

CERTIFICATE OF AMENDMENT

THE UNDERSIGNED, being the duly and acting President of Wiggins Lakes & Preserve Association, Inc., a Florida corporation not for profit, hereby certifies that at a meeting of the members held on February 7, 2008, where a quorum was present, after due notice, the resolution set forth below was approved by the vote indicated for the purpose of amending the Declaration of Protective Covenants for Wiggins Lakes, as originally recorded at O.R. Book 1551, Pages 820 et seq., and again at O.R. Book 1552, at Pages 872 et seq., in the Public Records of Collier County, Florida, as previously amended.

4138441 OR: 4337 PG: 3526
RECORDED in OFFICIAL RECORDS of COLLIER COUNTY, FL
03/11/2008 at 02:31PM DWIGHT B. BROCK, CLERK
RBC FEE 120.50

Retd:
SAMOUCE MURRELL ET AL
5405 PARK CENTRAL CT
NAPLES FL 34109

The following resolution was approved by the affirmative vote of the holders of at least seventy-five percent (75%) of the total number of votes of all classes entitled to be cast.

(for use by Clerk of Court)

RESOLVED: That the Declaration of Protective Covenants for Wiggins Lakes, is hereby amended and the amendment is adopted in the form attached hereto and made a part hereof.

Date: March 6, 2008

WIGGINS LAKES & PRESERVE ASSOCIATION, INC.

(1) [Signature]
Witness
Print Name: George W. Wooten

By: [Signature]
John Hayes, President
675 Wiggins Lake Drive, #201
Naples, FL 34110

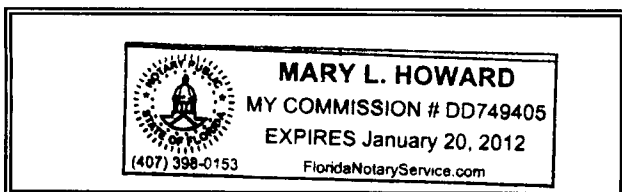
(2) [Signature]
Witness
Print Name: Ten Fairfield

(CORPORATE SEAL)

STATE OF FLORIDA

COUNTY OF COLLIER

The foregoing instrument was acknowledged before me this _____ day of _____, 2008, by John Hayes, as President of the aforementioned Corporation, on behalf of the Corporation. He is personally known to me or has produced _____ as identification.



Print, Type, or Stamp Commissioned Name of Notary Public (Affix Notarial Seal)

[Signature]
Signature of Notary Public

This instrument prepared by Robert C. Samouce, Esq., Samouce, Murrell & Gal, P.A., 5405 Park Central Court, Naples, FL 34109.

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

AMENDED AND RESTATED
DECLARATION OF PROTECTIVE COVENANTS
FOR
WIGGINS LAKES AND PRESERVE

KNOW ALL MEN BY THESE PRESENTS that the original Declaration of Protective Covenants for Wiggins Lakes, was recorded in O. R. Book 1551, at Page 820 *et seq.*, of the Public Records of Collier County, Florida. That Declaration, as it has previously been amended, is hereby further amended and is restated in its entirety, as amended.

The land subject to this Declaration (hereinafter "Wiggins Lakes and Preserve" or the "Property") is legally described in Exhibit "A" to the original Declaration as amended. The land subject to this Declaration was previously known as "Wiggins Lakes" and is being changed herein to "Wiggins Lakes and Preserve" to better define the Property subject to this Declaration. That Exhibit is hereby incorporated by reference. No additional land is being added by this instrument. The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of all present and future owners. The acquisition of title to a parcel or any other ownership interest in the Property, or the lease, occupancy or use of any portion of a parcel or the Property, constitutes an acceptance and ratification of all provisions of this Declaration as amended from time to time, and an agreement to be bound by its terms.

1. **DEFINITIONS.** The following words and terms used in this Declaration or any of the governing documents (unless the context shall clearly indicate otherwise) shall have the following meanings:

1.1 **"Assessments"** means a share of the funds required for the payment of common expenses which from time to time are assessed by the Association against an owner.

1.2 **"Articles" and "Bylaws"** as used herein, means the Articles of Incorporation and the Bylaws of Wiggins Lakes & Preserve Association, Inc., as amended from time to time. The Articles of Incorporation and Bylaws were completely amended and restated after a corporate merger and the restatements are re-recorded herewith.

