

1 **PROPOSED SECOND AMENDED AND RESTATED DECLARATION OF**
2 **PROTECTIVE COVENANTS**
3 **FOR**
4 **WIGGINS LAKES AND PRESERVE**

5 WHEREAS, the original Declaration of Protective Covenants for Wiggins Lakes and
6 Preserve (“Master Declaration”) was recorded at O.R. Book 1552, Page 872 *et seq.*, of the Public
7 Records of Collier County, Florida;

8 WHEREAS, the Master Declaration was subsequently Amended and Restated as recorded
9 at O.R. Book 4337, Page 3526 *et seq.*, of the Public Records of Collier County, Florida; and

10 WHEREAS, the intention of the Master Declaration was to provide for the ability to share
11 certain facilities between the Wiggins Lakes Condominium, as created by the Declaration of
12 Condominium recorded at O.R. Book 1551, Page 776 *et seq.*, of the Public Records of Collier
13 County, Florida; Wiggins Preserve Condominium One, as created by the Declaration of
14 Condominium recorded at O.R. Book 1910, Page 1451 *et seq.*, of the Public Records of Collier
15 County, Florida; and Wiggins Preserve Condominium Two, as created by the Declaration of
16 Condominium recorded at O.R. Book 1997, Page 2085 *et seq.*, of the Public Records of Collier
17 County, Florida; and

18 WHEREAS, Wiggins Lakes & Preserve Association, Inc. is the successor by merger by
19 and between: Wiggins Lakes Master Association, Inc. (which changed its name to Wiggins Lakes
20 & Preserve Association, Inc.); Wiggins Lakes Condominium Association, Inc., a Florida
21 corporation not for profit, incorporated on January 11, 1990; and Wiggins Preserve Condominium
22 Association, Inc., a Florida corporation not for profit, incorporated on April 21, 1995, resulting
23 from the merger of Wiggins Preserve One Association, Inc., a Florida corporation not for profit,
24 incorporated on January 27, 1994 and Wiggins Preserve Two Association, Inc., a Florida
25 corporation not for profit, incorporated on February 22, 1994; and

26 WHEREAS, the land intended to be devoted to the common use and enjoyment of the
27 owners of Wiggins Lakes and Preserve shall mean and refer to all the property described in Exhibit
28 “A” less and except all lands contained in (1) Wiggins Preserve Condominium One as described
29 in Exhibit “A” to the original Declaration of Condominium for Wiggins Preserve Condominium
30 One as recorded in O.R. Book 1910, Page 1451 *et seq.*, of the Public Records of Collier County,
31 Florida; (2) Wiggins Preserve Condominium Two as described in Exhibit “A” to the original
32 Declaration of Condominium for Wiggins Preserve Condominium Two as recorded in O.R. Book
33 1997, Page 2085 *et seq.*, of the Public Records of Collier County, Florida; and (3) Wiggins Lakes
34 Condominium as described in Exhibit “A” to the original Declaration of Condominium for
35 Wiggins Lakes Condominium as recorded in O.R. Book 1551, Page 776 *et seq.*, of the of the Public
36 Records of Collier County, Florida. Included within Wiggins Lakes and Preserve is an area known
37 as the Conservation Area-Tortoise Preserve permanently designated on the Wiggins PUD
38 development plan as a non-developable area for conservation purposes only; and

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1 WHEREAS, the Community Association no longer exists due to its merger with the
2 Condominium Association; and

3 WHEREAS, there is no longer a need for an extensive Declaration of Protective Covenants
4 as the maintenance, management and operation of the Association Property is now vested in the
5 Condominium Association and subject to the terms of the Condominium Declaration.

6 NOW THEREFORE, the following Second Amended and Restated Master Declaration is
7 adopted and shall supersede the previous Master Declaration.

8 **1. OPERATION, MAINTENANCE, AND MANAGEMENT OF**
9 **ASSOCIATION PROPERTY.** The aforementioned Association Property shall be operated,
10 managed and maintained by the Association as provided in the Combined Amended and Restated
11 Declaration of Condominium ("Condominium Declaration"), and to the extent applicable, the
12 Articles of Incorporation, Bylaws, Rules and Regulations and Policies and Procedures of the of
13 the Association, and the provisions of the Act.

