

THE UNDERSIGNED, being the duly elected and acting President of MAHOGANY BEND ASSOCIATION, INC, a Florida corporation not for profit, formerly known as THE LODGINGS ASSOCIATION, INC. does hereby certify that, at a special meeting of the members held October 27, 1999 and reconvened November 15, 1999 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, Restrictions and Easements for The Lodgings (the "Declaration"), as originally recorded at O.R. Book 1111, Page 1722 et seq., Public Records of Collier County, Florida, and the Article of Incorporation and the Bylaws of the corporation encumbering the land described as follows:

The Lodgings of Wyndemere Section One, according to Plat thereof recorded in Plat Book 13, Pages 8 - 12, Public Records of Collier County, Florida.

1. The following resolution was approved by majority vote of the votes of the members entitled to vote thereon.

RESOLVED: That the Declaration of Covenants, Conditions and Easements for The Lodgings be and is hereby amended in part and restated in its entirety, and the amendment and restatement is adopted in the form attached hereto, and made a part hereof; and

2. The following resolution was approved by majority vote of the votes of the members entitled to vote thereon.

RESOLVED: That the Bylaws of this corporation be and are hereby amended and restated, and the amendment and restatement is adopted in the form attached hereto and made a part hereof; and

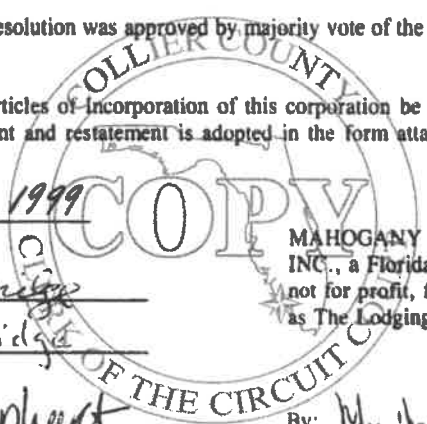
3. The following resolution was approved by majority vote of the votes of the members entitled to vote thereon.

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

December 15, 1999
Date

Debra Aldridge
Signature of Witness
Debra Aldridge
Printed name of witness

Suzanne Gephart
Signature of Witness
SUZANNE GEPHART
Print Name of Witness



MAHOGANY BEND ASSOCIATION, INC., a Florida corporation not for profit, formerly known as The Lodgings Association, Inc.

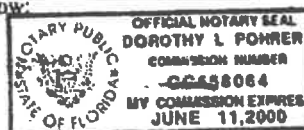
By: Michelle DeVineat
Michelle DeVineat, its President
98 Wyndemere Way
Naples, Florida 34105

(SEAL - FLORIDA CORPORATION NOT FOR PROFIT)

STATE OF FLORIDA
COUNTY OF COLLIER

I hereby certify that on the 15th day of December, 1999, personally appeared before me Michelle DeVineat, as President of Mahogany Bend Association, Inc., a Florida corporation not for profit, who executed the foregoing certificate in the name and on behalf of said corporation.

Notary Public-State of Florida:
Sign Dorothy L. Pohrer
Print Dorothy L. Pohrer
Personally Known ; or Produced Identification _____
Type of Identification _____
Produced: _____
Affix Seal Below:



This instrument prepared by:
Tamela Eady Wiseman, Esquire
DeBoest, Knudsen, Stockman, Wiseman, Decker & Dryden, P.A.
600 Fifth Avenue South, Suite 301
Naples, Florida 34102
(941) 263-5040

AMENDED AND RESTATED

DECLARATION OF COVENANTS, RESTRICTIONS, AND EASEMENTS

FOR

THE LODGINGS

KNOW ALL MEN BY THESE PRESENTS:

That heretofore on December 5, 1984, the original Declaration of Covenants, Restrictions and Easements for The Lodgings (hereinafter the "Community") was recorded in Official Records Book 1111, at Page 1722 *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 Mahogany Bend Association, Inc., a Florida corporation not for profit, formerly known as The Lodgings Association, Inc. hereinafter the "Association" and is joined in by Wyndemere Homeowners Association, Inc., a Florida corporation not for profit. 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 Lodgings, also known as Mahogany Bend.