1.3 **"Association"** means Wiggins Lakes & Preserve Association, Inc., a Florida corporation not for profit, which is responsible for the maintenance and operation of the common areas and amenities at Wiggins Lakes and Preserve.

1.4 **"Board"** means the Board of Directors responsible for the administration of Wiggins Lakes & Preserve Association, Inc.

1.5 **"Common Areas" or "Common Properties"** shall mean and refer to those areas of land intended to be devoted to the common use and enjoyment of the owners of The Properties. Common Properties shall mean and refer to all the property described in Exhibit "A" less and except all lands contained in (1) Wiggins

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Preserve Condominium One as described in Exhibit "A" to the original Declaration of Condominium for Wiggins Preserve Condominium One as recorded in O.R. Book 1910 at Pages 1451 *et seq.*, of the Official Records of Collier County, Florida; (2) Wiggins Preserve Condominium Two as described in Exhibit "A" to the original Declaration of Condominium for Wiggins Preserve Condominium Two as recorded in O.R. Book 1997 at Pages 2085 *et seq.*, of the Official Records of Collier County, Florida; and (3) Wiggins Lakes Condominium as described in Exhibit "A" to the original Declaration of Condominium for Wiggins Lakes Condominium as recorded in O.R. Book 1551 at Pages 776 *et seq.*, of the Official Records of Collier County, Florida. Included withing the Common Properties is an area known as the Conservation Area-Tortoise Preserve permanently designated on the Wiggins PUD development plan as a non-developable area for conservation purposes only.

1.6 **"Common Expenses"** means the expenses incurred by the Association in the course of performing its duties under the governing documents and the law. Common expenses of the Association include the costs of operating the Association, the costs of administration, maintenance, operation, repair and replacement of the common areas, other expenses declared by the governing documents to be common expenses, and any other valid expenses or debts of the common property as a whole of the Association which are assessed against the unit owners.

1.7 **"Common Surplus"** means the excess of all receipts of the Association, including but not limited to assessments, rents, profits and revenues over the common expenses.

1.8 **"Declaration of Covenants"** means this Declaration, as amended from time to time.

1.9 **"Governing Documents"** means and includes this Declaration, the Articles and Bylaws, and the governing documents of Wiggins Preserve Condominium One, Wiggins Preserve Condominium Two and Wiggins Lakes Condominium, and all recorded exhibits thereto, as amended from time to time.

1.10 **"Guest"** means any person who is not the owner or a lessee of a home or unit or a member of the owner's or lessee's family, who is physically present in, or occupies a home or unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

1.11 **"Home" or "Unit"** means each one of the two hundred twelve (212) units intended for residential use which is constructed within Wiggins Lakes and Preserve.

1.12 **"Institutional Mortgagee"** means the mortgagee (or its assignee) of a mortgage against a parcel, which mortgagee is a bank, savings and loan association, mortgage company, insurance company, real estate or mortgage investment trust, pension or profit sharing trust, the Federal Housing Administration, the Veterans Administration, or any agency of the United States of America. The term also refers to any holder of a mortgage against a parcel which mortgage is guaranteed or insured by the Federal Housing Administration, the Veterans Administration, any agency of the United States of America, or by any other public or private corporation engaged in the business of guaranteeing or insuring residential mortgage loans, and their successors and assigns.

1.13 **"Lease"** means the grant by a unit owner of a temporary right of use of the owner's parcel and unit for valuable consideration.

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1.14 **“Members”** means and refers to those persons who are entitled to membership in the Association as provided in this Declaration and the Association’s Articles of Incorporation and Bylaws.

1.15 **“Occupy”** when used in connection with a unit, means the act of staying overnight in a unit. **“Occupant”** is a person who occupies a unit.

1.16 **“Owner”** or **“Unit Owner”** means the record owner of legal title to a unit.

1.17 **“Primary Occupant”** means the natural person approved for occupancy of a home or unit when title to the home or unit is held in the name of two or more persons who are not husband and wife, or by a trustee or a corporation or other entity which is not a natural person.

1.18 **“Properties”** or **“Community”** means all the real property which is subject to this Declaration as described in Exhibit “A” of the original Declaration.

1.19 **“Rules and Regulations”** means these rules and regulations promulgated by the Board of Directors, governing the use of the common areas and operation of the Association.