14 **2. DEFINITIONS.** The terms used in this Master Declaration have the same
15 definitions and meaning as those set forth in the Condominium Declaration and the Act, unless
16 herein provided to the contrary, or unless the context otherwise requires.

17 **3. EASEMENTS.**

18 **3.1 Appurtenant Enjoyment Easements.** The Owner of each Unit, their
19 Guests, Tenants and Invitees, shall have as an appurtenance to their Units a perpetual nonexclusive
20 easement for ingress and egress over, across and through the Association Property, for the use and
21 enjoyment of all recreational facilities and areas intended for common use, such use and enjoyment
22 to be shared in common with the other Owners of Units, their Guests, Tenants and Invitees, subject
23 to the provisions of this Master Declaration.

24 **3.2 Interior Roadway Easements.** The interior roadway system of Wiggins
25 Lakes and Preserve is Association Property owned by the Association. The roadways are subject
26 to the rules and regulations and traffic controls and regulations as the Association imposes,
27 however, each Owner of a Unit shall have an easement for ingress and egress over said roadway
28 system. The Board of Directors shall have the right to establish parking and other regulations and
29 to enforce such regulation by all means lawful for such enforcement on drives and roadways.

30 **3.3 Utility Easements.** A perpetual easement shall exist upon, over, under and
31 across Wiggins Lakes and Preserve for the purpose of maintaining, installing, repairing, altering
32 and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water
33 mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal
34 systems, pipes, valves, gates, pipelines, cable television and all machinery and apparatus
35 appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing
36 all Owners of Units and servicing the Association Property, all such easements to be of a size,

1 width and location so as to minimize and not unreasonably interfere with the use of any
2 improvements which are now, or will be, located upon said property. The Association, through its
3 Board of Directors, has the authority to grant additional such easements, and to modify, move or
4 vacate such existing easements as may be necessary to efficiently and effectively provide utility
5 and other services to the Units and the common elements and Association Property.

6 **3.4 Subordination.** Notwithstanding any of the foregoing to the contrary, it is
7 understood that these covenants and restrictions are subordinate, and will be subordinate without
8 the necessity of any other instrument, to any existing easement covering the basic water, sewer
9 and drainage systems installed in the Association Property, and any existing easement or
10 easements to any public or quasi-public utility for the installation and maintenance of service lines
11 in the Association Property.

12 **3.5 Extent of Easements.** The rights and easements of enjoyment created
13 hereby shall be subject to the following:

14 3.5.1 the right of the Association, in accordance with its Bylaws, to
15 borrow money for the purpose of improving and/or maintaining the Association Property and
16 providing the services authorized herein, and, in aid thereof, to mortgage said properties;

17 3.5.2 the right of the Association to impose rules and regulations
18 governing the use of the Association Property and Association property as further provided in the
19 Bylaws; and

20 3.5.3 the right of the Association to a non-exclusive easement over, across
21 and through each Unit as necessary to meet the Association's maintenance responsibilities.

22 3.5.4 the right of the Association to levy assessments on Units to enable
23 the Association to pay the costs of operating and maintaining the Association Property and other
24 costs of the Association, and

25 3.5.5 the right of the Association to dedicate or transfer all of any part of
26 the Association Property to any public agency, authority, or utility for such purposes and subject
27 to such conditions as may be agreed by the Members; provided that no such dedication or transfer,
28 determination as to purposes or as to the conditions hereof, shall be effective unless an instrument
29 signed by the appropriate officers of the Association certifying that at a special or regular meeting
30 of Members called for such purpose, of which thirty (30) days written notice was sent to each
31 Member, the vote of two-thirds (2/3) of the Members present, either in person or by proxy, was
32 obtained, agreeing to such dedication or transfer;

33 3.5.6 the right of the Association to grant exclusive easements and rights-
34 of-way over certain parts of the Association Property to Members of the Association when the
35 Association deems it necessary;

1 3.5.7 the right of the Association to provide, restrict or limit access across
2 the roadways as the Board of Directors deems necessary and proper. Such limitation may include
3 but not be limited to the stopping and questioning of visitors into and across the Wiggins Lakes
4 and Preserve by such means as the Board of Directors deems is necessary and proper.

