst Estates Section was recorded in Official record Book 580, at page 938 *et seq.,* of the Public Records of Collier County, Florida. That declaration, as it has previously been amended and revitalized, is hereby further amended and restated in the entirety, as amended.

The land subject to this Declaration (hereinafter "Pinehurst Estates" or the "Neighborhood") is:

> LELY GOLF ESTATES, Pinehurst Estates Section, as filed in Plat Book 12, Page 1, of the Public Records of Collier County, Florida.

No additional land is being added by this instrument and no land is being removed by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a Lot or any other ownership interest in the neighborhood, or the lease, occupancy or use of any portion of a Lot or the Neighborhood, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

Article I – Definitions

As used herein, the following definitions shall apply (unless the context shall clearly indicate otherwise):

1.1 **ASSESSMENTS** mean a share of the funds required for the payment of both Common Expenses and individual expenses, which from time to time are assessed by the Association, against an Owner as Regular, Special or Individual Assessments.

1.2 **ASSOCIATION** means Lely Golf Estates Association, Inc., a Florida not for Profit Corporation.

1.3 **BOARD** means Board of Directors responsible for the administration of the Lely Golf Estates Association, Inc.

1.4 **COMMON EXPENSES** mean the expenses incurred by the Association in the course of performing its duties under the Governing Documents and the law. Common Expenses of the Association include the cost of operating the Association, the cost of administration, maintenance, operation, repair and replacement of the Common Fixtures, other expenses

declared by the Governing Documents to be Common Expenses, and any other valid expense or debts whole of the Association which are assessed against the Lot Owners.

1.5 **COMMON FIXTURES** means any improvement or fixture, owned, leased or the use of which has been granted or dedicated to the Association for the common use or enjoyment of its members.

1.6 **COMMON SURPLUS** means the excess of all receipts of the Association, including but not limited to Assessments and revenues over the Common Expenses.

1.7 **DECLARATION** means this Declaration of Protective Covenants, as amended from time to time.

1.8 **DEVELOPMENT** of a Lot shall mean and refer to the construction of any building or improvement permitted by this Declaration thereon.

1.9 **FAMILY** or **SINGLE FAMILY** means any one of the following:

(A) One natural person.

(B) Two or more natural persons who commonly reside together as a single housekeeping and economic unit, each of whom is related by blood, marriage or adoption to each of the others.

(C) Two or more natural persons meeting the requirements of (B) above, except that there is among them one person who is not related to some or all of the others.

1.10 **GOVERNING DOCUMENTS** means and includes this Declaration, the Articles of Incorporation, the Bylaws, and all recorded exhibits thereto, as amended from time to time.

1.11 **HOME** means a single-family residential dwelling unit intended for residential use which is constructed on a Lot.

1.12 **LOT** means the lots of land located within the real property according to the Plat. That description is hereby incorporated by reference. No addition land is being added by this instrument and no land is being removed by this instrument. All of said land has been subdivided for residential use with fee simple title to each Lot having been conveyed to an owner for use as a residential home site. No Lot may be subdivided or joined together without the consent of the Association. The Lots may be depicted and numbered on sketches or surveys as recorded in the Public Records of Collier County, Florida.

1.13 **OWNER** shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot within the plat, but not including those having an interest merely as security for the performance of an obligation.

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1.14 **PLAT** shall mean and refer to the plan of the Subdivision described above.

1.15 **STRUCTURE** means that which is built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground. The term shall be construed as if followed by the words "or part thereof". The term includes, without limitation, swimming pools, fences, flagpoles, and antennas.

1.16 **TENANT** shall mean an individual or individuals that have a temporary right of use of a home on the Owner's Lot, with or without valuable consideration; lessee.

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Article II – Easements

2.1 **Utility Easements.** Association hereby reserves an exclusive easement along all street rights-of way, along the rearmost ten (10) feet of each Lot, and along the outer five (5) feet of all side yards (where more than one Lot is used as a building site or where parts of one or more Lots are used as a building site, the outside boundaries of said building site shall carry said side yard easement), for water lines, butane and propane fuel lines, sewer lines, electric lines, telephone lines, television cable and any other pipes, lines or distributors for utilities or service to be furnished to fifty percent (50%) or more of the Lots within this subdivision. All telephone, electric, water, sewer, fuel lines and pipes or other distributors must be underground from the Lot line to the use connection. The Association through its Board has the authority to grant additional easements and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the Lots.

2.2 **Extent of Easements.** The rights and easements of enjoyment created hereby shall be subject to the following:

A. The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Fixtures and providing the services herein; and

B. The right of the Association to impose Rules and Regulations governing the use of the Common Fixtures as further provided in the Bylaws.

Article III - Use Restrictions

3.1 **Single-Family Residential Use.** All Lots within the Subdivision may only be used for single-family residential purposes. However, "no impact" or "low impact" home-based business in and from a Home are allowed as such uses are expressly declared customarily incident to residential use. "Impact" businesses are not permitted and include businesses or commercial

activity or ventures that create excessive customer or employee traffic to and from the Home, create noise audible from outside the Home, or generate fumes or odors noticeable outside the Home, including but not limited to, a home day care, beauty salon/barber, and animal breeding.

3.2 **Garages.** Garages may not be used as living spaces. Garage doors must be closed when not in use. Carports are prohibited.

3.3 **Air Conditioning.** No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning, heat pump systems, or pool equipment, which are located on the exterior of a building, shall be adequately screened by landscaping, natural screening or other material, as otherwise provided in this Declaration, to prevent their being viewed from the street. Such natural screening or other material shall not exceed a maximum height of five (5) feet.

3.4 **Post Lamps & Mailboxes.** Single family residences shall only include an Association approved electric or solar post lantern and mailbox combination at the street property line. The post lantern & mailbox combination shall be black in color. The bulb shall be white in color with a minimum of 800 lumens (60 watts) and be lit from dusk to dawn. The Owner shall keep the lamp post & mailbox in good condition with the house number displayed with at least 2-inch reflective numbers on both sides of the mailbox.

3.5 **Fencing and Natural Screening.** The Association encourages the use of natural screening (trees, plants, shrubs, and hedges) wherever possible in lieu of fencing material. Other than a pool fence, fencing material and style is limited to: manufactured white vinyl or black wrought iron/aluminum material or solid, lattice, staggered board, or traditional wrought iron/aluminum style as further set forth below.

A. **Pool fences.** Pool fences shall only enclose pool areas and be a minimum height of four (4) feet and a maximum height of five (5) feet. The fence shall be black wrought iron/aluminum only.

