

**CERTIFICATE OF AMENDMENT**

THE UNDERSIGNED, being the duly elected and acting President of THE PRESERVE ASSOCIATION, INC., a Florida corporation not for profit, does hereby certify that, at an annual meeting of the members held on February 22, 1996, where a quorum was present, after due notice, all the resolutions set forth below were approved and adopted by the votes indicated for the purpose of amending the Declaration of Covenants, Conditions and Reservations as originally recorded at O.R. Book 1111, Page 1777 *et seq.*, Public Records of Collier County, Florida, and the By-Laws of the corporation.

1. The following resolution was approved by the concurrence of at least sixty seven percent (67%) of those voting interests who were present and voting, in person or by proxy.

RESOLVED: That the Declaration of Covenants, Conditions and Restrictions of The Preserve be and is hereby amended, and the amendment is adopted in the form attached hereto as Exhibit "A", and made a part hereof; and

2. The following resolution was approved by the concurrence of a majority of the voting interests which were present and voting in person or by proxy.

RESOLVED: That the By-Laws of this corporation be and are hereby amended, and the amendment is adopted in the form attached hereto as Exhibit "B", and made a part hereof; and

3. The following resolution was approved by the concurrence of a majority of the voting interests which were present and voting in person or by proxy.

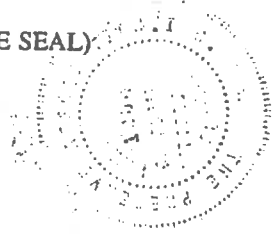
RESOLVED: That the Articles of Incorporation of this corporation be and are hereby amended, and the amendment is adopted in the form attached hereto as Exhibit "C", and made a part hereof.

March 28/96  
Date

The Preserve Association, Inc.

Mary Jo Fausnight  
Signature of Witness  
Mary Jo Fausnight  
Print Name of Witness  
L. Sue Hicks  
Signature of Witness  
L. Sue Hicks  
Print Name of Witness

By: [Signature]  
Adrian Williams President  
385 Edgemere Way, North  
Naples, Florida 33999  
(CORPORATE SEAL)



STATE OF FLORIDA  
COUNTY OF COLLIER

I hereby certify that on the 28th day of March, 1996, personally appeared before me ADRIAN J. R. WILLIAMS, as President of The Preserve Association Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation. He is personally known to me or has produced personally known as identification and did not take an oath.

(SEAL)

Dorothy L. Bohrer  
Notary Public  
Printed Name: DOROTHY L. BOHRER  
Commission No.:  
My Commission Expires:  
OFFICIAL NOTARY SEAL  
DOROTHY L. BOHRER  
NOTARY PUBLIC STATE OF FLORIDA  
COMMISSION NO. CC00081  
MY COMMISSION EXPIRES JUNE 1997

**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**THE PRESERVE**

**KNOW ALL MEN BY THESE PRESENTS:**

That heretofore on December 5, 1984, the original Declaration of Covenants, Restrictions and Easements for The Preserve (hereinafter the "Community") was recorded in Official Records Book 1111, at Page 1777 *et seq.*, of the Public Records of Collier County, Florida. That Declaration of Covenants, Restrictions and Easements (hereinafter the "Declaration") as it has previously been amended, is hereby further amended in part and is restated in its entirety.

1. **SUBMISSION OF PROPERTY:** This Amended and Restated Declaration of Covenants, Restrictions and Easements is made by The Preserve Association, Inc., a Florida corporation not for profit, hereinafter the "Association" and is joined in by Wyndemere Homeowners Association, Inc., a Florida corporation not for profit, and the "ARC" (as such term is hereinafter defined). The land subject to this Declaration and the improvements located thereon have already been made subject to covenants and restrictions by the original Declaration. No additional property is being made subject to the covenants and restrictions contained herein.

2. **NAME:** The name of the Community is The Preserve, also known as Pond Apple Preserve.

3. **DESCRIPTION OF COMMUNITY:** The land which is subject to this Declaration is legally described as all that certain property lying within the Preserve according to the Plat thereof as recorded in Plat Book 13, Page 57 of the Public Records of Collier County, Florida, less and except Lots 29 and 30 as shown on the Plat.

3.1 **Applicability of Declaration.** All property subject to this Declaration shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth. All provisions of this Declaration shall be equitable servitudes which run with the land, and are binding upon and inure to the benefit of all present and future owners of parcels. The acquisition of fee simple title to a parcel, or any ownership interest in the Community, or the lease, occupancies, or use of any portion of a parcel, shall constitute an acceptance and ratification of all provisions of this Declaration as it may be amended from time to time, and an agreement to be bound by its terms.

4. **DEFINITIONS.** All terms and words in this Declaration and its recorded exhibits shall have the meanings stated below unless the context clearly requires otherwise.

4.1 **"ARC"** means and refers to the Architectural Review Committee of the Master Association.

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4.2 **"Association"** means and refers to The Preserve Association, Inc. a Florida corporation not for profit.

4.3 **"Board"** means and refers to the Board of Directors of the Association.

4.4 **"Committee"** means and refers to the Architectural Review committee of the Association as provided in Section 11 hereof.

4.5 **"Declaration"** means and refers to this Amended and Restated Declaration of Covenants, Restrictions and Easements for The Preserve, and any future amendments hereto.

4.6 **"Family"** or **"Single Family"** means and refers to two (2) or more natural persons, each of whom is related to each of the others within the first degree by blood, marriage, or adoption, or not more than two (2) persons not so related who reside together as a single housekeeping parcel.

4.7 **"Governing Documents"** means and refers to this Declaration, and the Articles of Incorporation, Bylaws, the Rules and Regulations and the Resolutions of the Association. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority stated above.