3. **DESCRIPTION OF COMMUNITY:** The land which is subject to this Declaration (hereinafter the "Community") is legally described as follows: The Lodgings of Wyndemere Section One, according to the Plat thereof recorded at Plat Book 13, Pages 8 through 12 of the Public Records of Collier County, Florida.

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 Mahogany Bend Association, Inc. a Florida corporation not for profit. The Association is a "Neighborhood Association" pursuant to the Master Declaration.

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

4.4 "Country Club" means and refers to Wyndemere Country Club, Inc., a Florida corporation not for profit. All owners shall be members of the Country Club and must be accepted for membership in the Country Club as a condition of ownership of a parcel.

4.5 "Declaration" means and refers to this Amended and Restated Declaration of Covenants, Restrictions and Easements for The Lodgings, 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 Developmental Standards, 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. The Community is a "Neighborhood" pursuant to the Master Declaration.

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.

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"** or **"Lot"** means and refers to a platted 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 residence 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 **"Residence"** means and refers to a single-family detached dwelling unit and other improvements located upon a parcel.

4.18 **"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.

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

4.20 **"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 Mahogany Bend 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:

- (A) Approval for membership in the County Club;

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- (B) Recording in the Public Records of a Deed or other instrument evidencing legal title to the parcel in the member.
- (C) 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. 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.

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. All

incidental damage caused to a lot by work performed or ordered to be performed by the Association shall be promptly repaired by and at the expense of the Association which shall restore the property as nearly as practical to its condition before the damage, and the cost shall be at the Association's expense.

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. PROPERTY RIGHTS; EASEMENTS.

6.1 Encroachments. If any parcel or part of a parcel shall encroach upon any other parcel for any reason other than the intentional act of the owner, then an easement shall exist to the extent of that encroachment for so long as the encroachment shall exist. If a building, window, eave, projection, gutter, roof or any other structure on a parcel (the "encroaching parcel") shall encroach upon any adjoining parcel, by reason of original construction, reconstruction, repair, shifting, settlement, or movement of any portion of the improvements, or by the unintentional act of the owner, then an easement appurtenant to such encroaching parcel, to the extent of such encroachment, shall exist so long as such encroachment shall exist.

6.2 Separation of Interests. The ownership of any parcel and the ownership of the residence 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.

6.3 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 parcels. 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.

7. MAINTENANCE; IMPROVEMENTS.

7.1 Maintenance and Repair of Parcels of Land. The maintenance and repair of the Community is either the responsibility of the owners or the Association as hereinafter more particularly set forth:

(A) Responsibility of Owners.

1. Except as set forth below regarding ordinary lot maintenance, each owner shall maintain in good condition and repair at his own expense:

i) All portions of his lot and residence.

ii) All utility lines, ducts, conduits, pipes, wires and other utility fixtures and appurtenances which are located upon or under his lot and which service only his residence.

iii) All glass and screens in windows and doors, in a manner consistent and in uniformity with the standards promulgated by the Association.

iv) All driveways, walkways and fences in a color approved by the Association.

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 owner neglect to perform such maintenance and repair, the Association shall have the right to have maintenance performed by its agents or employees and 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.

2. Each owner shall promptly report to the Association any defect known to such owner which requires repair of the property for which the Association or a party other than that owner is responsible.

(B) Landscaping. In order to provide a means by which landscape maintenance of lots may be fulfilled without jeopardizing the security of Wyndemere by the possibility of admission thereto of a large number of landscaping maintenance contractors and their agents and employees, the Association shall be responsible for the maintenance of landscaping, sidewalks and in particular lawn care of each and every lot within The Lodgings and such maintenance shall be an Association expense. Such maintenance shall not extend to areas requiring unusual maintenance such as rose gardens, that portion of trees in excess of fifteen (15) feet, landscaping located within screen enclosures, and areas specifically designated by the Association as an "Area of High Maintenance" or to replacement of any portion of the lawn or landscaping. Areas of High Maintenance and pool areas shall be maintained by the owner of the lot or by such special arrangement as may be approved by the Association. In the event the owner makes special arrangements to have the Association perform maintenance on the owner's Areas of High Maintenance and/or pool, the cost of said maintenance shall be billed to the owner as a "special charge," for which the owner shall be solely liable and for the payment of which the Association shall have a lien against the owner's lot.