B. **Rear Property lines.** Interior lots may install fences with a maximum height of six (6) feet along the rear of a Lot and may only a use white vinyl solid or staggered board fencing. For Lots abutting a golf course, fencing may be installed with a maximum height of four (4) feet along the rear of the Lot and only a black wrought iron/ aluminum fencing material may be used with the fencing on the side facing the golf course screened by natural vegetation or plantings.

C. **Side Property lines.** Fencing along the side Lot lines from the rear Lot line to the front Lot line shall be no more than four (4) feet in height and may not extend past the rear most corner of the house on that side of the Lot. Fencing from the side property line inward to the house shall not be more than four (4) feet in height. Fencing facing the street must have plantings or a hedge along the outside of the fencing facing the street.

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D. **Corner Lots:** On corner Lots the rear property line fence shall end at a point equal to the side of the Home which is towards the street right-of-way. No fencing is allowed between the Home and side street right-of-way.

E. **Screening.** Other than natural vegetation, fencing material may be used to screen air conditioning units, pool equipment and garbage/recycling bin storage areas. The fencing material may be no more than five (5) feet in height.

F. **Replacement.** If a fence or screening is damaged by a storm or other incident, it may be replaced with Association approval. The replacement must be installed in the same location as the damaged original. If forty percent (40%) or more of any existing fence needs to be replaced then the entire fence must be replaced with the approved fencing material as set forth above. If natural vegetation is being used to screen areas, young plants may be installed in lieu of mature plants. The Lot Owner must show proof of the existence and location of the original fence or screening and the damage it sustained.

G. **Maintenance of all fences.** All fences must be kept clean of mold, stains and kept in good repair. Missing sections or parts must be replaced promptly. If the owner fails to maintain the fence to the satisfaction of the Association, the Association may proceed in accordance with Section 4.4 below, fine the Lot Owner, and/or request the removal of said fence permanently, in addition to any other action or remedies the Association may be permitted to take under the Governing Documents or Florida law.

3.6 **Motor Vehicles, Boats, and Trailers.** All vehicles must be parked in either the driveway or in an enclosed garage on the LOT, subject to the restrictions set forth in this Section.

A. Short term parking at individual residences on the street right-of-way shall be limited to guests of residents and service vehicles. No overnight parking is allowed on the street.

B. No Lot Owner, resident, or Tenant shall park or permit to be parked any motor vehicle, boat or trailer, on the lawn or within a street right-of-way within the plat.

C. Vehicles that are used strictly for commercial purposes or that contain exterior advertising must be stored within an enclosed garage or behind an Association approved screen.

D. Vehicles may not be repaired outside of a garage except in an emergency. Any vehicle without a valid registration or in inoperable condition or any vehicle, whether commercial or non-commercial, with body parts such as the hood, door, quarter panel, bumper or bed removed must be stored within an enclosed garage.

E. Any swamp buggy, stock car, golf cart or other vehicle not normally used for highway travel are prohibited unless stored within an enclosed garage.

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F. No trailers of any type are permitted to be parked within the street right-of-way or stored on the Lot unless the trailer is stored within an enclosed garage.

G. No recreational vehicles of any class or size or any type of camping trailers are permitted to be parked or stored on the Lot or within the street right-of-way except for the Association may approve a recreational vehicle or camping trailer to be parked in the driveway on a Lot for one (1) day to load or unload the vehicle.

H. No boat or watercraft, with or without a trailer, are permitted to be parked or stored on the street right-of-way or the Lot unless stored within an enclosed garage. A boat or a watercraft with trailer is allowed to be in the driveway for a maximum of four (4) hours per day for maintenance purposes only.

As used herein the term "commercial vehicle" means any vehicle which is used only for business purposes including, but not limited to, transporting goods, equipment or paying customers. Any vehicle which displays a company name or any type of advertisements logo on its exterior of a commercial nature or any vehicle with racks, specifically designed for carrying ladders, staging, or other equipment of a commercial nature, including supplies used for commercial purposes which are on or visible in the vehicle shall be considered a commercial vehicle regardless of any definition found elsewhere to the contrary.

3.7 **Pets.** No livestock or non-domesticated animals of any kind shall be kept on a Lot or within a building on a Lot. Dogs, cats, birds, and other domesticated household type pets are permitted provided that no pet may be kept, bred, or maintained for any commercial purpose. Pets must be leashed or kept within a fenced area at the rear of the property of the Lot at all times while outside of the house. An underground electric fence like an Invisible Fence® may be permitted by the Association if the underground electric fence appropriately contains the pet to the Lot. Owners are required to follow all Collier County Ordinances regarding pets. The Board is empowered to fine an Owner or Tenant and/or order the removal of any pet that becomes a source of unreasonable annoyance or a danger to the health, safety and welfare of other residents.

3.8 **Nuisances.** No Owner shall use his Home, or permit it to be used, in any manner which constitutes or causes an unreasonable amount of annoyance or nuisance to the Occupant of another Home, or which would not be consistent with the maintenance of the highest standards for a first-class residential community nor permit the premises to be used in a disorderly or unlawful way. The use of each Home shall be consistent with existing laws and the Governing Documents, and occupants shall at all times conduct themselves in a peaceful and orderly manner. No solicitation will be allowed at any time within the Neighborhood. The Board of Directors determination as to what constitutes a nuisance or annoyance shall be dispositive and shall control without regard to any legal definition of such terms.

3.9 **Garbage, Recycling, and Waste.** Trash, garbage, recycling, and other waste shall be kept only in sanitary containers which shall be kept in a clean and sanitary condition and kept inside the garage or screened from view from neighboring Homes and the interior roadways as set forth in Section 3.5 above except when out for pick-up. No items or containers for collection shall be placed

at the curb prior to 6:00 PM the night before the scheduled collection day and must be removed from the curb no later than 7:00 PM on the day of pick-up. With the exception of garbage, recycling, yard waste, and bulk items properly stored for pickup, no refuse or unsightly objects shall be permitted to accumulate on or adjacent to a LOT. No burning of garbage, yard waste, or trash is permitted. When prior written approval is received from the Board of Directors, dumpsters are permitted to be kept on a Lot for up to three (3) weeks. The Board may, however, grant extensions allowing for dumpster storage for a longer period of time.