4.8 **"Guest"** means and refers to any person who is physically present in, or occupies a parcel on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

4.9 **"Institutional Mortgagee"** means and refers to any lending institution or real estate investment trust having a first mortgage lien upon a parcel and includes any insurance company doing business in Florida and approved by the Commissioner of Insurance of the State of Florida; a Federal or State Savings and Loan Association, Building and Loan Association or bank doing business in the state of Florida and approved by the office of the comptroller, Division of Banking of the State of Florida; a mortgage banking company licensed in the State of Florida and any "Secondary Mortgage Market Institution" which includes the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation and such other secondary mortgage market institution as the Board shall hereinafter approve in writing. An **"Institutional Mortgage"** is a mortgage held by an Institutional Mortgagee encumbering a parcel.

4.10 **"Lease"** means and refers to the grant by an owner of a temporary right of use of the owner's parcel for valuable consideration.

4.11 **"Master Association"** means and refers to Wyndemere Homeowners Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common areas and improvements within Wyndemere as described in the Master Declaration. All owners of parcels in the Community shall be members of the Master Association.

4.12 **"Master Declaration"** means and refers to the Declaration of Covenants, Conditions and Restrictions of Wyndemere as originally recorded in Official Record Book 916, Page 1080 et seq., Public Records of Collier County, Florida, including all recorded exhibits thereto, as the same may be amended from time to time.

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**4.13 "Member"** means and refers to all persons who are members of the Association as provided in this Declaration, and the Articles of Incorporation and Bylaws of the Association.

**4.14 "Occupant" or "Occupy"** when used in connection with a parcel means any person who is physically present in the parcel on two or more consecutive days, including staying overnight.

**4.15 "Parcel"** means and refers to a lot within the Community which is subject to private ownership and except where the context clearly indicates to the contrary the term "parcel" shall also include the patio home located thereon.

**4.16 "Parcel Owner or Owner"** means and refers to any person or persons, entity or entities, who are the record owner of the fee simple title to any parcel in the Community.

**4.17 "Patio Home"** means and refers to an attached single-family unit located in a patio home building and upon a parcel.

**4.18 "Patio Home Building"** means and refers to a residential building constructed in the Community.

**4.19 "Rules and Regulations"** means and refers to administrative rules and regulations governing the procedures for administering the Association and the Community, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

**4.20 "Uncommitted Land"** means and refers to lots 29 and 30 as shown on the Plat of the Preserve, recorded in Plat Book 13, page 57 of the Public Records of Collier County, Florida.

**4.21 "Voting Interest"** means and refers to the voting rights distributed to members as further described in Section 5.4 below.

**4.22 "Wyndemere"** means and refers to that real estate development which is the subject of the Master Declaration.

**5. ASSOCIATION; MEMBERSHIP; VOTING RIGHTS.** The administration and management of the Association is by The Preserve Association, Inc., a Florida corporation not for profit, which shall perform its functions pursuant to the following:

**5.1 Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached as Exhibit "A".

**5.2 Bylaws.** The Amended and Restated Bylaws of the Association shall be the Bylaws as attached as Exhibit "B".

**5.3 Membership.** Every person or entity who is a record owner of a fee interest in any parcel located within the Community shall be a member, provided, however, that any such person or entity who holds such interest merely as a security for the performance of an obligation shall not be deemed the owner for purposes of determining voting and use rights. Membership shall become effective upon the occurrence of the last to occur of the following events:

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- (A) Recording in the Public Records of a Deed or other instrument evidencing legal title to the parcel in the member.
- (B) Delivery to the Association of a copy of the recorded Deed or other instrument evidencing title.

Membership shall be appurtenant to, run with, and shall not be separated from the real property interest upon which membership is based. If a parcel is sold under a recorded agreement for deed, and the agreement for deed specifically so provides, then the purchaser (rather than the fee owner) shall be considered the owner and, hence, the member.

**5.4 Voting Interests.** The members of the Association are entitled to one (1) vote for each parcel owned by them. The total number of votes shall not exceed the total number of parcels subject to this Declaration. The vote of a parcel is not divisible. The right to vote may not be denied because of delinquent assessments. If a parcel is owned by one natural person, his right to vote shall be established by the record title to the parcel. If a parcel is owned jointly by two or more natural persons who are not acting as trustees, that parcel's vote may be cast by any one of the record owners. If two or more owners of a parcel do not agree among themselves how their one vote shall be cast, that vote shall not be counted for any purpose. If the owner of a parcel is a corporation, the parcel's vote shall be cast by the President or Vice-President of the corporation. If the owner of a parcel is a partnership, any general partner may cast the parcel's vote. If a parcel is owned in trust, any of the trustees may cast the parcel's vote.

**5.5 Approval or Disapproval of Matters.** Whenever the decision or approval of an owner is required upon any matter, whether or not the subject of an Association meeting, such decision or approval may be expressed by any person who could cast the vote of such owner's parcel if present in person at an Association meeting, unless the consent of all record owners is specifically required.

**5.6 Change of Membership.** A change of membership in the Association shall be established by the new owner's membership becoming effective as provided above, and the membership of the prior owner shall thereby be automatically terminated.

**5.7 Termination of Membership.** The termination of membership in the Association does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Association during the period of his membership, nor does it impair any rights or remedies which the Association may have against any former owner or member arising out of or in any way connected with such ownership and membership and the covenants and obligations incident thereto.

**5.8 Association As Owner of Parcels.** The Association has the power to purchase parcels with the prior approval of at least a majority of the voting interests, and to acquire and hold, lease, mortgage, and convey them, by act of a majority of the Board of Directors.

**5.9 Membership Roster.** The Association shall maintain a current roster of names and mailing addresses of owners. A copy of the up-to-date roster shall be available to any owner upon request.

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**5.10 Limitation on Liability.** The Association shall not be liable to owners for property damage caused by any latent condition of the property to be maintained and repaired by the Association. The Association shall not be liable for damage caused by the elements or owners or other persons.

**5.11 Board of Directors.** Except as otherwise provided by law or by the Governing Documents, the Association shall act through its Board of Directors and its officers, and no vote of the members shall be required. The officers and Directors of the Association have a fiduciary relationship to the members. An owner does not have the authority to act for the Association by virtue of being an owner.

**5.12 Powers and Duties.** The powers and duties of the Association include those set forth in this Declaration, the Articles of Incorporation and the Bylaws. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers. If the Association has the authority to maintain a class action, the Association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the Association could bring a class action. Nothing herein limits any statutory or common law right of an individual owner or class of owners to bring any action which may otherwise be available.