1.20 **“Voting Interests”** means the voting rights distributed to the Association members pursuant to the Bylaws.

2. **ASSOCIATION.**

2.1 **Membership.** Every owner of a unit shall be a member of the Association, and by acceptance of a deed or other instrument evidencing his ownership interest, each owner accepts his membership in the Association, acknowledges the authority of the Association as herein stated, and agrees to abide by and be bound by the provisions of this Declaration, the Articles and Bylaws, and the rules and regulations of the Association, as amended from time to time.

2.2 **Voting Rights.** Voting rights are set forth in the Bylaws of the Association.

2.3 **Articles of Incorporation.** A copy of the Amended and Restated Articles of Incorporation of the Association is attached to this Declaration.

2.4 **Bylaws.** The Bylaws of the Association shall be the Amended and Restated Bylaws attached to this Declaration, as they may be amended from time to time.

2.5 **Delegation of Management.** The Association may contract for the management and maintenance of those portions of the Property it is required to maintain, and may authorize a licensed management agent to assist the Association in carrying out its powers and duties by performing such functions as the submission of proposals, collection of assessments, keeping of records, enforcement of rules and maintenance, repair and replacement of the common areas with funds made available by the Association for such purposes.

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2.6 Acts of the Association. Unless the approval or affirmative vote of the unit owners is specifically made necessary by some provision of the law or the governing documents, all approvals or actions permitted or required to be given or taken by the Association may be given or taken by its Board of Directors, without a vote of the unit owners. The officers and Directors of the Association have a fiduciary relationship to the unit owners. A unit owner does not have the authority to act for the Association by reason of being a unit owner.

2.7 Powers and Duties. The powers and duties of the Association include those set forth in Chapter 617, Florida Statutes, and in the governing documents. The Association may contract, sue, or be sued with respect to the exercise or non-exercise of its powers and duties. For these purposes, the powers of the Association include, but are not limited to, the maintenance, management, and operation of the common areas. The Association has the power to enter into agreements to acquire leaseholds, memberships and other ownership, possessory, easement or use interests in lands or facilities for the use and enjoyment of the owners.

2.8 Official Records. The Association shall maintain its official records as required by law. The records shall be open to inspection by members or their authorized representatives at all reasonable times. The right to inspect the records includes a right to make or obtain photocopies at the reasonable expense of the member seeking copies.

2.9 Purchase of Units. The Association has the power to purchase Wiggins Lakes and Preserve units and to hold, lease, mortgage, or convey them, such power to be exercised by the Board of Directors.

2.10 Interests in Real Property. The Association has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. Except as otherwise provided in Section 2.9 above, the power to acquire, encumber or convey ownership interests in real property shall be exercised by the Board of Directors only after approval by at least a majority of the voting interests of the Association, present, in person or by proxy, at a duly called meeting of the members of the Association, called for the purpose.

2.11 Disposition of Personal Property. Any personal property owned by the Association, may be mortgaged, sold, or otherwise encumbered or disposed of by the affirmative vote of a majority of the entire Board of Directors, without need for authorization by the unit owners.

2.12 Roster. The Association shall maintain a current roster of names and mailing addresses of unit owners, based upon information supplied by the unit owners. A copy of the roster shall be made available to any member upon request.

3. ASSESSMENTS. The provisions of this section shall govern assessments payable by all owners of units, for the common expenses of the Association not directly attributable to one of the units.

3.1 Covenant to Pay Assessments. Each owner of a unit by the act of becoming an owner covenants and agrees, and each subsequent owner of any unit (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 the Association:

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- (A) the unit owner's prorata share of annual assessments based on the annual budgets adopted by the Association;
- (B) the unit owner's prorata share of special assessments for capital improvements or other Association expenditures not provided for by annual assessments; and
- (C) any charges properly levied against individual unit owner(s) without participation from other owners.

Assessments and charges shall be established and collected as provided herein and elsewhere in the Bylaws. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 3.10 below, whenever title to a unit is transferred for any reason, the transferee is jointly and severally liable with the transferor for all unpaid assessments and charges against the transferor, regardless of when incurred, without prejudice to any right the transferee may have to recover from the transferor any amounts paid by the transferee. No owner may waive or otherwise escape liability for the assessments and charges provided for herein by waiver or non-use of the common areas, by abandonment, or otherwise. Except as provided elsewhere in the governing documents as to Institutional Mortgagees, no owner may be excused from the payment of assessments unless all owners are similarly excused. Assessments and other funds collected by or on behalf of the Association become the property of the Association. No unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his prior payments to the common surplus or Association reserves, except as otherwise provided herein or by law.