3.10 **Hurricane Shutters.** All hurricane protection systems, including hurricane shutters are subject to review and approval by the Architectural Review Committee ("ARC"). The following are acceptable shutters: Bahama, accordion, electric or manual roll down, and hurricane fabric. Hurricane shutters must be removed or left open unless the area is subject to a tropical storm watch, tropical storm warning, hurricane watch, or hurricane warning issued by the National Oceanic and Atmospheric Administration. In such situations, shutters must be removed seven (7) days after the area is no longer under one of the aforementioned watches or warnings. No shutter may be stored on the exterior of the Home except for a Bahama style shutter or shutter that is intended to be permanently affixed to the exterior of the home, in which case it should be in an open position during periods in which the area is not subject to a tropical storm watch, tropical storm warning, hurricane watch, or hurricane warning. It is the Lot Owner's responsibility to ensure that any hurricane shutters are installed or closed during times of watches or warnings and for hurricane shutter removal or opening after the area is no longer under a watch or warning.

3.11 **Signs**. No sign or advertising matter shall be placed or allowed to be placed on or adjacent to a Lot, or structure on a Lot, by an Owner, Tenant or other occupant of the Lot, except for the following:

A. One (1) white "For Sale" sign with a maximum area of four (4) square feet, with no more than three (3) lines of black lettering, that is placed no higher than two (2) feet from the ground and located no closer than ten (10) feet from adjoining properties or the street right-of-way;

B. One (1) security sign no longer than eighty-one (81) square inches;

C. One (1) security decal no larger than four (4) square inches in each window of a structure on a Lot;

D. One (1) "Open House" sign which may be posted or displayed during reasonable weekend hours while the property is actually open for inspection by potential purchasers and attended to by the Owner's agent;

E. One (1) "take one" receptacle for information regarding the proposed sale of the Lot on the post of the mailbox for the lot, which receptacle shall conform to uniform standards and specifications set by the Association.

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F. One (1) contractor sign is permitted while contractor is working on the Lot. The sign must be no more than twelve (12) inches high and eighteen (18) inches wide. The sign must be removed immediately upon completion of work by either the contractor, Owner, or Tenant.

G. One (1) political yard sign is allowed to be displayed on a Lot one (1) month prior to any Federal, State or Local election and must be removed within one (1) week after said election. Political yard signs may not exceed four (4) square feet in area and three (3) square feet in height. The sign may be located no closer than five (5) feet to any property line. No other political material or banners are permitted to displayed. No vulgar or disrespectful material, as determined in the sole discretion of the Board of Directors, is permitted to be displayed on a sign.

The Board of Directors may, in its discretion, further regulate the signs on the property, including but not limited to regulating the type, size, shape, color, lettering, material and placement of the signs and receptacles so long as the further regulations do not conflict with this Declaration or other applicable law.

3.12 **Antenna, Satellite Dishes.** No television or other antenna which is visible from the street or adjoining lots is permitted unless specific approval for such is granted in writing by the Association. Satellite dishes that are 30 inches or less in diameter and are specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended, promulgated under the Telecommunications Act of 1996, as amended from time to time, are permitted without prior approval by the Association, provided that such satellite dishes are placed on the side or rear of the Home. No Ham radio antennas are permitted.

3.13 **Exterior Storage.** Storage containers on the exterior of the Home may be used to store items like pool equipment and patio cushions as long as such storage containers are made of a heavy-duty resin material and are no larger than sixty (60) inches long by thirty (30) inches wide by forty-two (42) inches high and are placed in a lanai area or are otherwise secured against the Home and screened from view with natural vegetation or another Association approved enclosure. Moving pods may also be used and stored on a Lot for up to one (1) week with prior Association approval, for which the Association is empowered to grant extensions on a case-by-case basis. All other exterior storage on the Lots is prohibited.

3.14 **Recreational Facilities.** Improvements placed on a Lot for the purpose of recreational activities including, but not limited to swing sets, play houses, basketball hoops or any other kind of improvements of a similar kind or nature shall be referred to herein as "Recreation Facilities" and are governed by the provisions in this Section.

A. Recreation Facilities shall be placed in the backyard of the Lot, when possible, otherwise these Recreation Facilities may be placed on side yards towards the rear of Lot. If Recreation Facilities are placed in the side yard of a Lot, such improvement must be screened in by natural material. All swing sets shall be made out of preserved

wood, wood composite, or plastic resin. No basketball backboards are permitted to be attached to a Home or any structure connected to the Home. Notwithstanding the foregoing, portable or free-standing basketball backboards are permitted and may be used in a driveway without natural screening.

B. Tents or bounce houses or other similar entertainment devices are only permitted to be used on the Lot for special events and may only be used on the Lot for periods of seventy-two (72) hours or less.

C. The Owner is responsible to keep all Recreation Facilities maintained in a good condition. If upon inspection, the Owner has not maintained the Recreation Facilities, the Association may order the removal of such Recreation Facilities.

D. If Tenants wish to erect a swing set or other Recreation Facilities, the Tenants must have written permission signed by the actual Lot Owner and not the Lot Owner's agent. The written permission must be included with the Tenant's ARC submission for approval.

3.15 **Flags.** One portable, removable United States flag or official flag of the State of Florida in a respectful manner, and one portable, removable official flag, in a respectful manner, not larger than four and one-half (4 ½) feet by six (6) feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, or a POW-MIA flag. In addition, Owners may seek approval from the ARC to erect a freestanding flagpole on the Owner's Lot.

3.16 **Fire Pits.** Wood burning fire pits are prohibited. Natural gas or propane fire pits or chimineas are permitted. Prior to the installation of any outside fire place, ARC approval must be obtained.

3.17 **Clothes Drying**. Clothes lines or drying yards shall be located as not to be visible from the street or adjoining Lots. No towels, garments, rugs, etc., may be hung from windows or other parts of the Home.

Article IV - Maintenance

4.1 **Association Maintenance.** The Association shall, in addition to other maintenance obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility for all Common Fixtures, including, but not limited to, the Association-owned Street signs and corresponding posts and the Hibiscus Golf Course flood pump. The cost of such maintenance is a Common Expense of the Association.

4.2 **Lot Owner Maintenance.** The individual Lot Owners shall, in addition to other obligations contained elsewhere herein, have the maintenance, repair and replacement responsibility of the following:

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A. **Lot and Structures.** The Lot and any improvements or structures, including the home, thereon, and all of the physical structure constructed in, upon or below the Lot, and physical items attached or connected to such structure that run beyond the boundary line of the Lot which exclusively service or benefit the lot. Such items shall be maintained in good order, condition and repair and lot owners must perform promptly all maintenance and repair work which, if omitted, would adversely affect the neighborhood, other owners, the Association and its members. It is the owner's responsibility to make sure the home, driveway, roof and any other structures or components on the owner's lot are cleaned on a regular basis as not to accumulate mold, dirt, mildew, and staining.