## **6. COMMON STRUCTURAL ELEMENTS.**

- (A) **Definition.** Each patio home building contains or shall contain certain elements, features or parts which are structural elements of the patio home building or of more than one patio home contained in said patio home building (hereinafter referred to as "common structural elements"). The common structural elements of each patio home building include, or shall include, the following:
- (B) **Utility Lines.** All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located on or within the Community and which directly or indirectly in any way service more than one patio home in the patio home building in question, all of which are collectively referred to herein as the "utility lines".
- (C) **Party Walls.** All division walls (hereinafter referred to as "party walls") between two patio homes located upon a lot line between two patio homes (hereinafter referred to as "lot lines"), provided that the mere fact that such a division wall between two patio homes is found to be not on a lot line shall not preclude that division wall from being a party wall.
- (D) **Roofing.** The entire roof of the patio home building, any and all roof support structures, and any and all appurtenances to such roof and roof support structures including, but not limited to, the roof covering, roof trim and roof drainage fixtures, all of which are collectively referred to herein as the "roofing".
- (E) **Siding.** Any and all siding, finish, trim, exterior sheeting and other exterior materials and appurtenances on the exterior of the Patio Home Building, all of which are collectively referred to herein as the "siding".
- (F) **Flooring.** The entire concrete floor slab or wood floor system if utilized in lieu thereof and all foundational and support structures and appurtenances thereto, all of which are collectively referred to as the "flooring".

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**7. USE AND MAINTENANCE OBLIGATIONS.** The maintenance and repair of the Community is either the responsibility of the parcels owners or the Association as hereinafter more particularly set forth:

**7.1 Responsibility of Owners.**

- (A) Each owner shall maintain in good condition and repair at his own expense: (i) all portions of his parcel and patio home; (ii) all utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under his lot and which services only his patio home; (iii) all glass and screens in windows and doors, in a manner consistent an in uniformity with the standards promulgated by the committee. Each owner shall perform promptly all such maintenance and repairs and shall be liable for any damages that arise due to his failure to perform such maintenance and repairs. Furthermore, should the negligence or willful misconduct of an owner result in the need for work (including, but not limited to, work in the nature of maintaining or repairing portions of the Community which would otherwise be the responsibility of the Association), the owner in question shall be liable to the Association for the cost and expense so incurred and shall be subject to a special assessment therefor.

**7.2 Responsibility of Owners Within a Building.**

- (A) The owners of each individual patio home within any particular patio home building shall be responsible jointly for the maintenance and repair of all portions of the property which are not the responsibility of any individual owner. Maintenance, repair and replacement of all common structural elements of the patio home building shall be the joint obligation of the owners within the patio home building. In the event that the joint owners of patio homes within any patio home building disagree as to the need for or method of undertaking such maintenance, repair or replacement then either party shall have the right to request the Committee to decide the issue and when rendered by the Committee such decision shall be binding on both owners.
- (B) In the case of a situation deemed an emergency by the Board or arising because of the failure of such owners to perform proper maintenance, the Board may repair, replace, or maintain those portions of a patio home and/or patio home building which are otherwise the responsibility of an owner or owners and levy a special assessment against owner or owners for same.

**7.3 Landscaping.** In order to provide a means by which the covenants in this Declaration as to landscape maintenance by owners of their parcels may be fulfilled without jeopardizing the security of Wyndemere by the possibility of admission thereto of a large number of landscaping or pool maintenance contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping and in particular lawn care of each and every parcel within the Community; provided, however, such duty of maintenance shall not extend to areas specifically designated by the Committee as an "area of high maintenance." Areas of high maintenance shall be maintained by the owner of the parcel or by such special arrangement as may be approved by the Committee. The Association shall contract for the maintenance of the parcels and shall assess as a portion of the individual unit assessment attributable to each parcel hereunder a "maintenance fee" equal to the cost of the provision of such

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services to the parcel. The maintenance fee shall be collected in the same manner and shall be subject to the same lien rights as hereinafter provided for the collection of the Association expenses.

**7.4 Negligence; Damage Caused by Condition in Parcel.** The owner of each parcel shall be liable for the expenses of any maintenance, repair or replacement made necessary by his negligence or by that of any member of his family or his guests, employees, agents, or lessees; but, unless the negligence is of such character as to evidence gross recklessness or willful or wanton disregard for life or property, the owner shall be liable only to the extent that such expense is not met by the proceeds of insurance. If any condition, defect or malfunction existing within a parcel, whether caused by the owner's negligence or otherwise, shall cause damage to other parcels, the owner of the offending parcel shall be liable to the person or entity responsible for repairing the damaged areas for all costs of repair or replacement not met by insurance. If one or more of the damaged parcels is not occupied at the time the damage is discovered, the Association may enter without prior notice to the owner and take reasonable actions to prevent the spread of the damage. The Association may, but is not obligated to, also repair the damage.

**8. ASSOCIATION EXPENSES.** In order to fulfill the covenants contained in this Declaration and in order to maintain and operate the patio home buildings for the use, safety, welfare and benefit of owners, their families, invitees, guests and lessees there is hereby imposed upon each parcel and its owners the affirmative covenant and obligation to pay the Association (in the manner set forth Section 9 hereof), and upon the Association, the obligation to assess, collect and expend, the Association expenses, as those expenses are now about to be more fully set forth in and described.