3.2 Purposes of Assessments. The assessments levied by the Association shall be used for the purposes of promoting the security, health, safety and general welfare of the unit owners and residents of Wiggins Lakes and Preserve; to operate, maintain, repair, improve, construct, reconstruct and preserve, on a not for profit basis the common areas owned by the Association for the benefit of its members, their guests, tenants and invitees; and those portions of the condominium properties that are the responsibility of the Association, and to perform all other duties and responsibilities of the Association as provided in the governing documents. Common expenses also include the funds necessary to provide reserve accounts for:

- (A) renovation or major repairs to the common areas and those portions of the condominium properties that are the responsibility of the Association; and
- (B) for emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

3.3 Share of Assessments. The owners of each unit shall be liable for their proportionate shares as follows:

- (A) Association Common Expenses: For Association common expenses not applicable to a particular condominium, the owner of each unit shall be liable for a share of the Association common expenses equal to one-two hundred twelfth (1/212th).

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(B) Wiggins Preserve Condominium One Expenses: For expenses applicable to Wiggins Preserve Condominium One, the owner of each unit shall be liable for a share of the Wiggins Preserve Condominium One expenses equal to one thirty-second (1/32nd).

(C) Wiggins Preserve Condominium Two Expenses: For expenses applicable to Wiggins Preserve Condominium Two, the owner of each unit shall be liable for a share of the Wiggins Preserve Condominium Two expenses equal to one ninety-sixth (1/96th).

(D) Wiggins Lakes Condominium: For expenses applicable to Wiggins Lakes Condominium, the owner of each unit shall be liable for a share of the Wiggins Lakes Condominium expenses equal to one eighty-fourth (1/84th).

The Board may change the budget and level of Periodic Assessments at a duly constituted meeting of the Board.

3.4 Ownership. Assessments and other funds collected by or on behalf of the Association become the property of the Association; no unit owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his unit. No owner can withdraw or receive distribution of his share of the common surplus, except as otherwise provided herein or by law.

3.5 Who is Liable for Assessments. The owner of each unit, regardless of how title was acquired, is liable for all assessments or installments thereon coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided by Section 3.10 below as to certain first mortgagees, whenever title to a condominium parcel is transferred for any reason, the new owner becomes jointly and severally liable with the previous owner for all assessments which came due prior to the transfer and remain unpaid, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.

3.6 No Waiver or Excuse from Payment. The liability for assessments may not be avoided or abated by waiver of the use or enjoyment of any common elements, by abandonment of the unit on which the assessments are made, or by interruption in the availability of the unit or the common elements for any reason whatsoever. No unit owner may be excused from payment of his share of the common expenses unless all unit owners are likewise proportionately excused from payment, except as otherwise provided in Section 20.3 below as to certain first mortgagees.

3.7 Application of Payments; Failure to Pay; Interest. Assessments and installments thereon paid on or before ten (10) days after the date due shall not bear interest, but all sums not so paid shall bear interest at the highest rate allowed by law, calculated from the date due until paid. The Association may also impose a late payment fee (in addition to interest) to the extent permitted by law. Assessments and installments thereon shall become due, and the unit owner shall become liable for said assessments or installments, on the date established in the Bylaws or otherwise set by the Board of Directors for payment. All payments on account shall be applied first to interest, then to late payment fees, court costs and attorneys' fees, and finally to delinquent assessments. No payment by check is deemed received until the check has cleared.

3.8 Liens. The Association has a lien on each condominium parcel securing payment of past due assessments, including interest and attorneys' fees and costs incurred by the Association incident to the

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collection of the assessment or enforcement of the lien, whether before, during or after a lien foreclosure suit. The lien is perfected upon recording a Claim of Lien in the Public Records of Collier County, Florida, stating the description of the condominium parcel, the name of the record owner, the assessments past due and the due dates. The lien is in effect until barred by law. The Claim of Lien secures all unpaid assessments coming due prior to a final judgment of foreclosure. Upon full payment, the person making the payment is entitled to a satisfaction of the lien.