B. **Landscaping.** Lot landscaping design, installation and maintenance, including the unpaved street right-of-way adjacent to the lot, shall promote and preserve the appearance, character and value of surrounding homes and area. No weeds, underbrush (other than indigenous growth), or other unsightly growths shall be permitted to grow or remain upon any part of the lot. Lawns must be mowed on a regular basis and kept neat, trees must be properly pruned and hedges must be kept trimmed and allowed to grow no higher than eight (8) feet in height. Vacant Lots shall be kept free of debris, rubbish and regularly mowed and maintained by the Lot Owner.

C. **Irrigation.** An irrigation system on the lot which is designed to irrigate the entire landscaped portion of the lot and the landscaped edge of the street right-a-way immediately abutting the lot. The irrigation system must be utilized enough to keep grass, flowers, shrubs and other plantings green and healthy.

D. **Modifications by Lot Owner.** Any modifications, alteration installation or addition to the lot made by the lot owner or his predecessors in title including, but not limited to, any decks or concrete pads. The lot owner shall be responsible for insurance, maintenance, repair and replacement of such modifications, installations or additions and the cost of removing and replacing or reinstalling such modifications if their removal by the Association becomes necessary in order to maintain, repair, replace or protect other parts of the Properties for which the Association is responsible.

4.3 **Negligence: Damage Caused by Condition on Lot.** Each Lot Owner shall be liable for the expenses of any maintenance, repair or replacement of Common Fixtures, other Lots, or personal property made necessary by his act or negligence or by that of any member of his family or his guest's employees, agents, or lessees.

4.4 **Remedial Action by Association.** If an Owner fails to maintain that Owner's lot such that the Board of Directors reasonably determines that the failure has a material adverse effect on the appearance of the neighborhood or constitutes a hazard to other property or residents, the Association, after ten (10) business days of written notice and opportunity for the Owner to cure such failure to maintain, may institute legal proceedings to enforce compliance, or may take any and all steps necessary to remedy such violation, including but not limited to entering the lot for the purpose of remedying the violation. In the event the Association accesses the lot to cure non-

compliance, any expenses incurred to remedy the violation shall be billed directly to the Lot Owner to which services are provided and shall be an individual assessment charged against the Lot, secured by a lien against the Lot as provided in the Bylaws. Said expenses, and any and all Association costs, until paid, are collectible in the same manner as an Assessment. Notice pursuant to this paragraph is deemed given upon sending notice by certified, or register mail to the Owner's last known address, and shall be deemed given upon such mailing of the notice, postage prepaid.

Article V –Architecture/Construction

5.1 **Architectural Review.** No building, structure, or improvement of any kind shall be constructed or altered in exterior appearance, placed on the premises, or used, until the plans therefor, including exterior color scheme, drive and other paved area plans, landscape, and landscape irrigation plans have been submitted to and approved in writing by the Architectural Review Committee (the "ARC"), which may be denied if not in compliance with the architectural standards adopted by the Association, as amended from time to time. In addition to the foregoing, the landscaping on the property shall not be altered without the prior written approval of the ARC. Florida friendly landscaping is permitted with approval from the ARC. Notwithstanding the foregoing, Recreation Facilities discussed in Section 3.14 do not require ARC approval, but any landscaping required to be planted to screen such facilities, if any, must receive prior ARC approval.

5.2 **The ARC.** The architectural review and control functions of the Association shall be administered and performed by the ARC, which shall consist of at least three (3) persons, who shall be members of the Association and may be members of the Board of Directors. All members of the ARC shall be appointed by and shall serve at the pleasure of the Board of Directors of the Association. A majority of the ARC shall constitute a quorum to transact business at any meeting of the ARC, and the action of a majority present at a meeting at which a quorum is present shall constitute the action of the ARC. Any vacancy occurring on the ARC because of death, resignation, or other termination of service of any member thereof, shall be filled by the Board of Directors. Notwithstanding anything to the contrary contained herein or elsewhere all decisions of the ARC are subject to review by the Board of Directors and the Board of Directors has the authority to overrule, void or otherwise modify in all respects any decision of the ARC. The Board of Directors, in its sole and absolute discretion, may remove members of the ARC at any time, with or without cause.

5.3 **Lot Grade.** The grade of any Lot, or portion thereof, may not be altered without the written consent of the Association, and the Association will have the right to withhold such consent if the proposed change of grade would be visually objectionable or would adversely affect drainage patterns.

5.4 **Minimum Residence Size.** Each single-family residence shall have a minimum of 1,500 square feet of living area, exclusive of garage, open or screen porches, and shall incorporate an enclosed garage which is structurally integrated with the residence. If the size of any lot is such that a house of the above-described size will not fit on said lot, then in that case the Association

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may permit a house of a small size, said smaller size to be within the discretion of the Association.

5.5 **Roofs.** No built-up roofs are permitted on a Home or garages except when covering the Lanai portion of the Home. Metal roofs in the slate, shingle, shake, standing seam and tile style are permitted after written approval by the Association, which may be denied if not in compliance with the architectural standards adopted by the Association, as amended from time to time.

5.6 **Driveways.** Driveways and off-street parking areas shall be paved with concrete, asphalt, pavers or gravel surface of stable and permanent construction. Any alteration to any driveways or parking areas must have all proper permits from Collier County and written approval from the Association.

5.7 **Time to Construct.** When the physical construction of any structure is started on the Lot, said construction shall be prosecuted diligently and completed within a reasonable time. If for any reason, a structure is not completed within six (6) months from the issuance of the Collier County building permit(s), or if landscaping and the landscape irrigation system are not completed with sixty (60) days after completion of the principal structure on the Lot, then the Association may, after notifying the Owner of record of the premises of its intentions, enter the premises and take such steps as it determines necessary to correct any undesirable condition resulting for the failure to complete such construction. Any corrective steps taken by the Association shall be in the discretion of its Board of Directors, and may serve aesthetic, nuisance abatement, or other reasonable purpose. The Owner of the Lot shall be liable to the Association for any cost incurred in taking correction action and shall be an Individual Assessment charged against the Lot, secured by a lien against the Lot, which may be foreclosed in the manner provided by law.