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7.2 Enforcement of Maintenance. If the owner of a parcel fails to maintain his parcel as required in Section 7.2 above, the Association shall have the right to institute legal proceedings to enforce compliance, or may take any and all other steps necessary to remedy such violation, including but not limited to entering the parcel, with or without consent of the owner(s). The Association shall have the right to repair, clear or paint any parcel which constitutes a danger or nuisance or is unsightly or in disrepair, provided that the owner is given no less than thirty (30) days notice of the Association's intent to do so which reasonably specifies the proposed action. The Association shall charge the expense of same against the owner(s) of said parcel(s), which charge shall be a lien on the parcel(s) which may be foreclosed and shall include the Association's attorney fees and other costs in connection with said foreclosure. Nothing herein shall be construed to authorize the Association to enter individual residences.

7.3 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 take reasonable actions to prevent the spread of the damage. The Association may, but is not obligated to, also repair the damage. Except in the event of any emergency as determined by the Association (in which event no prior notice shall be required), the Association shall notify the owner by certified or registered mail at least 30 days prior to entering a parcel as authorized by this Section 7.3. Nothing herein shall be construed to authorize the Association to enter individual residences or to authorize the Association to perform repairs within individual residences.

8. INSURANCE.

8.1 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 in amounts determined annually by the Board of Directors.

8.2 Duty to Insure Parcels. 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 all-risk casualty insurance on the parcel and structures constructed thereon. If requested, each owner shall provide a certificate of insurance to the Association annually. Each owner covenants to carry homeowner's insurance or recognize that he bears the financial responsibility for any damage to his property or liability to others that would otherwise be covered by such insurance.

8.3 Duty to Reconstruct. If any residence 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 residence or other 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. The Association shall be authorized to extend these time periods, at its sole discretion, in the event that such deadlines cannot be reasonably met due to conditions

beyond the owner's control. All such repairs or replacements must restore the improvements to substantially their original character, design and condition, shall utilize and conform with the original foundation and appearance of the original improvements except as otherwise approved by the Board of Directors and the ARC.

8.4 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 8.3 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 improvements. Alternatively, if the improvements have been damaged beyond repair, the Association shall have the authority to have the parcel cleared. 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.

8.5 Association's Right of Entry. For the purpose of performing the duties authorized by this Section 8, the Association, through its duly authorized agents and employees, shall have the right, after reasonable notice to the owner, to enter upon the parcel (but not the residence located thereon) at reasonable hours.

9. ASSESSMENTS AND LIENS.

9.1 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:

- (A) the parcel's prorata share of regular assessments based on the annual Association budget;
- (B) the parcel's prorata share of special assessments for capital improvements or other Association expenditures not provided for by regular assessments, except that the total of all special assessments made in any fiscal year shall not exceed ten percent (10%) of the total budget for that year, excluding reserves for capital expenditures and deferred maintenance, unless at least a majority of the voting interests first consent; and
- (C) any charges against less than all of the parcels specifically authorized in this Declaration or the Association Bylaws.

Assessments shall be established and collected as provided herein and in the Bylaws of the Association. The regular and special 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.

9.2 Cable Television. The Board of Directors shall have the authority to enter into a contract for cable or satellite television services in bulk for all parcels, and to assess all owners for the costs of those services to be included in the amount of regular assessments. However, the Master Association may contract for such services for the Community.

9.3 Share of Assessments. Each parcel and the owner thereof shall be liable for an equal share of all regular and special assessments.

9.4 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 assessment unpaid 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 of Lien.

9.5 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.