**8.1 Common Expenses.**

- (A) **Administration.** The costs of administration for the Association, including any secretaries, bookkeepers and other employees necessary to carry out the obligations and covenants of the Association under this Declaration, notwithstanding the fact that some of these services may be expended in providing services to or collecting sums owed by particular owners. In addition, the Association may retain a managing company or contractors to assist in the operation of the Community and to perform or assist in the performance of certain obligations of the Association hereunder. The fees or costs of any management company or contractor so retained shall be deemed to be part of the common expenses.
- (B) **Indemnification.** The costs to the Association of indemnifying its officers and members of the Board and Committee for all costs and expenses whatsoever and in legal defense of such actions or in settlement thereof including, without limitation, counsel fees and costs at all levels of any trial or appeal or other proceeding.
- (C) **Enforcement.** Any and all expenses incurred by the Association in enforcing any of the covenants, restrictions, terms and conditions of this Declaration or in curing any default, violation or failure to perform or abide by such covenants, restrictions, terms and conditions.
- (D) **Insurance.** As enumerated in Section 13.1 hereof.
- (E) **Miscellaneous Expenses.** The costs of all items of expense pertaining to or for the benefit of the Association or Community not herein specifically enumerated and which is determined

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to be a common expense by the Board including, but not limited to, the costs of refuse collection if billed to the Association and not individual owners and the costs of providing security services to the Community in the event the Board elects to provide such services.

**9. METHOD OF DETERMINING ASSESSMENT OF ASSOCIATION EXPENSES.** It is hereby declared, and all owners agree, that the Association expenses shall be disbursed by the Association out of funds assessed and collected from and paid by all owners in the Community.

**9.1 Individual Assessments.**

- (A) As provided in the Bylaws of the Association, the Board shall prepare an annual estimated budget which shall reflect the estimated common expenses. Thereupon the Board shall allocate to all parcels located in the Community an equal share of the expenses and shall allocate to each patio home in each patio home building the patio home expenses attributable to such patio home building, including the maintenance fee. The share of the Association expenses (including the maintenance fee) allocated to a parcel is the "individual assessment" for each parcel.
- (B) For purposes of assessments, the number of patio homes located in the Community shall include all patio homes located therein for which a Certificate of Occupancy has been issued by an appropriate governmental agency, and the number of patio homes contained in any patio home building which is subsequently destroyed, damaged or demolished shall be the number of patio homes originally constructed thereon until such time as the structure is replaced and new certificate of occupancy is issued, whereupon the number of patio homes contained in the replaced structure shall be used.
- (C) The individual assessments shall be payable quarterly in advance on the first day of January, April, July and October of each year.

**9.2 Special Assessments.** Special assessments include, in addition to other assessments designated as special assessments in the Governing Documents and whether or not for a costs or expense which is included within the definition of Association expenses, any other assessments in addition to the individual assessments as shall be levied by the Board as a result of: (i) extraordinary items or expenses under this Declaration; (ii) the failure or refusal of other owners to pay assessments of association expenses; and (iii) such other reasons or basis determined by the Board which is not inconsistent with the terms of any of the Governing Documents. Special assessments shall be assessed in the same manner as the individual assessments. Special assessments shall be paid in such installments or lump sum as the Board shall determine from time to time.

**10. LIENS.**

**10.1 Creation of Lien and Personal Obligation for Assessments.** Each owner of any parcel (including any purchaser at a judicial sale), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

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- (A) the parcel's prorata share of assessments for common expenses based on the annual Association budget; and
- (B) any other charges against less than all of the parcels specifically authorized in this Declaration or the Association Bylaws.

Individual assessments shall be established and collected as provided herein and in the Bylaws of the Association. The individual assessments and charges, together with interest, costs, and reasonable attorney's fees shall bind such property in the hands of the owner, his heirs, devisees, personal representatives, successors and assigns. In any conveyance, voluntary or otherwise, the transferee shall be jointly and severally liable with the transferor for all unpaid assessments coming due prior to the time of such conveyance, without prejudice to the rights of the transferee to recover from the transferor the amounts paid by the transferee. Except as provided elsewhere in this Declaration as to the Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused.

**10.2 Establishment of Liens.** Any and all assessments levied by the Association in accordance with the provisions of this Declaration or any of the Governing Documents, together with interest at the highest rate allowed by law, and costs and collection (including, but not limited to reasonable attorney's fees) are hereby declared to be a charge and continuing lien upon the parcel against which each such assessment is made, and shall also be the personal obligation of the owner of each parcel assessed. This lien is superior to any homestead rights the owner may acquire. No owner may exempt himself from personal liability for assessments, or release the parcel owned by him from the liens and charges hereof, by abandonment of his parcel. The lien shall be perfected from and after the recording in the Public Records of Collier County of a Claim of Lien by the Association setting forth the amount and due date of each unpaid assessment as of the date the Claim of Lien is recorded. A Claim of Lien shall secure payment of all assessments due at the time of recording (including interest, costs and attorney's fees as provided above), as well as all assessments coming due subsequently, until the Claim is satisfied or a final judgment of foreclosure obtained. Upon full payment of all sums secured by that Claim of Lien, the party making payment is entitled to a satisfaction.

**10.3 Priority of Liens.** The Association's lien for unpaid assessments shall be subordinate and inferior to any recorded institutional first mortgage, unless the Association's Claim of Lien was recorded prior to the mortgage, but shall be superior to, and take priority over, any other mortgage regardless of when recorded. Any lease of a parcel shall be subordinate and inferior to any Claim of Lien of the Association, regardless of when the lease was executed. A mortgagee in possession, a receiver, a purchaser at a foreclosure sale, or a mortgagee that has acquired title by deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser, or mortgagee shall hold title subject to the liability and lien of any assessment coming due after foreclosure or conveyance in lieu of foreclosure. Any unpaid assessment which cannot be collected as a lien against any parcel by reason of the provisions of this Section, shall be treated as a special assessment divided equally among, payable by, and assessed against all parcels, including the parcel as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

**10.4 Collection of Assessments.** If any owner fails to pay any assessment, or installment thereof, within thirty (30) days after the due date, the Association shall have any or all of the following remedies,

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to the extent permitted by law, which remedies are cumulative and are not in lieu of, but are in addition to, all other remedies available to the Association:

- (A) To charge interest on such assessment or installment, from the date payment is due until paid, at the highest rate allowed by law, as well as to impose a late payment penalty in such amount as determined by the Board of Directors. A separate penalty may be imposed for each month that the assessment or installment remains unpaid. This penalty shall not be considered a fine as provided for in Section 15 hereof, and the procedural requirements for levying fines set forth therein shall not apply. All payments on account shall be applied first to interest, then to late payment penalties, court costs and attorney's fees and finally to delinquent assessments.
- (B) To accelerate the due date for the entire remaining unpaid amount of the assessments against the owner's parcel for the remainder of the fiscal year notwithstanding any provisions for the payment thereof in installments.
- (C) To file an action in equity to foreclose its lien. The lien may be foreclosed by an action in the name of the Association in the same manner as provided in Section 718.116 of the Florida Condominium Act, as amended from time to time, for the foreclosure of liens on condominium parcels for unpaid condominium assessments.
- (D) To bring an action at law for a money judgment against the owner without waiving any lien foreclosure rights of the Association.