3.9 Priority of Lien. The Association's lien for unpaid assessments shall be subordinate and inferior to the lien of a recorded first mortgage, but only to the extent required by the Condominium Act, as amended from time to time. The Association's lien shall be superior to, and take priority over, any other mortgage or lien regardless of when the mortgage or lien was recorded, except as otherwise expressly provided by the Condominium Act, as amended from time to time. Any lease of a unit shall be subordinate and inferior to the Association's lien, regardless of when the lease was executed.

3.10 Foreclosure of Lien. The Association may bring an action in its name to foreclose its lien for unpaid assessments in the manner provided in the Condominium Act, and may also bring an action to recover a money judgment for the unpaid assessments without waiving any lien rights.

3.11 Certificate as to Assessments. Within fifteen (15) days after request by a unit owner or mortgagee, the Association shall provide a certificate (sometimes referred to as an "estoppel letter") stating whether all assessments and other monies owed to the Association by the unit owner with respect to the condominium parcel have been paid. Any person other than the owner who relies upon such certificate shall be protected thereby.

4. EASEMENTS.

4.1 Appurtenant Enjoyment Easements. The owner of each unit, their guests, lessees and invitees, shall have as an appurtenance to their units a perpetual nonexclusive easement for ingress and egress over, across and through the common areas, for the use and enjoyment of all recreational facilities and common areas, such use and enjoyment to be shared in common with the other owners of units, their guests, lessees and invitees, subject to the provisions of this Declaration.

4.2 Interior Roadway Easements. The interior roadway system of Wiggins Lakes and Preserve is common property owned by the Association. The roadways are subject to the rules and regulations as the Association imposes, however, each owner of a unit shall have an easement for ingress and egress over said roadway system. The Board of Directors shall have the right to establish parking regulations and to enforce such regulation by all means lawful for such enforcement on drives and roadways.

4.3 Utility Easements. A perpetual easement shall exist upon, over, under and across Wiggins Lakes and Preserve for the purpose of maintaining, installing, repairing, altering and operating sewer lines, water lines, waterworks, sewer works, force mains, lift stations, water mains, sewer mains, water distribution systems, sewage disposal systems, effluent disposal systems, pipes, valves, gates, pipelines, cable television and all machinery and apparatus appurtenant thereto as may be necessary for the installation and maintenance of utilities servicing all owners of units and servicing the common areas, all such easements to be of a size, width and location so as to minimize and not unreasonably interfere with the use of any improvements which

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are now, or will be, located upon said property. The Association, through its Board of Directors, has the authority to grant additional such easements, and to modify, move or vacate such existing easements as may be necessary to efficiently and effectively provide utility and other services to the units and the common elements and common areas.

4.4 Subordination. Notwithstanding any of the foregoing to the contrary, it is understood that these covenants and restrictions are subordinate, and will be subordinate without the necessity of any other instrument, to any existing easement covering the basic water, sewer and drainage systems installed in the common areas, and any existing easement or easements to any public or quasi-public utility for the installation and maintenance of service lines in the common areas.

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

- (A) the right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the common areas and providing the services authorized herein, and, in aid thereof, to mortgage said properties;
- (B) the right of the Association to impose rules and regulations governing the use of the common areas and Association property as further provided in Section 7. of the Bylaws; and
- (C) the right of the Association to a non-exclusive easement over, across and through each unit as necessary to meet the Association's maintenance responsibilities.
- (D) the right of the Association to levy assessments on lots and units to enable the Association to pay the costs of operating and maintaining the Common Properties and other costs of the Association, and
- (E) the right of the Association to dedicate or transfer all of any part of the Common Properties to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members; provided that no such dedication or transfer, determination as to purposes or as to the conditions hereof, shall be effective unless an instrument signed by the appropriate officers of the Association certifying that at a Special or Regular Meeting of Members called for such purpose, of which thirty (30) days written notice was sent to each Member, the vote of two-thirds (2/3) of the Members present, either in person or by proxy, was obtained, agreeing to such dedication or transfer;
- (F) the right of the Association to grant exclusive easements and rights-of-way over certain parts of the Common Properties to Members of the Association when the Association deems it necessary; and
- (G) the right of the Association to provide, restrict or limit access across the roadways as the Board of Directors deems necessary and proper. Such limitation may include but not be limited to the stopping and questioning of visitors into and across the Wiggins Lakes and Preserve property by such means as the Board of Directors deems is necessary and proper.