5.8 **Duty to Reconstruct.** If any Home or other improvement located on a Lot are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the Owner of such improvement shall cause repair or replacement to be commenced within ninety (90) days from the date that such damage or destruction occurred, and to complete the repair or replacement within nine (9) months thereafter. All such repairs or replacements must restore the improvements to substantially their original character, design and condition directly prior to the casualty, shall utilize and conform with the original foundation and appearance of the original improvements directly prior to the casualty except as otherwise approved by the Board. The Board may base, on its sole and exclusive discretion to extend the time periods for reconstructions contained herein.

5.9 **Failure to Reconstruct.** If the Owner fails to commence or complete construction to repair or replace any damaged or destroyed improvements within the time periods provided Section 5.7 above, the Association shall give written notice by certified mail to the Owner of his default. If, after fifteen (15) business days from receipt of the notice, the Owner has not made satisfactory arrangements to meet the Owner's obligations, the Association shall be deemed to have been granted the right by the Owner, as such Owner's attorney-in-fact, to commence and/or complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements. If the Association exercises the rights afforded to it by this section, which shall be in the sole discretion of the Board of Directors, the Owner of the Lot shall be deemed to have assigned to the Association any right he

may have to insurance proceeds that may be available because of the damage or destruction of the improvement. To the extent that the costs of repairing or restoring the Dwelling Unit exceeds the insurance proceeds received by the Association, the Association shall have the right to levy an Individual Assessment against said Dwelling Unit in an amount equal to such excess.

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Article VI – General

6.1 **Common Fixtures.** The Association has the right, in accordance with its Bylaws, to borrow money or propose special assessments for the purpose of improving and/or maintaining the Common Fixtures and providing for the Common Expenses of the Association.

6.2 **Membership in Association.** Each Owner of the Lot in the Subdivision is a Member of the Association and subject to all powers, duties, dues, liens, and assessments which may be exercised thereby. Each Owner, by accepting an interest in any LOT, hereby and thereby agree to be bound by all the conditions, limitations, reservations and restrictions as contained in this Declaration, the Articles of Incorporation of the Association, its Bylaws, and Rules and Regulations, and in the event of a breach agrees to pay all cost, including a reasonable attorney's fee, for the enforcement of these Declarations. Membership is appurtenant to, runs with, and cannot be separated from, the real property ownership interest upon which it is based. Owners agree to maintain such membership in good standing as long as they own such property.

Article VII – Amendments; Termination

7.1 **Duration.** The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the Owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if prior to one (1) year in advance of an effective date of a proposed termination, at least two-thirds (2/3rds) of all Owners and all Institutional First Mortgagees on Lots affirmatively vote, in person or by proxy, at a duly held meeting of members of the Association in favor of terminating this Declaration. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, to be given at least ninety (90) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the

Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida and may be relied upon for the correctness of the facts contained therein as they relate to termination of this Declaration.

7.2 **Amendments.** Modifications of these Covenants shall be proposed and adopted in the following manner:

A. **Proposal.** Amendments to this Declaration may be proposed by the Board of Directors, or by written petition to the Board signed by the Owners of at least ten percent (10%) of the LOTS within the section effected by the proposed Amendment(s).

B. **Procedure.** Upon any Amendment or Amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the Owners within the section affected by the proposed Amendment not later than the next annual meeting for which proper notice can still be given.

C. **Vote Required.** Except as otherwise provided by law, or by specific provision of the documents, this Declaration may be amended if the proposed amendment is approved by at least fifty-one percent (51%) of the voting interests who are present and voting, in person or by proxy, at any annual or special meeting called for the purpose. Alternatively, amendments may be adopted without a meeting upon approval of a majority of all voting interests following the procedure set forth in the Bylaws. The BOARD of Directors may amend the documents to correct scrivener's errors or omissions, and amend and restate the documents in order to consolidate into one document amendments previously adopted.

D. **Certificate; Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be in the form required by law and shall be executed by the President or Vice President of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment is recorded in the Public Records of Collier County, Florida.

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Article VIII – Transfers

8.1 **Transfers of Ownership Requiring Approval.**

A. **Sale or Gift**. No owner may dispose of a Lot or any interest therein by sale or gift (including agreement for deed) without the prior written approval of the Board of Directors of the Association.

B. **Devise or Inheritance.** If any owner acquires their title by devise or inheritance, the right to occupy or use the lot shall be subject to the approval of the Board of Directors

of the Association. The approval of the Association may not be denied to any devisee or heir who was the previous owner's lawful spouse at the time of death, or related to the owner by blood or adoption within the first degree.

C. Other Transfers. If any person acquires title in any manner not considered in the foregoing subsections, the continuance of ownership of the lot is subject to the approval of the Board of Directors of the Association under the procedure outlined in 8.3 below.

8.2 **Committee Approval.** To facilitate transfers proposed during times when many of the members are not in residence, the Board of Directors may by resolution delegate its approval powers to an ad hoc committee, which shall consist of at least three members. The Chairman of the committee is empowered to execute Certificates of Approval on behalf of the Association.

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8.3 **Notices to the Association.**

A. **Sale or Gift**. An owner intending to make a sale or gift of their Lot shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the date of the proposed transfer, together with the name and address of the proposed purchaser or donee, a copy of the executed purchase agreement, and such other information as the Board may reasonably require. The Board may require a reasonable application fee which may not exceed the amount allowed by Florida law. The Board may also require, without limitation, credit history, a criminal background investigation, past residency or employment verification, personal references, and a personal interview with the purchaser or donee and all proposed occupants.

B. **Devise, Inheritance, or Other Transfers**. An Owner who has obtained his/her title by devise or inheritance or other transfer, must notify the Board of their ownership and submit to the Board a certified copy of the instrument evidencing the ownership and such other information as the Board may reasonably require (including that set forth in Section 8.3(A)). The transferee has no occupancy right unless approved by the Board, but may sell or lease their Lot following the procedures provided in this section and in Article 9.

C. **Failure to Give Notice**. If no notice is given, the Board at its option may approve or disapprove the transfer without prior notice. If it disapproves, the Board shall proceed as if it received notice on the date of such disapproval; however, the proposed transferee may provide the Board with the required notice and request reconsideration. If any Owner fails to obtain the Association's approval prior to selling their Lot, such failure shall create a rebuttable presumption that the seller and purchaser intended to violate the covenants of this Declaration, and shall constitute good cause for Association disapproval.