**10.5 Certificate.** The Association shall, within fifteen (15) days of receipt of a written request for same, furnish to any owner liable for assessments a certificate in writing signed by an officer of the Association, setting forth whether said assessments and any other sums due the Association have been paid. Such certificate may be relied upon by all interested persons except the owner. The Association may require the advance payment of a processing fee not to exceed fifty dollars (\$50.00) for the issuance of such certificate.

**11. ARCHITECTURAL AND AESTHETIC CONTROL.** No construction, which term shall include within its definition, but not be limited to, staking, clearing, excavation, grading, and other site work; no exterior alteration or modification of existing improvements; or removal of trees or shrubs shall take place anywhere on the Community except in strict compliance with this Section, until the requirements below have been fully met, and until the approval of the Architectural Review Committee (Committee) has been obtained pursuant to Section 11.1. The Board of Directors may establish reasonable fees to be charged by the Committee on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application. All residential structures constructed on any portion of the Community shall be designed by and built in accordance with the plans and specifications of a licensed Architect and/or certified residential designer. The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee established in Section 11.1.

**11.1 Architectural Review Committee.** The Board of Directors shall appoint the members of the Committee, who shall serve and may be removed at the discretion of the Board of Directors. The

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members of the Committee may include architects, engineers and other persons who are not members of the Association.

**11.2 Developmental Standards.** The Committee is empowered to publish or modify, from time to time, design and development standards ("Standards") for the Community, including but not limited to standards for the following: (i) architectural design of improvements; (ii) fences, walls and similar structures; (iii) exterior building materials and colors; (iv) exterior landscaping; (v) exterior appurtenances relating to utility installation; (vi) signs and graphics, mailboxes and exterior lighting; (vii) building set backs, pools and pool decks, side yards and related height bulk and design criteria; (viii) pedestrian and bicycle ways, sidewalks and pathways; and (ix) all buildings, landscaping and improvements on lands owned or controlled by the Association. The Standards shall be reasonable and in conformance with the plan of development of the Preserve and Wyndemere. A copy of any Standards promulgated and any modification or amendment thereof shall be mailed to all owners and shall not be effective until approved by the Architectural Review Committee (ARC) of the Master Association and placed amongst the Public Records of the County. No written consent of any owner shall, however, be required to effect such amendment, approval, and recordation.

**11.3 Right to Inspect.** Any member of the Committee or their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any of the parcel and inspect for the purposes of ascertaining whether or not these restrictive covenants have been or are being observed. Such person or persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may record in the appropriate land records a notice of violation naming the violating owner.

**11.4 No Waiver of Future Approvals.** The approval of the Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

**11.5 Variance.** The Committee may authorize variance from compliance with any of its standards and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain any financing shall not be considered a hardship warranting a variance.

**11.6 Compliance With Standards.** Any contractor, subcontractor, agent, employee or other invitee of an owner or member who fails to comply with the terms and provisions of the standards and procedures promulgated by the Committee is subject to any enforcement procedures, including fines, as set forth in the Declaration or Bylaws.

**11.7 No Liability.** Review and approval of any application pursuant to this Section 11 is made on the basis of aesthetic considerations and compliance with standards only, and the Committee shall not bear any responsibility of ensuring the marketability, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements.

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Neither the Association, the Board of Directors, the Committee, nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any residence or other structure.

**11.8 Performance by Board.** If the Committee fails to perform any of its functions as set forth above, these functions may instead be performed by the Board.

**11.9 Exculpation and Approvals.** The Association, Board, Committee or any of their agents may grant, withhold or deny their consent, permission or approval in any instance when their consent, permission or approval is permitted or required at their sole discretion and without any liability of any nature or kind to an owner or any other person for any reason whatsoever and shall be indemnified and held harmless by such owner or other person from any and all damages resulting therefrom, including, but not limited to, court costs and reasonable attorneys' fees. Every consent, permission or approval by the Association, Board, Committee or their agents under this Declaration shall be in writing are binding upon all persons and shall be kept as part of the official records of the Association.

**11.10 Committee Action.** A majority of the Committee may designate a member of the Committee to act for it. Approval or disapproval by a majority of the members of the Committee (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the Committee. Any and all approvals or disapprovals of the Committee shall be in writing and shall be sent to the respective Owner, the Board of Directors and the ARC along with copies of all material submitted to the Committee. In the event the Committee fails to approve or disapprove in writing any proposed Plans within thirty (30) days after the submission to the Committee, then said plans shall be deemed to have been approved by the Committee and the appropriate written approval delivered forthwith; provided, however, any owner intending to rely upon the Committee's failure to act, shall submit notice of such intention in writing to the ARC together with a copy of all material submitted to the Committee in connection with the Owner's application for approval ("Notice"). If, within thirty (30) days of submission of the notice and the Plans to the ARC, the ARC issues a written disapproval or if an Owner fails to provide the ARC with Notice, the Plans shall be deemed disapproved notwithstanding anything herein to the contrary.