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4.6 Any owner of a unit in the Properties which unit contains a structure which encroaches upon another unit or, the common areas shall have a valid easement for the encroachment and maintenance of same, as long as it stands and exists.

5. MAINTENANCE.

5.1 Association Maintenance. The Association shall be responsible for the maintenance, repair, replacement and operation of all common areas, including, but not limited to, water retention and water management areas landscaping, trees, plantings, lawns, flowers, water management facilities, irrigation systems and footpaths, roadways, common driveways, parking areas, lighting, community swimming pool, swimming pool area, bath house, tennis court, utility installations located on units but serving more than one unit, fences, mailboxes and privacy walls. As part of the common areas is an area known as the Conservation Area-Tortoise Preserve for which the Association is responsible to maintain. The Conservation Area-Tortoise Preserve is regulated by the Collier County Land Development Code, Resource Protection, 3.04 Protection of Endangered Species. The Association is responsible for a plan and the maintenance of this area as required by the Collier County Environmental Services Department. The plan for maintenance of this area includes implementing a program for removal of exotic plant species and vegetation management for tortoise habitat preservation. The cost of all Association maintenance shall be a common expense.

6. INSURANCE. In order to adequately protect the Association and its members, insurance shall be carried and kept in force at all times in accordance with the following provisions:

6.1 Association Insurance; Duty and Authority to Obtain. The Board of Directors shall obtain and keep in force the insurance coverage which it is required to carry by law and under this Declaration, and may obtain and keep in force any or all additional insurance coverage as it deems necessary. The name of the insured shall be the Association and the owners without naming them, and their mortgagees, as their interests shall appear. To the extent permitted by law, the Association may self-insure.

6.2 Optional Coverage. The Association may purchase and carry other such insurance coverage as the Board of Directors may determine to be in the best interest of the Association and residential unit owners.

6.3 Description of Coverages. A detailed summary of the coverage included in the policies, and copies of the policies, shall be available for inspection by residential unit owners or their authorized representatives upon request.

6.4 Waiver of Subrogation. If available and where applicable, the Board of Directors shall endeavor to obtain insurance policies which provide that the insurer waives its right to subrogation as to any claim against the Association unit owners, or their respective servants, agents or guests, except for any claim based upon gross negligence evidencing reckless, willful or wanton disregard for life or property.

6.5 Insurance Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association, the owners and their mortgagees as their interests may appear, and all proceeds shall be payable to the Association. The duty of the Association shall be to receive such proceeds as are paid, and

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to hold the same in trust, and disburse them for the purposes stated herein and for the benefit of the owners and their respective mortgagees in the following shares:

(A) Common Areas. Proceeds on account of damage to common areas shall be held in as many undivided shares as there are units, the shares of each owner being the same as his share in the common areas.

(B) Mortgagee. If a mortgagee endorsement has been issued as to a unit, the shares of the mortgagee and the owner shall be as their interests appear. In no event shall any mortgagee have the right to demand application of insurance proceeds to any mortgage or mortgages which it may hold against unit or units, except to the extent that insurance proceeds exceed the actual cost of repair or restoration of the damaged building or buildings. Except as otherwise expressly provided, no mortgagee shall have any right to participate in determining whether improvements will be restored after casualty.

6.6 Distribution of Proceeds. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the owners in the following manner: The proceeds shall be paid to defray the costs of reconstruction or repair by the Association. Any proceeds remaining after defraying costs shall be distributed to the beneficial owners, remittances to unit owners and their mortgagees being paid jointly to them.

6.7 Association as Agent. The Association is hereby irrevocably appointed as agent for each unit owner to adjust all claims arising under insurance policies purchased by the Association for damage or loss to the common areas.

6.8 Damage to Common Areas. Where insured loss or damage occurs to the common areas or association property, it shall be mandatory for the Association to repair, restore and rebuild the damage caused by the loss, and the following procedures shall apply:

(A) The Board of Directors shall promptly obtain reliable and detailed estimates of the cost of repair and restoration, and shall negotiate and contract for repair and reconstruction.

(B) If the proceeds of insurance and available reserves are insufficient to pay for the cost of repair and reconstruction of the common areas, the Association shall promptly, upon determination of the deficiency, levy a special assessment against all unit owners for the deficiency. Such special assessments need not be approved by the unit owners. The special assessments shall be added to the funds available for repair and restoration of the property.