8.4 **Board Action**. Within twenty (20) days of receipt after the required notice and all information or appearances requested, whichever occurs later, the Board shall then approve or disapprove the transfer. If a transfer is approved, the approval shall be stated in the Certificate of Approval executed by the President, Vice-President or Chairman of the Committee for approvals of the Association in recordable form and delivered to the transferee. If the Board neither approves nor disapproves the transfer within the period stated above, such failure to act is deemed the equivalent of approval, and on demand the Board shall issue a Certificate of Approval to the transferee.

8.5 **Disapproval With Good Cause**. Disapproval of title transfers or the continuation of ownership pursuant to this Section 8 shall be made by the Board if it is determined that the potential Owner does not facially qualify for membership in the Association or if the proposed transaction will result in violation of the Condominium Documents. Only the following may be deemed to constitute good cause for disapproval on the grounds that the proposed purchaser does not facially

qualify for membership in the Association or the proposed transaction will result in a violation of the Governing Documents or Rules and Regulations of the Association:

A. The application on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant (which shall hereinafter include all proposed Occupants or Residents) indicate that the Person seeking approval intends to conduct himself/herself in a manner inconsistent with the Governing Documents or Rules and Regulations of the Association;

B. The Person seeking approval, which includes all proposed Occupants or Residents, has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for: (1) a capital, first or second degree felony involving violence to Persons within the past ten (10) years; (2) a first or second degree felony involving illegal drugs within the past ten (10) years; (3) any drug offense involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or (4) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when the conviction, plea or release occurred;

C. The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

D. The Person seeking approval is currently on probation or community control for a felony involving violence to another or damage to or theft of property;

E. The Person seeking approval has a record of financial irresponsibility, including without limitation prior foreclosures or bad debts such that the Board reasonably concludes that the applicant is unable to meet his/her financial obligations to the Association;

F. The Person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has made material misstatements or withheld material/information during the application process; or

G. All Assessments and other Charges against the lot have not been paid in full, unless the Association has reasonable assurances that said amounts will be paid out of the closing proceeds.

If the Board disapproves a transfer for good cause, the Association has no duty to purchase the lot or furnish an alternative purchaser, and the transaction shall not be made, or if made, shall be rescinded in the manner determined by the Board. The ability to conduct background investigations and the extent of such investigation, if any, shall be as determined by the Board in its discretion.

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8.6 **Without Good Cause.** If the Board disapproves a prospective purchaser for any other reason than those reasons set forth in Section 8.5, then within thirty (30) days after giving notice of such disapproval to the owner, the Board shall submit an offer by an approved purchaser to buy the home on the same terms and conditions that are in the purchase agreement, unless the selling price is reasonably questioned as being bona fide, in which event the price to be offered shall be determined by taking the average price established by two qualified real estate appraisers familiar with the current condominium prices in Collier County, one appraiser to be selected by the selling owner and the other selected by the Board. The cost of the appraisals shall be shared equally by the owner and the Association. Closing and transfer of the home shall be within thirty (30) days from submission of the agreement to purchase by the Association or thirty (30) days after the price is determined as provided above, whichever occurs later. If the Board fails to submit an offer to purchase by an approved purchaser within thirty (30) days after giving notice of disapproval to the owner, or if the approved purchaser defaults in his purchase, then the original proposed purchaser is deemed to be approved, despite the Board's former disapproval, and upon demand a Certificate of Approval shall be issued.

8.7 **Exception.** The provisions of this Article are not applicable to the acquisition of title by a first mortgagee who acquires title through the mortgage, whether by foreclosure or deed in lieu of foreclosure, but shall apply to the acquisition of title by any other person without regard to how the title was acquired.

8.8 **Fees and Deposits Related to Sale of Lots.** Whenever herein the Board's approval is required to allow the sale or other transfer of an interest in a lot, the Association may charge the owner a reasonable application processing fee, which is not to exceed the amount allowed by Florida law.

Article IX – Leasing of Homes

9.1 **Leasing Generally.** In order to foster a stable residential community, the leasing of the homes by their Owners shall be governed by this section. An Owner may only lease the entire home, and then only in accordance with this section, after receiving the approval of the association. No room rental, subleasing, or assignment of lease rights by a Tenant or Owner is allowed. All leases of homes must be in writing. The tenant must be a natural person as opposed to an artificial entity such as a corporation, partnership, trust, etc. The following also applies to any new occupant of a Home that is over the age of eighteen (18) years that was not approved at the time the lease of the Home was approved.

9.2 **Lease Procedures.**

A. **Notice by the Owner.** An Owner intending to leases his/her home shall give to the Board of Directors or its designee written notice of such intention at least twenty (20) days prior to the first day of occupancy under the lease, together with the name and

address of the proposed tenant and any person intending to occupy the home with the tenant, a fully executed copy of the proposed lease and such other information as the board may reasonably require. Application for authority to lease shall be made to the Board of Directors on such forms and include such terms as the Board may provide from time to time. The Board may require the applicant and each occupant over the age of eighteen (18) years intending to reside in the home to submit to a personal interview, national criminal background check, credit report, and tenant history report. The Association may charge the Owner a preset fee for processing the application, such fee to be determined by the Board and not to exceed the maximum amount allowed by law as then in effect. A separate fee may be charged for each person intending to occupy the Home except that a single fee may be charged to a married couple and no extra fee may be charged for minor children.

B. **Board Action**. After the required notice and all information requested has been provided, the Board shall have fifteen (15) days in which to approve or disapprove the proposed lease. If the Board neither approves or disapproves within that time, its failure to act shall be deemed equivalent of approval and, on demand, the Board shall issue a written letter of approval to the tenant.

C. **Disapproval**. A proposed lease shall be disapproved pursuant to subsections (2) through (8) below only if a majority of the Board so votes. If disapproved, the lease shall not be made. Appropriate grounds for disapproval shall include, but not be limited to, the following:

1. The Lot Owner is delinquent in the payment of assessments, fines, and other Charges and monetary obligations against the Lot and/or Lot Owner at the time the application is considered;

2. The Lot Owner has a history of leasing the Home without obtaining approval or leasing the unit to troublesome lessees and/or refusing to control and accept responsibility for the occupancy of the Home;

3. The real estate company or rental agent handling the leasing transaction on behalf of the Owner has a history of screening tenant applicants inadequately, recommending undesirable tenants, or entering into leases without prior Association approval.