**11.11 Appeal Procedure.** The Owner who submitted the initial request, if the Owner decides to challenge the Committee's decision shall, submit a request for an Appeal to the Board of Directors. The request for an Appeal shall be submitted in writing to the Board within ten (10) days after issuance by the Committee of its decision; provided, however, such time may be extended in the sole discretion of the Board. A request for Appeal shall also state the basis on which the person submitting the request for Appeal believes the decision of the Committee should be changed. It shall be in the sole discretion of the Board to either uphold or overturn the disapproval of the committee, and such Board action shall constitute the official approval or disapproval of the Association. Any approval or ~~disapproval~~ of the Committee and/or Board of Directors shall also be subject to review by the ARC, as provided in the Master Declaration. It is the intent of this Section 11.11 that approvals by the Committee proceed directly to the ARC for review, but that disapprovals by the Committee first be subject to review by the Board of Directors before ARC review.

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## **12. PROPERTY RIGHTS; EASEMENTS.**

**12.1 Separation of Interests.** The ownership of any residence and the ownership of the patio home constructed thereon may not be separated or separately conveyed; nor may any person who does not have an ownership interest in at least one parcel hold membership in the Association.

**12.2 Easements.** The Association shall have the right to grant such electric, telephone, gas, water, sewer, irrigation, drainage, cable television or other easements, and to relocate any existing easement in any portion of the Community and to grant access easements and to relocate any existing access easements in any portion of the Community as the Association shall deem necessary or desirable, for the proper operation and maintenance of the Community, or any portion thereof, or for the general health or welfare of the owners or for the purpose of carrying out any provisions of this Declaration. Such easements or the relocation of existing easements may not prevent or unreasonably interfere with the use of the parcel. Each parcel shall be subject to an easement in favor of all other portions of the Community for the location of utilities, and for surface water drainage, for lateral and subjacent support, and for the use, maintenance, repair, and replacement of the party walls, structural supports, roofs, pipes, wires, ducts, vents, cables, conduits, public utility lines and other similar or related facilities serving other portions of the Community.

## **13. INSURANCE.**

**13.1 Duty to Insure Association.** The Association shall maintain adequate liability insurance, casualty insurance covering any Association property, and such other insurance which the Board of Directors deems to be in the best interest of the Association and its members, including Directors and Officers liability coverage (with coverage for Directors, officers and Committee members) in amounts determined annually by the Board of Directors.

**13.2 Duty to Insure Parcel.** By virtue of taking title to a parcel subject to the terms of this Declaration, each owner covenants and agrees with all other owners and the Association that each owner shall carry sufficient casualty insurance on his patio home (including, but not limited to, the common structural elements which are a part thereof).

**13.3 Duty to Reconstruct.** If any patio home or other improvements located on any parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner of such improvements 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, unless a hardship exception to such time period is granted by the Board of Directors. All such repairs or replacements must restore the improvements to substantially their original character, design and condition and shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Committee.

**13.4 Failure to Reconstruct.** If the owner of any parcel fails to commence or complete construction to repair or replace any damaged or destroyed improvements for which he is responsible within the time periods provided for in Section 13.3 above, the Association shall give written notice to the owner of his default. If after thirty (30) days the owner has not made satisfactory arrangements to meet his 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

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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 parcel 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 improvements. The Association shall have the right to recover from the owner any costs not paid by insurance, and shall have a lien on the parcel to secure payment.

**13.5 Association's Right of Entry.** For the purpose of performing the duties authorized by this Section 13, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the parcel at reasonable hours.

#### **14. GENERAL COVENANTS AND RESTRICTIONS.**

**14.1 Residential Use.** No parcel shall be used for other than a single family residence. Parcels owned by corporations, partnerships, in trust or some other form of multiple ownership shall designate one (1) natural person and his or her family to occupy the parcel prior to, or at the time of conveyance of the parcel to the multiple ownership entity. The designation of such occupants may be changed only with prior written notice to the Board of Directors. No more than one (1) patio home may be built upon a single parcel. No business or commercial activity shall be conducted in or from any parcel. This restriction shall not be construed to prohibit any owner from maintaining a personal or professional library, from keeping his personal, business or professional records in his residence or from handling her personal, business or professional telephone calls, computer communications or written correspondence in and from his parcel. Such uses are expressly declared customarily incident to residential use.

**14.2 Leases.** Parcel may not be leased for periods of less than thirty (30) days or more than three (3) times in any calendar year. The first day of the lease term shall determine in which year the lease occurs. No subleasing or assignment of lease rights is allowed.

**14.3 Nuisance.** No noxious or offensive activity shall be carried on in any parcel, nor shall any owner permit or condone any activity that is or may reasonably become a source of annoyance or nuisance to other residents.

**14.4 Temporary Structures.** No temporary structure, including trailer, tent or shack shall be used at any time as a residence, either temporarily or permanently.

**14.5 Signs.** No sign of any kind shall be displayed to the public view on any of the parcels or patio homes, except for signs approved by the Architectural Review Committee (ARC) of the Master Association.

**14.6 Appearance; Refuse Disposal.** Each owner shall keep his parcel and abutting sidewalk and bike path, if any, clear of trash and debris and shall reasonably maintain his parcel. No parcel shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers or plastic bags within the parcel, except that such containers may be placed on the street the day of or night before scheduled refuse removal service. Such containers must be replaced inside the parcel on the day of the service, following said service. No garbage incinerators or burning of trash shall be permitted.

**14.7 Windows.** Storm shutters and other window coverings shall be subject to the prior approval and control of the Committee.

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**14.8 Outside Lighting.** No spotlights, floodlights, or similar type of high intensity lighting shall be placed or utilized upon any parcel which in any way will allow light to be reflected on any other parcel or the improvements thereon, without the written authorization of the Committee. Other types of low intensity lighting which do not unreasonably disturb the owners or other occupants of the Community shall be allowed.

**14.9 Pets.** Normal domesticated household type pets (such as a cats or dogs) may be kept in a parcel, provided that no pet may be kept, bred or maintained for any commercial purpose. The pet must be under direct and immediate voice control, carried under the owner's arm or leashed at all times while outside of the parcel. The owner of the pet is responsible for the appropriate removal of all pet waste. The ability to keep such a pet is a privilege, not a right, and the Board of Directors is empowered to order and enforce the removal of any pet which becomes a source of unreasonable annoyance to other residents of the Community. No poultry or livestock may be kept on the Community.