9.6 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, 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 12.2 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 suspend the voting rights of a member if regular annual assessments are delinquent in excess of ninety (90) days.
- (C) To accelerate the due date for the entire remaining unpaid amount of the regular assessments against the owner's parcel for the remainder of the fiscal year notwithstanding any provisions for the payment thereof in installments.
- (D) 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.
- (E) To bring an action at law for a money judgment against the owner without waiving any lien foreclosure rights of the Association.

9.7 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.

10. 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 Association and the ARC. For the purposes of this Section 10, no Association approval shall be required for any repair, replacement, repainting and refurbishment of building, driveway, fence, landscaping or other structure provided that any repainting is exactly the same as the existing color and that all other work duplicates existing improvements in all respects, including, but not limited to, the quality of material and appearance and is not in violation of the Governing Documents or the Master Declaration. Any decision made by the ARC that work performed or to be performed constitutes an exterior alteration or modification requiring approval shall be binding on all parties. 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 Association shall have the authority and

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standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Association and the ARC.

10.1 Developmental Standards. The Association 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 Lodgings 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 ARC and placed amongst the Public Records of Collier County. No written consent of any owner shall, however, be required to effect such amendment, approval, and recordation. The original Standards were recorded as Exhibit "E" to the original Declaration.

10.2 Right to Inspect. Any member of the Board of Directors or their representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any of the parcel (but not the residence located thereon) 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. Upon cure of the violation, the Board shall promptly record notice of such cure in the appropriate land records.

10.3 No Waiver of Future Approvals. The approval of the Association 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 Association, 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.

10.4 Variance. The Association 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 Association 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.

10.5 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 Association is subject to any enforcement procedures, including fines, as set forth in the Declaration or Bylaws.

10.6 No Liability. Review and approval of any application pursuant to this Section 10 is made on the basis of aesthetic considerations and compliance with Standards only, and the Association 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. 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.

10.7 Exculpation and Approvals. The Association 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 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.

10.8 Board Action. A majority of the Board of Directors may designate director to act for it. Approval or disapproval by a majority of the members of the Board (or by the member designated by the majority of the members) shall constitute the official approval or disapproval of the Association. Any and all approvals or disapprovals of the Association shall be in writing and shall be sent to the respective Owner, and the ARC along with copies of all material submitted to the Association. Approvals shall be subject to ARC approval pursuant to the Master Declaration, however, Association disapprovals shall stand disapproved and shall not be considered by the ARC. In the event the Association fails to approve or disapprove in writing any proposed plans within thirty (30) days after the submission to the Association, then said plans shall be deemed to have been approved by the Association and the appropriate written approval delivered forthwith; provided, however, that ARC approval shall still be required pursuant to the Master Declaration.

11. GENERAL COVENANTS AND RESTRICTIONS.

11.1 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) residence 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 his 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.

11.2 Transfers of Ownership. The Association is legally obligated to maintain an accurate roster of the owners of legal title to each parcel. In order to protect that interest, in addition to the requirements for membership set forth in Section 5.3 above, an owner who intends to offer his parcel for sale shall give written notice of his intention to the Association within ten (10) days after listing the property with an agent or otherwise offering it for sale.

11.2 Leases. Parcel may not be leased for periods of less than six (6) months or more than two (2) 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.

11.3 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.

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

11.5 Signs. No sign of any kind shall be displayed to the public view on any of the parcels or improvements located thereon, except for signs approved by the ARC.

11.6 Appearance; Refuse Disposal. Each owner shall keep his parcel and abutting sidewalk and 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 morning of 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.

11.7 Windows. Storm shutters and other window coverings shall be subject to the prior approval and control of the Association.

11.8 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 Association. Other types of low intensity lighting which do not unreasonably disturb the owners or other occupants of the Community shall be allowed.

11.9 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 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 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.