4. The application on its face, facts discovered in connection with the Association's investigation, or the conduct of the applicant, indicate that the Person seeking approval intends to conduct himself/herself in a manner inconsistent with the Governing Documents. By way of example, but not limitation, a Tenant taking possession of the premises prior to approval by the Association as provided for herein

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shall constitute a presumption that the applicant's conduct is inconsistent with the Governing Documents and may constitute grounds for denial;

5. The Person seeking approval, which includes any proposed adult Occupant or Resident, has been convicted of, pled no contest to, or has been released from incarceration, probation or community control for: (a) a capital, first or second degree felony involving violence to Persons within the past ten (10) years; (b) a first or second degree felony involving illegal drugs within the past ten (10) years; (c) any drug offense involving the manufacture and/or distribution of illegal drugs regardless of when that conviction, plea or release occurred; or (d) a felony involving sexual battery, sexual abuse, or lewd and lascivious behavior regardless of when the conviction, plea or release occurred;

6. The Person seeking approval has been labeled a sexual offender or a sexual predator by any governmental or quasi-governmental agency regardless of when that label occurred;

7. The Person seeking approval is currently on probation or community control for a felony involving violence to another or damage to or theft of property;

8. The Person seeking approval has a history of disruptive behavior or disregard for the rights or property of others as evidenced by his/her conduct in other housing facilities or associations, or by his/her conduct in this community as a Tenant, Resident, Occupant or Guest;

9. The Lot Owner or Person seeking approval has failed to provide the information, fees or appearances required to process the application in a timely manner or has made material misstatements or withheld material/information during the application process;

10. The prospective tenant has a history of prior evictions; or

11. The owner has outstanding violations on their home that have not been corrected.

D. **Failure to Give Notice or Obtain Approval**. If proper notice is not given, the Board, at its discretion may approve or disapprove the lease. Any lease which is not approved or which is disapproved pursuant to the terms of this Declaration shall be void unless subsequently approved in writing by the Board. If an owner allows a tenant to take occupancy of the Home without obtaining Board approval as provided in this Section, the lease is deemed disapproved and legally void, and the Board shall have the right and authority, on its own or as an agent of the Owner, to pursue legal eviction

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proceedings or injunctive relief to cause the removal of the unapproved tenant; and to recover from the owner all costs, including the Association's attorney's fees, associated with the eviction process.

E. **Approval by Manager.** To facilitate approval of leases, the Board of Directors may by resolution delegate its approval powers to the property manager for the Association. If the power is delegated, only the Board of Directors shall have the power to disapprove a lease. If the property manager, after reviewing a lease and all information provided by the applicant, determines that the Association should not approve the lease, the property manager shall then forward the proposed lease to the members of the Board of Directors for their review.

9.3 **Term of lease and frequency of leasing.** No lease may be for a term of less than six (6) months and no Home may be rented more than two (2) times in any calendar year. For purposes of this restriction, the first day of occupancy under the lease shall conclusively determine in which year the lease occurs. No lease may be for a period of more than one (1) year and no option for the tenant to extend or renew the lease for any additional period shall be permitted. However, the Board may, in its discretion, approve the same lease from year to year, but no automatic renewals are permitted. A lease renewal for the same approved tenant of the same owner in the same property must submitted to the Association twenty (20) days prior to the lease expiration. No subleasing or assignment of lease rights by the tenant is allowed.

9.4 **Occupancy During Lease Term**. All homes are intended for single-family occupancy. No one but the tenant, family members within the first degree of relationship by blood, adoption or marriage, and their spouses and guests may occupy the home. Guests may only occupy the property while the tenant or the tenant's family members within the first degree of relationship are occupying the property. The total number of overnight occupants of a leased home is limited to two persons per bedroom. The Board of Directors may adopt additional rules regarding Guest occupancy during a lease term, including, but not limited to, limitations regarding number of Guests permitted to occupy the home at the same time, length of Guest stay, number of occasions for Guest occupancy, and notice requirements to the Association advising of Guest occupancy. Anyone over the age of eighteen (18) years that occupies a home for more than twenty (20) days is deemed a Tenant and subject to approval and denial by the Association.

9.5 **Occupancy in Absence of Lessee.** If a tenant is absent from the home for any period of time during the lease term, the family within the first degree of relationship already in residence may continue to occupy the home and may have houseguests subject to all the restrictions in the Governing Documents and the Rules and Regulations of the Association. If the tenant and all the family members mentioned in the foregoing sentences are absent, no other person may occupy the Home.

9.6 **Regulation by Association**. All the provision of the Governing Documents and the Association's Rules and Regulations shall be applicable and enforceable against any person occupying a home as a tenant or a guest to the same extent as the owner. A covenant on the part of each occupant to abide by the Rules and Regulations of the Association and the provisions of the

Governing Documents, designating the Association as the owner's agent with authority to terminate any lease agreement, deny the tenant access on the property and evict or otherwise cause the tenant's removal in the event of breach of such covenant, shall be deemed to be included in every lease agreement, whether oral or written and whether specifically expressed in such agreement or not. The Association shall have the right to recover any costs or fees, including attorney's fees, incurred in connection with terminating a lease, evicting or otherwise causing the removal of a tenant, from the Owner which shall be secured by a continuing lien in the same manner as Assessments for common expenses, to wit, secured by a Lien for Charges. If a tenant, resident, other occupant, guest or invitee of the Owner or tenant fails to abide by the covenants, Articles of Incorporation for the Association, Bylaws or Rules and Regulations, the Owner shall be responsible for the conduct of the tenant, residents, occupants, guests and invitees and shall be subject to all remedies set forth in the Governing Documents and under Florida law, without waiver of any remedy available to the Association as to the Tenant. Any fines assessed by the Association to a tenant that remain unpaid may be assessed against the Owner and the parcel. Any legal fees incurred by the Association to collect the fines may also be assessed to the Owner and the Owner's parcel if such fees remain unpaid by the Tenant for a period of thirty (30) days.

9.7 **Association as Owner's Agent**. The Association shall have the authority to act as the owner's agent to undertake any action necessary to abate a Tenant's noncompliance, including, without limitation, the right to file an action for eviction or injunctive relief to cause the tenant's removal in the name of the Association in its own right or as an agent of the owner. The tenant and Owner agree that the Association may proceed against either the Owner or the tenant or both and that the Owner and the tenant shall be jointly and severally responsible for the Association's costs and expenses, including attorney's fees, in abating a tenant's noncompliance or seeking the removal of the tenant from the Home.

Article X – Enforcement; General Provisions.