**14.10 Parking and Vehicular Restrictions.**

(A) **Parking.** No motor vehicle of any kind (including trucks and vans) other than a four wheel passenger automobile shall be parked in Wyndemere for a period exceeding eight (8) hours, unless such vehicle is kept in a closed garage or screened from view from all portions of Wyndemere by a fence or landscaping approved by ARC. No boat, boat trailer or other trailer of any kind, camper, mobile home, golf cart or disabled vehicle shall be permitted in Wyndemere unless kept in a closed garage or screened from view from all portions of Wyndemere by a fence or landscaping approved by ARC. No maintenance or repair shall be done upon or to any vehicle (including four wheel passenger automobiles), except within a closed garage. Nothing herein shall prohibit the establishment by the Master Association of an area within Wyndemere designated and available for the storage of prohibited vehicles if the establishment of such storage facility is otherwise permitted by applicable government regulation and the ARC. No vehicle shall be parked anywhere but on paved areas intended for the purpose. Parking on lawns or landscaped areas is prohibited. These restriction shall not preclude the entry on the Property of necessary service or development related vehicles.

(B) **Towing.** Subject to applicable laws and ordinances, any vehicle parked in violation of these or other restrictions contained herein or in the rules and regulations promulgated by the Board may be towed by the Association at the sole expense of the owner of such vehicle if such vehicle remains in violation for a period of twenty-four (24) hours from the time a notice of violation is placed on the vehicle. The Association shall not be liable to the owner of such vehicle for trespass, conversion or otherwise, nor guilty of any criminal act, by reason of such towing and once the notice is posted, neither its removal, nor failure of the owner to receive it for any other reason, shall be grounds for relief of any kind. For purposes of this paragraph, "vehicle" shall also mean boats, campers, mobile homes, motor homes, and trailers. An affidavit of the person posting the aforesaid notice stating that it was properly posted shall be conclusive evidence of proper posting.

**14.11 Satellite Dishes, Television and Other Outdoor Antennae.** No outdoor satellite dishes, television, radio or other antenna or antenna system may be erected or installed on any parcel unless approved by Committee.

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**14.12 Garage Sales.** No garage sale, estate sale, flea market, auction, or similar event shall be held from any parcel.

**14.13 Dikes, Dams or Canal Walls.** No dikes, dams or canal walls shall be erected or constructed except pursuant to a plan approved by the Association and appropriate governmental officials.

**14.14 Docks, Boathouses, Waterfront Construction, and Shore Contours.** No docks, bulkheads, moorings, pilings, boathouses, or boat shelters of any kind or any construction shall be erected on or over waterways of and within the Community without the consent of Wyndemere Country Club, Inc. The area, if any between the rear lot line of the parcel and the water edge of any lake or other body of water within the Community shall be landscaped and/or sodded and maintained by the Association. No person or persons whomsoever shall be permitted upon that portion of the Community lying between the rear lot line and the parcel and the water's edge of any lake or other water body within the Community, except:

- (A) Preserve owners, their families, guests and invitees, or
- (B) An employee or contractor of the Association for the sole and exclusive purpose of performing landscape maintenance upon the backs of property along lake or lake bank itself or within said lake or other water body.

**14.15 Boats.** No boats shall be used upon any portion of the Community which is designed for water retention. The administration, management, operation and maintenance of water retention areas and drainage system shall be the responsibility of Wyndemere Country Club, Inc. (The Club)

**14.16 Water Supply.** No individual water supply system for drinking purposes or household use shall be permitted on any parcel. This provision, however, shall not preclude the installation of any water supply system for irrigation or sprinkler purposes: provided, however, that such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the Association and the applicable governmental authorities. A water supply system for irrigation or sprinkler purposes has been installed by the Master Association and the Master Association requires that an owner use such water.

**14.17 Sewage Disposal.** No individual sewage disposal system shall be permitted on any parcel.

**15. ENFORCEMENT OF COVENANTS AND ABATEMENT OF VIOLATIONS.** Every owner shall at all times comply with Chapter 617, Florida Statutes, other applicable laws, ordinances and regulations as well as all the covenants, conditions and restrictions of the Governing Documents. All violations of laws or the Governing Documents shall be reported immediately by any owner to the Board of Directors. Before undertaking any remedial, disciplinary or enforcement action against a person alleged to be in violation, the Association shall give the alleged violator reasonable written notice of the alleged violation, except in emergencies. Disagreements concerning violations, including, without limitation, disagreements regarding the proper interpretation and effect of the Governing Documents, shall be presented to and determined by the Board of Directors of the Association, whose interpretation of the Governing Documents and/or whose remedial action shall control. If any person, firm or entity subject to the Governing Documents fails to abide by them, as they are interpreted by the Board of Directors of the Association, that person shall be liable to be fined by the Association for each such failure to comply or other violation.

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**15.1 Legal Action.** Judicial enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the parcel to enforce any lien created by these covenants; and failure by the Association or any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If such action is instituted, the Association shall, in addition, be entitled to recover its costs and attorney's fees incurred in enforcing the Governing Documents.

**15.2 Fines.** The Board may impose a fine or fines upon an owner for failure of the owner, his family, guests, invitees, tenants, or employees to comply with any covenant, restriction, rule, or regulation contained herein or promulgated pursuant to the Governing Documents. The procedures for levying fines shall be as follows:

- (A) **Notice.** The Association shall notify the owner of the nature of the alleged infraction or infractions. Included in the notice shall be the date and time of the next Board of Directors meeting at which time the owner shall have an opportunity for a hearing and a right to present reasons why penalty(ies) should not be imposed. Notice of the hearing must be given at least fourteen (14) days in advance of the hearing.
- (B) **Hearing.** At the hearing, the facts of the alleged infraction(s) shall be presented to a committee appointed by the Board consisting of at least three (3) members who are not officers, directors or employees of the Association or the spouse, parent, child, brother or sister of an officer, director or employee. The owner shall then have a reasonable opportunity to present evidence as to why the penalty(ies) should not be imposed. If the committee, by majority vote, does not approve a proposed fine, it may not be imposed.
- (C) **Amount of Fine.** The Board of Directors may impose fines in amounts reasonably related to the severity of the offense and deemed adequate to deter future offenses, however, no fine may exceed fifty dollars (\$50.00) per violation. Each day of a continuing violation may be considered a separate violation, with the requirement of only one notice and opportunity for hearing.
- (D) **Collection of Fines.** Fines shall be treated as an assessment due to the Association ten (10) days after the hearing.
- (E) **Application.** All monies received from fines shall become part of the common surplus.
- (F) **Nonexclusive Remedy.** Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from such owner.