7. AMENDMENTS; TERMINATION.

7.1 Duration. The conditions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the owner of any real property subject to this Declaration, their respective legal representatives, heirs, successors and assigns until August 14, 2020. On August 14, 2020, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being

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automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, and subject to existing laws and ordinances, that there shall be no renewal or extension of this Declaration if during the last year of the initial period, or during the last year of any subsequent ten (10) year renewal period, at least two-thirds (2/3rds) of owners of units affirmatively vote at a duly held meeting of members of the Association in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, be given at least forty-five (45) days in advance of said meeting. If the Association votes to terminate this Declaration, the President and Secretary shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, and the total number of votes cast against such resolution. Said certificate shall be recorded in the Public Records of Collier County, Florida, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

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

8. ENFORCEMENT; GENERAL PROVISIONS.

8.1 Enforcement. Enforcement of these covenants, conditions and restrictions may be by a proceeding at law or in equity and may be instituted by the Association, its successors or assigns, or by any owner, against any person or persons violating or attempting to violate or circumvent any covenant, condition or restriction, either to restrain violation or to recover damages, and against any unit to enforce any lien created by these covenants. Failure of the Association or any owner to enforce any covenant, condition or restriction herein contained for any period of time shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

8.2 Owner and Member Compliance. The protective covenants, conditions, restrictions and other provisions of the governing documents and the rules promulgated by the Association shall apply to members and all persons to whom a member has delegated his right of use in and to the common areas, as well as to any other person occupying any unit under lease from the owner or by permission or invitation of the owner or his tenants (express or implied), and their licensees, invitees or guests. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the governing documents shall not in any way act to limit or divest the Association of the power to enforce these provisions. Each residential unit owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

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8.3 Litigation. Enforcement actions for damages, or for injunctive relief, or both, on account of any alleged violation of law, or of the governing documents or Association rules, may be brought by any owner, or the Association against:

- (A) the Association;
- (B) a unit owner;
- (C) anyone who occupies or is a tenant or guest of a residential unit; or
- (D) any officer or Director of the Association who willfully and knowingly fails to comply with these provisions.

8.4 Attorney Fees. In any legal proceeding arising out of an alleged failure of a guest, tenant, residential unit owner, officer, Director or the Association to comply with the requirements of the law, or the governing documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such attorney fees as may be awarded by the court.

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

8.6 Notices. Any notice required to be sent to any member or owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper postage affixed to the last known address of the owner appearing in the records of the Association, or to the address of the member's unit. Notice to one of two or more co-owners of a unit shall constitute notice to all co-owners. It shall be the obligation of every member to immediately notify the Secretary of the Association in writing of any change of address.

8.7 Severability. Should any covenant, condition or restriction herein contained, or any section, subsection, sentence, clause, phrase or term of this Declaration or its recorded exhibits be declared to be void, invalid, illegal, or unenforceable, for any reason, by any court having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

8.8 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.

8.9 Non-Profit Status. Notwithstanding anything contained herein to the contrary, the Association will perform no act nor undertake any activity inconsistent with its non-profit status under applicable state or federal law.

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

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

EXHIBITS TO DECLARATION

Exhibits listed below were recorded on August 14, 1990, together with the original Declaration of Protective Covenants of Wiggins Lakes, at O.R. Book 1551, Page 820 *et seq.*, Public Records of Collier County, Florida.

● The following exhibits, as previously recorded with the original Declaration are hereby incorporated by reference as exhibits to the Amended and Restated Declaration of Covenants.

Exhibits "A"- LEGAL DESCRIPTION

● In addition, the following Exhibits are completely amended and restated after a corporate merger, and the Restatements are recorded as follows and re-recorded herewith:

ARTICLES OF INCORPORATION OF WIGGINS LAKES & PRESERVE ASSOCIATION, INC. recorded with the Articles of Merger in O.R. Book 2345 at Page 2806 *et seq.*, of the Public Records of Collier County, Florida.

BYLAWS OF THE WIGGINS LAKES & PRESERVE ASSOCIATION, INC. recorded with the Articles of Merger in O.R. Book 2345 at Page 2806 *et seq.*, of the Public Records of Collier County, Florida are incorporated herewith.

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