10.1 **Enforcement**. In the event of a violation or breach of any of these restrictive covenants, the Association shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach of any of them. The failure to enforce any right, reservation, restriction, condition or limitation herein contained, however long contained, shall not be deemed a waiver of the right to do so thereafter. The invalidation by a court of any covenant herein contained shall not in any way effect any of the other covenants, which shall remain in full force and effect. Owners agree to pay reasonable attorney's fees and costs incurred by the Association for the enforcement of these restrictions, including without limitation fees costs as the prevailing party in any proceeding brought to enforce these restrictions including appellate proceedings.

10.2 **Owner Compliance**. The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and to any other person occupying any Lot under lease from the Owner or by permission or invitation of the Owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of any Owner to notify any person of the existence of the rules, or the

covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each Owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests and by the guests, licensees and invitees of his tenants, at any time.

10.3 **Fines.** The Board may impose a fine or fines upon an Owner, Tenant, guest or other individual for failure of the Owner, his family, guest(s), invitees, tenants or employees to comply with any covenant, restriction, rule or regulation contained herein or promulgated pursuant to the Governing Documents and the Association's Rules and Regulations. Fines shall be in amounts deemed necessary by the Board to deter future violations, but in no event shall any fine exceed $100 per violation per day or $2,500 in the aggregate in a quarter for an ongoing violation.

10.4 **No Election of Remedies.** All rights, remedies and privileges granted to the Association or Owners under the law and the Governing Documents shall be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party from exercising any other rights, remedies, or privileges that may be available.

10.5 **Interpretation; Disputes.** The Board of Directors is responsible for interpreting the provisions of these covenants, the Articles of Incorporation, Bylaws, and Rules and Regulations promulgated by the Board. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel retained by the Board that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation. In the event there is any dispute as to whether the use of the Lot complies with the covenants and restrictions contained in these covenants, the Articles of Incorporation, Bylaws, and Rules and Regulations promulgated by the Board the matter shall be referred to the Board and the determination of the Board with respect to such dispute shall be dispositive on the issue and binding on all parties.

10.6 **Use of Singular and Plural and Gender.** Whenever the context so permits, the use of the singular shall include the plural and the plural shall include the singular, and the use of any gender shall be deemed to include all genders.

10.7 **Headings.** The headings used in the Governing Documents are for reference purposes only, and do not constitute substantive matter to be considered in construing the terms and provisions of these documents.

ARTICLE XI - DISCLAIMER OF LIABILITY OF ASSOCIATION

NOTWITHSTANDING ANYTHING CONTAINED HEREIN OR IN THE ARTICLES OF INCORPORATION, BYLAWS, OR ANY RULES AND REGULATIONS OF THE ASSOCIATION OR ANY OTHER DOCUMENT GOVERNING, BINDING ON OR ADMINISTERED BY THE ASSOCIATION (COLLECTIVELY, THE "ASSOCIATION DOCUMENTS"), THE ASSOCIATION SHALL NOT BE LIABLE OR RESPONSIBLE FOR, OR IN ANY MANNER A GUARANTOR OR INSURER OF, THE HEALTH,

SAFETY OR WELFARE OF ANY OWNER, OCCUPANT OR USER OF ANY PORTION OF THE PROPERTIES INCLUDING, WITHOUT LIMITATION, RESIDENTS AND THEIR FAMILIES, GUESTS, INVITEES, AGENTS, SERVANTS, CONTRACTORS OR SUBCONTRACTORS OR FOR ANY PROPERTY OR ANY SUCH PERSONS, WITHOUT LIMITING THE FOREGOING:

11.1 IT IS THE EXPRESS INTENT OF THE ASSOCIATION DOCUMENTS THAT THE VARIOUS PROVISIONS THEREOF WHICH ARE ENFORCEABLE BY THE ASSOCIATION AND WHICH GOVERN OR REGULATE THE USES OF THE PROPERTIES HAVE BEEN WRITTEN, AND ARE TO BE INTERPRETED AND ENFORCED, FOR THE SOLE PURPOSE OF ENHANCING AND MAINTAINING THE ENJOYMENT OF THE PROPERTIES AND THE VALUE THEREOF;

11.2 THE ASSOCIATION IS NOT EMPOWERED, AND HAS NOT BEEN CREATED, TO ACT AS AN ENTITY WHICH ENFORCES OR ENSURES THE COMPLIANCE WITH THE LAWS OF THE UNITED STATES, STATE OF FLORIDA, COLLIER COUNTY AND/OR ANY OTHER JURISDICTION OR THE PREVENTION OF TORTUOUS ACTIVITIES.

11.3 ANY PROVISIONS OF THE ASSOCIATION DOCUMENTS SETTING FORTH THE USES OF ASSESSMENTS WHICH RELATE TO THE HEALTH, SAFETY AND/OR WELFARE SHALL BE INTERPRETED AND APPLIED ONLY AS LIMITATIONS ON THE USES OF ASSESSMENT FUNDS AND NOT AS CREATING A DUTY OF THE ASSOCIATION TO PROTECT OR FURTHER THE HEALTH, SAFETY OR WELFARE OF ANY PERSON(S), EVEN IF ASSESSMENT FUNDS ARE CHOSEN TO BE USED FOR ANY SUCH REASON.

11.4 EACH OWNER AND EACH OTHER PERSON HAVING AN INTEREST IN OR LIEN UPON ANY PORTION OF THE PROPERTIES SHALL BE BOUND BY THESE DISCLAIMERS AND SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ANY AND ALL RIGHTS, CLAIMS, DEMANDS AND CAUSES OF ACTION AGAINST THE ASSOCIATION ARISING FROM OR CONNECT WITH ANY MATTER FOR WHICH THE LIABILITY OF THE ASSOCIATION HAS BEEN DISCLAIMED HEREIN.

11.5 AS USED HEREIN "ASSOCIATION" SHALL INCLUDE WITH ITS MEANING ALL OF THE ASSOCIATION'S DIRECTORS, OFFICERS, COMMITTEE MEMBERS, EMPLOYEES, AGENTS, CONTRACTORS (INCLUDING MANAGEMENT COMPANIES), SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.

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EXHIBITS TO DECLARATION
Pinehurst Estates Section

The Articles of Incorporation of the Association, as originally recorded at O.R. Book 679, Page 432, and amended at O.R. Book 932, Page 668 and O.R. Book 5138, Page 3675, all of the Public Records of Collier County, Florida, remain in effect.

The Bylaws of the Association, as originally recorded at O.R. Book 4805, Page 3377, as previously amended and re-recorded at O.R. Book 4805, Page 3377, and further amended by O.R. Book 4931, Page 527, all of the Official Records of Collier County, Florida, remain in effect.

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