11.10 Parking and Vehicular Restrictions.

- (A) **Parking.** No motor vehicle of any kind (including commercial vehicles and trucks) other than a four wheel passenger automobile, sport utility vehicle, or passenger van, shall be parked in the Community for a period exceeding eight (8) hours, unless such vehicle is kept in a closed garage or screened from view from all portions of the Community by a fence or landscaping approved by ARC. For the purposes of this Paragraph, commercial vehicles" shall mean those which are not designed for customary, personal/family purposes, and those vehicles which contain commercial lettering. The absence of commercial-type lettering or graphics on a vehicle shall not be dispositive as to whether it is a commercial vehicle. No boat, boat trailer or other trailer of any kind, camper, mobile home, golf cart or disabled

vehicle shall be permitted in the Community unless kept in a closed garage or screened from view from all portions of the Community 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 (except in an emergency). 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 restrictions shall not preclude the temporary parking within the Community of necessary service or construction 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.

11.11 Satellite Dishes, Television and Other Outdoor Antennae. No exterior antennas, aerials, satellite dishes, or other signals of any kind shall be placed, allowed, or maintained upon the exterior of any parcel or Common Area, except in compliance with any standards imposed by the ARC and/or the Association. As provided under applicable federal law certain antennas, aerials, satellite dishes and other reception apparatus may be installed prior to any architectural approval, provided that the ARC and/or Association may require any such improvements to be relocated or screened for safety or to maintain the aesthetic appearance of the Community. Owners are encouraged to contact the Association prior to locating or installing satellite dishes or aerials. The Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Community, should any such master system or systems be utilized and require any such exterior apparatus, subject to approval of the ARC.

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

11.13 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.

11.14 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.

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

11.16 Master Association Restrictions. The Master Declaration contains additional restrictions which are applicable to the Community and the owners. In the event of a conflict between the provisions of this Declaration and the provisions of the Master Declaration, the provisions of the Master Declaration shall control, provided, however that this Declaration may contain provisions which are more restrictive than those contained in the Master Declaration, in which event the more restrictive provisions shall control.

12. 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.

12.1 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.

12.2 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 one hundred dollars (\$100.00) per violation. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed \$5,000.00 in the aggregate.
- (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 Association's funds.
- (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.

12.3 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 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.

13. MASTER ASSOCIATION.

13.1 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.

13.2 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. The Master Association assessments may include charges for the provision of bulk cable or satellite television services to the parcels.

13.3 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.

14. DURATION OF COVENANTS: AMENDMENT OF DECLARATION.

14.1 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 fifty (50) years from the date of the original recording of this Declaration amongst the Public Records of Collier County (which date was December 5, 1984), 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 fifty (50) 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 the Institutional Mortgagees holding at least two-thirds (2/3rds) of all mortgages (by number and not by unpaid amount thereof) encumbering parcels. agreeing to terminate this Declaration, upon which event this Declaration shall be terminated upon the expiration of the fifty (50) year term or the then ten (10) year extension during which such instrument of termination is recorded.

14.2 Vote Required to Amend. Except as otherwise provided by law, or by specific provision of the Governing Documents, this Declaration may be amended at any time 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 be effective which shall in a material fashion impair the rights or priorities of any owner or Institutional Mortgagee under this Declaration without the specific written approval of the owner or Institutional Mortgagee affected thereby.

14.3 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.

15. GENERAL PROVISIONS.

15.1 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.

15.2 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.

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

15.4 **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.

15.5 **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.

15.6 **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, the Association 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.

Debra Aldridge
Signature of Witness

Debra Aldridge
Print Name of Witness

Suzanne Gephart
Signature of Witness

SUZANNE GEHART
Print Name of Witness

MAHOGANY BEND ASSOCIATION, INC., a
a Florida corporation not for profit
formerly known as The Lodgings
Association, Inc.

Michelle DeVincent
Michelle DeVincent, President

(SEAL - FLORIDA
CORPORATION
NOT FOR PROFIT)

STATE OF FLORIDA
COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this 15 day of December, 1999, by Michelle DeVincent, President of Mahogany Bend Association, Inc., a Florida corporation not for profit, on behalf of the corporation.

Notary Public-State of Florida:

Sign Dorothy L. Pohrer
Print Dorothy L. Pohrer

Personally Known ; or Produced
Identification _____

Type of Identification _____

Produced: _____

Affix Seal Below:

DECLARATION