5 3.5.8 the right of the Association to regulate parking and traffic on the
6 roads or streets within the Wiggins Lakes and Preserve, including without limitation, the use of
7 access gates (manned or unmanned as determined by the Board in its sole discretion), stop signs,
8 speed limits, speed bumps, or other traffic calming or restriction installations.

9 Any Owner of a Unit in Wiggins Lakes and Preserve which Unit contains a
10 structure which encroaches upon another Unit or, the Association Property shall have a valid
11 easement for the encroachment and maintenance of same, as long as it stands and exists.

12 **4. ASSOCIATION MAINTENANCE.** The Association shall be responsible for the
13 maintenance, repair, replacement and operation of all Association Property, including, but not
14 limited to, water retention and water management areas landscaping, trees, plantings, lawns,
15 flowers, water management facilities, irrigation systems and footpaths, roadways, common
16 driveways, parking areas, lighting, community swimming pool, swimming pool area, bath house,
17 tennis court, utility installations located on Units but serving more than one Unit, fences, mailboxes
18 and privacy walls. As part of the Association Property is an area known as the Conservation Area-
19 Tortoise Preserve for which the Association is responsible to maintain. The Conservation Area-
20 Tortoise Preserve is regulated by the Collier County Land Development Code, Resource
21 Protection, 3.04 Protection of Endangered Species. The Association is responsible for a plan and
22 the maintenance of this area as required by the Collier County Environmental Services
23 Department. The plan for maintenance of this area includes implementing a program for removal
24 of exotic plant species and vegetation management for tortoise habitat preservation. The cost of
25 all Association maintenance shall be a Common Expense of the Association.

26 **5. AMENDMENTS; TERMINATION.**

27 **5.1 Duration.** The conditions of this Master Declaration shall run with the land
28 and shall inure to the benefit of and be enforceable by the Association or the owner of any real
29 property subject to this Master Declaration, their respective legal representatives, heirs, successors
30 and assigns until August 14, 2030. On August 14, 2030, this Master Declaration shall be
31 automatically renewed and extended for successive ten (10) year periods. The number of ten (10)
32 year renewal periods hereunder shall be unlimited with this Master Declaration being
33 automatically renewed and extended upon the expiration of each ten (10) year renewal period for
34 an additional ten (10) year period; provided, however, and subject to existing laws and ordinances,
35 that there shall be no renewal or extension of this Master Declaration if during the last year of the
36 initial period, or during the last year of any subsequent ten (10) year renewal period, at least two-
37 thirds (2/3rds) of owners of Units affirmatively vote at a duly held meeting of members of the
38 Association in favor of terminating this Master Declaration at the end of its then current term. It
39 shall be required that written notice of any meeting at which such proposal to terminate this Master

1 Declaration is to be considered, setting forth the fact that such a proposal will be considered, be
2 given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate
3 this Master Declaration, the President and Secretary shall execute a certificate which shall set forth
4 the resolution of termination adopted by the Association, the date of the meeting of the Association
5 at which such resolution was adopted, the date that notice of such meeting was given, the total
6 number of votes of members of the Association, the total number of votes required to constitute a
7 quorum at a meeting of the Association, the number of votes necessary to adopt a resolution
8 terminating this Master Declaration, and the total number of votes cast against such resolution.
9 Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be
10 relied upon for the correctness of the facts contained therein as they relate to the termination of
11 this Master Declaration.

12 **5.2 Amendments by Members.** Except as otherwise provided herein or by law,
13 this Master Declaration may be amended at any time by affirmative vote of at least two-thirds
14 (2/3rds) of the Voting Interests of the Association present, in person or by proxy, and voting at a
15 duly called meeting of the members of the Association. A copy of each adopted amendment shall
16 be attached to a certificate that the amendment was duly adopted as an amendment to the
17 Declaration, which certificate shall identify the Book and Page of the Public Records where the
18 Declaration is recorded, and shall be executed by the President or Vice-President of the
19 Association with the formalities of a deed. The amendment shall be effective when the certificate
20 and copy of the amendment are recorded in the Public Records of Collier County, Florida.