**15.3 Applicability of Documents.** All of the provisions of the Governing Documents pertaining to use and occupancy shall be applicable and enforceable against any person occupying a parcel as a lessee, guest or invitee to the same extent as against an owner, and 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 the authority to terminate any lease

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and evict the tenant in the event of violations by the tenant of such covenant, shall be deemed to be included in every lease whether oral or written, and whether specifically expressed in such lease or not. The Association may also bring an action at law or in equity, or both, to redress alleged failure or refusal to comply with the Governing Documents or law against any tenant, guest or invitee occupying a parcel. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs.

## **16. MASTER ASSOCIATION.**

**16.1 Applicability of Master Documents.** By taking title to a parcel, the owner becomes subject to the terms and conditions of the Declaration of Covenants, Conditions, and Restrictions for Wyndemere, originally recorded in Official Record Book 916, Page 1080 *et seq.*, of the Public Records of Collier County, Florida (the "Master Declaration"), as it may be amended from time to time.

**16.2 Master Association Assessments.** Pursuant to the Master Declaration, the Master Association has the right to assess its members for all expenses which may be incurred by the Master Association in the performance of its duties and to place liens on parcels in the event of failure to pay said assessments.

**16.3 Membership in Master Association, Inc.** In accordance with the provisions of the Articles of Incorporation of the Master Association, all owners are automatically and irrevocably members of the Master Association.

## **17. DURATION OF COVENANTS; AMENDMENT OF DECLARATION.**

**17.1 Duration of Covenants.** This Declaration and its terms, provisions, conditions, covenants, restrictions, reservations, regulations, easements, burdens and liens contained herein, including without limitation, the provisions for assessment of a parcel, shall run with and bind the land and inure to the benefit of the Association, owners and their respective legal representatives, heirs, successors and assigns for the term of ninety (90) years from the date of the original recording of this Declaration amongst the Public Records of Collier County, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each, unless at least one (1) year prior to the termination of such ninety (90) year term of any such ten (10) year extension thereof there is recorded amongst the Public Records of Collier County, an instrument signed by the then owners owning two-thirds (2/3rds) of the parcels and all Institutional Mortgagees in existence one (1) year prior to the termination of such term or extension agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the ninety (90) year term or the then ten (10) year extension during which such instrument of termination is recorded.

**17.2 Vote Required to Amend.** Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended by concurrence of at least a majority of the voting interests at any annual or special meeting called for the purpose, provided that notice of each proposed amendment has been given to the members in accordance with law. No amendment shall change the owner's share of liability for assessments or voting rights unless the owner consents to the amendment.

**17.3 Adding Uncommitted Land.** Notwithstanding anything to the contrary contained herein, the Board of Directors in its sole discretion without consent of any owners may execute and record in the Public Records of Collier County, Florida an amendment adding the Uncommitted Land to the

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Community. This shall be accomplished by amending the legal description of the Community to include such Uncommitted Land and must be recorded with the joinder and consent of all record owners of that land agreeing to make their property and themselves, their successors and assigns subject to the covenants, restrictions and easements contained in this Declaration. If any Uncommitted Land shall be subject to mortgages, liens or other encumbrances, the joinder and consent of such lienholders shall also be required.

**17.4 Certificate; Recording.** A copy of each amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall identify the Book and Page of the Public Records where the Declaration is recorded, and shall be executed by officers of the Association with the formalities of a deed. The certificate must also set forth the legal description of the Community. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of Collier County, Florida.

## **18. GENERAL PROVISIONS.**

**18.1 Waiver.** Any waiver by the Board of Directors of any provisions of this Declaration or breach hereof must be in writing and shall not operate or be construed as a waiver of any other provision or subsequent breach.

**18.2 Severability.** If any section, subsection, sentence, clause, phrase or portion of this Declaration or any of its recorded exhibits is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and shall not affect the validity of the remaining portions.

**18.3 Headings.** The headings of any Sections herein are for convenience only and shall not affect the meanings or interpretation of the contents thereof.

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

**18.5 Notices.** Any notice required to be sent to any owner under the provisions of this Declaration or the Bylaws, shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as owner on the records of the Association at the time of such mailing. The owner bears the responsibility for notifying the Association of any change of address.

**18.6 Interpretation.** The Board of Directors is responsible for interpreting the provisions of this Declaration and its exhibits. Such interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by legal counsel that an interpretation adopted by the Board is not unreasonable shall conclusively establish the validity of such interpretation.

IN WITNESS WHEREOF, ADRIAN J. R. WILLIAMS, has caused these presents to be executed in its name and its corporate seal to be affixed by its proper officers on the day and year first above written.

THE PRESERVE ASSOCIATION, INC.

Mary Jo Fausnight  
Signature of Witness

Mary Jo Fausnight

Print Name of Witness

By: Adrian J. R. Williams  
Adrian J. R. Williams President

(SEAL)

L. Sue Hicks  
Signature of Witness

L. Sue Hicks

Print Name of Witness

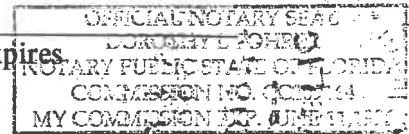
STATE OF FLORIDA  
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 28th day of March, 1996, by ADRIAN J. R. WILLIAMS, President of The Preserve Association, Inc., a Florida corporation not for profit, on behalf of the corporation. He/She is personally known to me or has produced personally known as identification and did take an oath.

(SEAL)

Dorothy L. Pohrer  
Notary Public  
DOROTHY L. POHRER  
Printed name

My commission expires



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